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Requirements for Notification, Evaluation and Reduction of Lead-Based Paint Hazards in Federally Owned Residential Property and Housing Receiving Federal Assistance; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

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[Docket No. FR–3482–F–06]

RIN 2501–AB57

Requirements for Notification, Evaluation and Reduction of Lead-Based Paint Hazards in Federally Owned Residential Property and Housing Receiving Federal Assistance

AGENCY: Office of the Secretary-Office of Lead Hazard Control, HUD.

ACTION: Final rule.

SUMMARY: The purpose of this rule is to ensure that housing receiving Federal assistance and federally owned housing that is to be sold does not pose lead-based paint hazards to young children. It implements sections 1012 and 1013 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, which is Title X of the Housing and Community Development Act of 1992. The requirements of this rule are based on the practical experience of cities, states and others who have been controlling lead-based paint hazards in low-income privately-owned housing and public housing through HUD assistance. It also reflects the results of new scientific and technological research and innovation on the sources, effects, costs, and methods of evaluating and controlling lead hazards. With today's action, HUD's lead-based paint requirements for all Federal programs are now consolidated in one part of title 24 of the Code of Federal Regulations.

DATES: *Effective Dates:* Section 35.140 is effective on November 15, 1999. All other provisions of the rule are effective on September 15, 2000.

FOR FURTHER INFORMATION CONTACT: For questions on this rule, call (202) 755–1785, ext. 104 (this is not a toll-free number) or e-mail your inquiry to lead__regulations@hud.gov. For lead-based paint program information, contact Steve Weitz, Office of Lead Hazard Control, Department of Housing and Urban Development, 451 7th Street, SW, Room B–133, Washington, DC 20410–0500. For legal questions, contact John B. Shumway, Office of General Counsel, Room 9262, Department of Housing and Urban Development. Hearing and speech-impaired persons may access the above telephone number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

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I. Background

A. Lead Poisoning

Childhood lead poisoning causes reduced intelligence, low attention span, reading and learning disabilities, and has been linked to juvenile delinquency, behavioral problems, and many other adverse health effects. Over the past 20 years, the removal of lead from gasoline, food canning and other sources has been successful in reducing population blood lead levels by over 80 percent. Nearly 1 million children, however, still have excessive levels of lead in their blood, making lead poisoning a major childhood environmental disease (See CDC 1997a). Lead-based paint in housing is the major remaining source of exposure and is responsible for most cases of childhood lead poisoning today.

HUD estimates that over 60 million occupied homes, or approximately 80 percent of all homes built before 1980, have some lead-based paint. Many of those 60 million homes have only small amounts of such paint, however; generally, the older the home, the greater the amount of lead-based paint. The use of lead in paint was highest in housing built before 1960. It was completely banned for residential use in 1978 by the Consumer Product Safety Commission.

Higher childhood blood lead levels are associated with lower household income, residence in large urban areas, non-Hispanic African American race, and living in older homes. Recent data from the period 1991–1994 indicate that over 16 percent of young children of less than 6 years of age from low income families had blood levels above the level of concern set by the Centers for Disease Control and Prevention (CDC), compared with only one percent for young children from high income families. Over 8 percent of all young children living in housing built before 1946 had blood lead levels over the CDC level of concern compared to only 1.6 percent for those living in housing built after 1973. Over 11 percent of non-Hispanic African American children were above the CDC level of concern compared to 2.3 percent for non-Hispanic white children. Twenty-two percent of non-Hispanic African American children living in pre-1946 housing were over the CDC level of concern.

Childhood lead poisoning is ''the most common environmental disease of young children,'' (CDC 1990) eclipsing all other environmental health hazards found in the residential environment (ATSDR 1988). Lead is highly toxic and affects virtually every system of the body. At high exposure levels, lead poisoning can cause coma, convulsions, and death. While adults can suffer from excessive lead exposures, the groups most at risk are fetuses, infants, and children under age 6. At low levels, the neurotoxic effects of lead have the greatest impact on children's developing brains and nervous systems, causing reductions in IQ and attention span, reading and learning disabilities, hyperactivity, and behavioral problems. These effects have been identified in many carefully controlled research studies (National Academy of Sciences 1993; HUD 1997). The vast majority of childhood lead-poisoning cases, however, go undiagnosed and untreated, since most poisoned children have no obvious symptoms.

The Residential Lead-Based Paint Hazard Reduction Act of 1992 (Pub. L. 101–550; 42 U.S.C. 4851 *et seq.*), which hereafter is referred to as ''Title X'' because it is Title X of the Housing and Community Development Act of 1992, redefines the concept of ''lead-based paint hazards.'' Under prior Federal legislation, a lead-based paint hazard was defined as any paint greater than or equal to one milligram of lead per square centimeter (mg/cm^2), regardless of its condition or location. Title X states that a lead-based paint hazard is ''any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil or lead-contaminated paint that is deteriorated or present in chewable surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects.'' Thus, under this definition, intact lead-based paint on most surfaces is not considered a ''hazard,'' although the condition of the paint should be monitored and maintained to ensure that it does not become deteriorated.

Title X defines two methods of ''evaluating'' lead-based paint hazards or lead-based paint. One method, ''risk assessment,'' includes dust wipe sampling and other environmental sampling to identify lead-based paint hazards. The other, ''inspection'' (or ''lead-based paint inspection''), determines the presence only of lead-based paint. Evaluation may also be accomplished by a combination of the two methods. The combination approach results in an identification of all lead-based paint and lead-based paint hazards. Title X provides for three types of lead-based paint ''hazard reduction'': Interim controls, abatement of lead-based paint hazards, and complete abatement of all lead-based paint. Interim controls are ''measures designed to reduce temporarily human exposure or likely exposure to lead-based paint hazards.'' Abatement means ''a set of measures designed to permanently eliminate lead-based paint hazards'' or lead-based paint. To ensure that evaluation and hazard reduction are carried out safely and effectively, Title X authorizes new requirements for consistency and quality control.

B. Legislative and Regulatory History

The existing lead-based paint regulations pertaining to the Department's programs, as well as to all federally owned residential property at the time of sale, were written pursuant to the passage of the Lead-Based Paint Poisoning Prevention Act of 1971, as amended prior to 1992 (42 U.S.C. 4821 *et seq.*). This legislation required the Secretary to ''establish procedures to eliminate as far as practicable the hazards of lead-based paint poisoning

with respect to any existing housing which may present such hazards and which is covered by an application for mortgage insurance or housing assistance payments under a program administered by the Secretary.'' HUD interpreted the phrase ''housing assistance payments'' broadly and therefore in 1976 drafted regulations to eliminate the hazards of lead-based paint for virtually all of its programs. Part 35 of the Department's regulations in title 24 of the Code of Federal Regulations was promulgated setting forth general procedures for the inspection and treatment of defective paint surfaces in HUD-associated housing. The regulation at 24 CFR 35.5(c), however, gave each Assistant Secretary the authority to develop regulations pertaining to their specific areas of responsibility, and varying program regulations concerning lead-based paint now exist throughout title 24.

The Department's lead-based paint regulations have been amended from time to time in response to changes in the law, court orders and increased knowledge about the hazards and treatment of lead-based paint. The most recent Department-wide regulatory revisions pertaining to lead-based paint were made in 1986, 1987 and 1988. Some additional revisions specific to the public and Indian housing programs were issued in 1991, and important changes were made in 1995 to the Housing Quality Standards (HQS) that apply to Section 8 tenant-based rental assistance and certain other HUD programs.

Title X represents a new and sweeping approach to the problem of lead-based paint poisoning of children, necessitating a comprehensive revision of HUD's lead-based paint regulations. Title X amends what had previously been general language contained in the Lead-Based Paint Poisoning Prevention Act and sets out specific requirements for federally owned residential property and housing receiving Federal assistance. Title X stresses identification of hazards, notification to occupants of the existence of these hazards, and control of those hazards. This final rule also reflects current knowledge of the causes of lead poisoning and current lead-based paint hazard evaluation and reduction technologies and practices. The presence of lead-based paint will be more accurately identified, with fewer false negatives or false positives. Likewise, the existence, nature, severity and location of lead-based paint hazards (in dust, soil and deteriorated paint) will be more accurately identified and reported. By improving lead-based paint hazard evaluation, decisions about hazard reduction activities will be more fully informed, and available resources will be better targeted to reduce exposure to occupants and to the environment.

C. HUD Reinvention

The Department has launched a major restructuring to meet the changing housing and development needs of communities across the country. The restructuring includes program consolidation, organizational changes within the Department, and relocation of some cross-cutting functions outside of Washington, D.C. HUD's reinvention efforts are taking place in the context of a broader, government-wide reinvention process, the National Performance Review, initiated by President Clinton and Vice-President Gore. The goal of the reinvention is to give State, tribal and local decisionmakers maximum flexibility to tailor Federal resources in response to local circumstances, needs and priorities.

In order to keep pace with the changes HUD is undertaking, the Department's program regulations must also change. Although this lead-based paint rule was developed to implement the statutory requirements of Title X for federally owned residential property and housing receiving Federal assistance, the Department saw this as an opportunity to revise all of its lead-based paint regulations to keep pace with changes in the scientific understanding of how childhood lead poisoning occurs, lead-based paint technology and in HUD service delivery.

The rule consolidates numerous lead-based paint regulations found throughout HUD's program regulations into part 35 of title 24 of the Code of Federal Regulations. This eliminates redundant lead-based paint regulations and achieves consistency among the lead-based paint requirements for different HUD programs. Before this rule, many HUD clients received funding from several HUD programs with separate and sometimes inconsistent sets of program regulations.

This rule groups HUD programs by the type of assistance provided to make it easier to understand and implement. For instance, a client receiving HUD funds for rehabilitation will find only one rehabilitation subpart. In addition, grouping HUD programs by type of assistance allows greater flexibility for local governments and recipients of HUD funds.

Finally, the rule reflects HUD's efforts to balance the practical need for cost-effective, affordable lead-based paint hazard notification, evaluation and reduction measures with the statutory requirements of Title X as well as with HUD's duty to protect children living in a residential property that is owned or assisted by the Federal government.

D. Public Input on Rulemaking

Consistent with Executive Order 12866, Regulatory Planning and Review, and with Executive Order 13045 on Protection of Children From Environmental Health Risks and Safety Risks, HUD has increased public participation in the regulatory development process, with attention to the special needs of children. Because of the magnitude of the changes required in HUD's lead-based paint regulations and the potential impact of these changes, public involvement was crucial to the rulemaking process. The three main avenues for public involvement in the development of the proposed rule were the HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing (June 1995) (HUD Guidelines), the recommendations from the Task Force on Lead-Based Paint Hazard Reduction and Financing (Task Force), and three major meetings of HUD clients to seek input on the implementation of Title X. In addition to these three methods of public involvement, there was, of course, the opportunity for public comment on the proposed rule.

1. *HUD Guidelines.* The HUD Guidelines were mandated by section 1017 of Title X. They were developed by housing, public health and environmental professionals with broad experience in lead-based paint hazard identification and control. The HUD Guidelines form the basis for many of the lead-based paint evaluation and reduction methods described in subpart R, and are intended to help property owners, government agencies and private contractors sharply reduce children's exposure to lead-based paint hazards, without adding unnecessarily to the cost of housing.

2. *Title X Task Force.* The Task Force on Lead-Based Paint Hazard Reduction and Financing (Task Force) was mandated by section 1015 of Title X. The Task Force submitted its report with recommendations, Putting the Pieces Together: Controlling Lead Hazards in the Nation's Housing, to then-HUD Secretary Henry Cisneros and EPA Administrator Carol Browner in July 1995. Members of the Task Force included representatives from Federal agencies, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the building and construction industry, landlords, tenants, primary lending

institutions, private mortgage insurers, single family and multifamily real estate interests, nonprofit housing developers, property liability insurers, public housing agencies, low-income housing advocacy organizations, lead-poisoning prevention advocates and community-based organizations serving communities at high-risk for childhood lead poisoning. The mandate of the Task Force was to address sensitive issues related to lead-based paint hazards in private housing, including standards of evaluation and control, financing, and liability and insurance for rental property owners and hazard control contractors. Methods found in this rule for ongoing lead-based paint maintenance and the option for standard treatments are drawn from the Task Force recommendations. Further discussion of ways the Department used the Task Force recommendations in developing this rule is provided below under ''Other General Issues.''

3. *Meetings with HUD Clients.* Prior to the development of the proposed rule, the Department held three meetings with HUD clients on the potential implications of Title X on HUD programs. The meetings involved HUD constituents, grantees, and field staff of the Offices of Public and Indian Housing (PIH), Community Planning and Development (CPD), and Housing, as well as advocacy and tenant representatives. Participants shared their thoughts on several Title X issues including: Risk assessment and interim controls, hazard reduction activities during the course of rehabilitation, occupant notice of evaluation and hazard reduction activities, and responding to children with elevated blood-lead levels. Additional written comments were accepted from participants after the meetings.

4. *Comments on Proposed Rule.* Under the authority of Title X, HUD published a proposed rule in the **Federal Register** of June 7, 1996 (61 FR 29170). The proposed rule set forth new requirements for lead-based paint hazard notification, evaluation, and reduction for federally owned residential property and housing receiving Federal assistance. Comments on the proposed rule were requested on or before September 5, 1996.

Most of the 93 comments were from persons representing organizations that would be directly affected by the rule. More than a third of the comments (34) came from agencies of State or local government: Community development agencies, public housing authorities, planners, mayors, health departments and other organizations directly or indirectly involved with federally assisted programs involving housing. Groups representing the housing and community development industry, or segments of it, accounted for an additional nine comments.

Fourteen Federal agencies submitted comments on the rule, including 11 agencies affected by it as potential regulated entities, and three others with their own regulatory role in some aspect of health and safety regulations associated with lead poisoning. Four comments were received from hospitals, physicians or health agencies other than those included in the count of State or local agencies, above. Four lead poisoning prevention advocacy groups submitted comments, along with three more broadly based environmental groups and five law firms or legal aid organizations.

Housing developers, or representatives of developers, accounted for five comments. Eight others were received from persons identifying themselves as consultants or experts on some aspect of the rule, or individuals who did not explain the basis of their interest in the rule. In addition, two comments were received from standards-setting entities, and one each from a bank, a secondary mortgage market organization, a coalition of tenant action groups, a child welfare group, and an advocacy group representing industries that manufacture or use lead.

Comments are summarized below in Section II of this preamble and described in more detail in Section III of this preamble.

E. Related Actions by EPA and HUD

Title X requires EPA and HUD to take other very important actions that are complementary to and in some cases binding on this final rule. Five such actions are: (1) The HUD–EPA regulation on notification and disclosure during real estate transactions; (2) the EPA standards for certification of firms and individuals performing lead-based paint activities, and associated work practices standards; (3) EPA standards for determining hazardous levels of lead in paint, dust and soil; (4) the EPA program for the accreditation of laboratories for analysis of lead in paint, dust and soil; and (5) EPA requirements applying to renovation and remodeling activities.

1. *Disclosure Rule.* Section 1018 of Title X (42 U.S.C. 4852d) directs EPA and HUD to issue joint regulations requiring disclosure of known lead-based paint or lead-based paint hazards by persons selling or leasing most housing built before 1978. Under that authority, the two agencies published a final rule on March 6, 1996, which became effective on September 6, 1996 for owners of more than four dwelling units and on December 6, 1996 for owners of four or fewer dwelling units. The rule requires that, before completing the transaction, sellers and lessors of applicable housing must: (1) Provide purchasers and lessees (tenants) with the lead hazard information pamphlet approved by EPA; (2) disclose all known information about the presence of lead-based paint or lead-based paint hazards; (3) provide purchasers and lessees with any available records or reports pertaining to the presence of lead-based paint or lead-based paint hazards; (4) include, as an attachment to the contract or lease, certain disclosure and acknowledgement language and a warning statement about the dangers of lead-based paint; and (5) include certain disclosure and acknowledgment language in the contract or lease. In addition, sellers must allow purchasers a ten-day opportunity to inspect the dwelling for lead-based paint or lead-based paint hazards. Purchasers and sellers are free to negotiate another mutually-agreeable time period and all other aspects of the inspection or risk assessment. Agents must ensure compliance with these requirements. Section 1018 does not require either the buyer or the seller to conduct an inspection, nor does it require either the buyer or the seller to take action to reduce any lead-based paint or lead-based paint hazards. Also, with lease agreements, neither the landlord nor the tenant is required by section 1018 to conduct any type of inspection or hazard reduction.

Section 1012 of Title X (42 U.S.C. 4822) directs HUD to require that tenants and purchasers of ''target housing'' receiving Federal assistance be provided the same EPA-approved pamphlet that must be used in compliance with the section 1018 notification and disclosure regulation. (''Target housing'' is a statutorily defined term in Title X that means housing constructed before 1978, except housing for the elderly and persons with disabilities unless a child of less than 6 years of age resides or is expected to reside in the housing, and except any zero-bedroom dwelling.) As described below, HUD has avoided duplication of pamphlet dissemination requirements if the pamphlet has already been provided in compliance with the disclosure rule.

2. *EPA Certification Requirements and Work Practices Standards.* Title IV of the Toxic Substances Control Act (TSCA, 15 U.S.C. 2681–2692), as

amended by Title X, section 402(a) (15 U.S.C. 2682(a)) requires EPA to establish a regulatory framework governing lead-based paint activities that will ensure that individuals engaged in risk assessments, inspections and abatement are properly trained, that contractors are certified (licensed), and that training programs are accredited. TSCA section 404 (15 U.S.C. 2684) mandates a process under which EPA will approve State programs for training and certification of individuals and firms under section 402. In States lacking their own programs, EPA must establish, administer and enforce Federal programs. EPA published a final rule on August 29, 1996 (40 CFR part 745, subparts L and Q, 61 FR 45777–45830) implementing sections 402 and 404 as they pertain to target housing and ''child-occupied facilities'' (generally, certain facilities regularly visited by children under 6 years). The regulations contain the following requirements: Training and certification to ensure the proficiency of individuals who offer to conduct lead-based paint inspections, risk assessments or abatement services; accreditation requirements to ensure that training programs provide quality instruction; work practice standards to ensure that lead-based paint activities are conducted safely, reliably and effectively; and procedures for States and Tribes to apply to EPA for authorization to administer these elements. It is expected that many States and Tribes will have EPA-authorized certification programs in place prior to the effective date for the 402/404 rule, which is August 29, 1999. Regardless of the status of EPA authorizations, however, after that time, all lead-based paint inspections, risk assessments and abatements must be conducted by individuals and contractors certified in accordance with the EPA rule and the work must be in accordance with the work practice standards contained in that rule.

HUD requires that lead-based paint inspections, risk assessments and abatements done in compliance with its final rule on lead-based paint activities in federally owned and assisted housing be conducted in accordance with the EPA rule implementing TSCA sections 402 and 404, i.e., that individuals and firms be certified and the work be done in accordance with the work practices standards. It should be noted that the EPA regulation is not applicable to interim controls. It has been necessary, therefore, for HUD to include basic standards for such procedures in this rule.

3. *EPA Standards for Hazardous Levels of Lead in Paint, Dust and Soil.* TSCA section 403 (15 U.S.C. 2683) requires EPA to issue regulations identifying, for the purposes of Title X, levels of lead in paint, dust and soil that are considered hazardous. EPA published a proposed rule on June 3, 1998. When promulgated and effective, the final rule implementing section 403 will contain standards that affect the risk assessments required in this rule. In the meantime, the interim levels of lead in paint, dust and soil set forth in this rule issued by HUD shall be followed in housing covered by the rule. When the TSCA 403 rule is effective, HUD will issue any technical amendments that are needed to make clear what standards are applicable to this rule at that time.

4. *EPA Laboratory Accreditation Program.* Under TSCA section 405(b) (15 U.S.C. 2685(b)), EPA has established the National Lead Laboratory Accreditation Program (NLLAP). NLLAP recognizes laboratories which have demonstrated the ability to accurately analyze lead in paint, dust, and soil samples. To be NLLAP recognized, laboratories must successfully participate in the Environmental Lead Proficiency Analytical Testing (ELPAT) program and undergo a systems audit. EPA has recognized the American Association for Laboratory Accreditation (A2LA) and the American Industrial Hygiene Association (AIHA) as NLLAP accrediting organizations. The National Lead Information Center Clearinghouse (1–800–424-LEAD) provides the public with a continually updated list of NLLAP recognized laboratories. In this rule on lead-based paint requirements in housing receiving Federal assistance and federally owned housing, HUD is requiring the use of NLLAP recognized laboratories for laboratory-based analysis of lead in paint, dust and soil samples.

5. *Possible EPA Regulations Pertaining to Renovation and Remodeling.* TSCA section 402(c) (15 U.S.C. 2682(c)) requires EPA to study the extent to which various types of renovation activities create a lead-based paint exposure hazard for workers or occupants where the work is being conducted. The same section directs EPA to revise the regulations implementing section 402(a) to apply to renovation and remodeling activities or to determine that such regulations are not required. EPA has not yet made the determination as to whether regulatory revision is necessary. If EPA does decide to issue such regulations, it is possible that they would apply to interim controls, which are a type of hazard reduction activity commonly required in this HUD rule but not currently regulated by EPA. Other types of work may also be affected. Until EPA promulgates and makes effective a new regulation under TSCA section 402(c), the requirements in this rule issued by HUD shall be followed in housing covered by the rule.

II. Summary of Public Comments on Proposed Rule

A. Diversity of Comments

With only a few exceptions, commenters on the proposed rule agreed that lead-based paint hazards are a serious health problem deserving to be addressed. There was, however, an extraordinary diversity of views regarding how best to control lead-based paint and its associated risks. Additionally, commenters varied widely on the question of what relative priority lead-based paint control efforts should enjoy, given the shortage of resources for the provision of housing services generally, and the costs associated with lead hazard control measures.

Commenters also perceived the proposed rule in different ways. Some considered it biased in favor of lead-based paint abatement as opposed to less expensive interim control procedures. Several argued that in recent years interim controls have become accepted as a wiser response to lead hazards than more elaborate abatement processes. Other commenters, however, warned against what they saw as undue readiness in the proposed rule to undertake limited measures to control hazards in circumstances where, *these* commenters believed, such measures would be inadequate and would afford only temporary solutions of unknown duration.

Spokespersons for State and local funded agencies, despite providing many comments on ways to make the rule more effective, were concerned that the cost of compliance with the rule would severely affect their housing programs.

Most, although not all, of the commenters representing the health industry or environmental concerns pleaded for a stronger rule, for more rapid effectiveness, and for a more strenuous program of hazard control than the proposed rule required.

Regulated Federal agencies, like their State and local counterparts, worried about costs and often advocated wider discretion. Many State and Federal commenters advocated more deference on HUD's part to hazard control programs, present or future, that have been or will be developed elsewhere.

Commenters from varying backgrounds suggested that HUD's rule

was likely to become the nationwide ''standard'' for compliance, i.e., that courts (through tort litigation) and lending institutions (through underwriting standards) eventually would establish a standard of care applicable to *private* housing suppliers that was closely patterned after the standards set out in this rule. Most often, this observation was accompanied by expressions of concern that the proposed rule was not adequate to provide the appropriate standard of care for the nation's housing stock.

B. Commenters' Broad Concerns

Following is a brief description of the most common concerns expressed by the commenters. The Department's response to these concerns is described and explained in Section IV of this preamble below.

1. *''Missed Opportunities''.* Some argued that the proposed rule was misdirected, set the wrong priorities, spent limited resources less wisely than they could be spent, or failed to take important additional considerations into account. Most typical are comments suggesting that the rule:

(1) Should stress abatement more (or less);

(2) Is inadequately focused on controlling lead in units currently occupied by small children;

(3) Pays insufficient attention to soil-related hazards;

(4) Pays too little deference to EPA and/or private-sector standards-setters;

(5) Stresses liability risk-management over health-based hazard control measures; or

(6) Otherwise misses an opportunity to apply the most effective possible rule to an acknowledged problem.

2. *Cost of Compliance.* A very large number of commenters expressed concerns about costs. Cost-related comments took many forms, but the most frequently raised assertions were variations on the following:

(1) The cost-benefit analysis in the Economic Analysis is inaccurate and grossly underestimates the impact the rule will have on the ability of federally funded entities to carry out their programs.

(2) Because of high costs, the regulation will divert resources that could be better used to meet other critical housing needs.

(3) Costs will be so extreme that many housing programs currently in existence will be forced to close down or drastically curtail their productivity.

(4) The rule will cause existing housing to deteriorate as it becomes too expensive to rehabilitate, or will distort local selection processes by steering them away from older dwellings most in need of rehabilitation.

(5) Landlords in HUD's tenant-based rental assistance program will not accept the additional financial burden of participating in the program.

3. *Legality of Portions of the Rule.* Two of the issues presented raised challenges to the legitimacy of portions of the rule, asserting that:

(1) Lead hazard controls in the tenant-based subsidy programs and controls on properties receiving less than $5,000 in project-based assistance are beyond the scope of the statute.

(2) The rule's soil-testing and soil-abatement/control provisions are outside the scope of HUD's authority, to the extent they fail to differentiate the *sources* of lead in dust.

4. *Perceived HUD Overreaching.* Beyond the aforementioned legal challenges, some commenters thought that the rule exceeded proper bounds. They asserted that:

(1) The rule is an ''unfunded mandate,'' in that it would require expensive undertakings by those regulated, without the offer of a new source of financial assistance.

(2) The rule, by imposing new risk assessment requirements and/or new obligations to control hazards, would endanger existing contracts.

(3) The underlying statute makes no distinction between HUD-assisted and other housing receiving Federal assistance, while the rule provides for this dichotomy without providing any justification.

(4) The rule fails to provide real support to local hazard control efforts, instead imposing requirements that fail to recognize important community concerns.

III. Response to Public Comments and Final Rule Provisions

A. Scope and Applicability

This rule implements the requirements of the Lead-Based Paint Poisoning Prevention Act (LPPPA), as amended by section 1012 and section 1013 of Title X.

Throughout this rule, lead-based paint hazard notification, evaluation, and reduction requirements represent the minimum activities required. Parties may voluntarily undertake more extensive lead-based paint activities if appropriate or permitted under the specific housing program with which the dwelling unit or residential property is associated.

If the requirements of this rule for a dwelling unit or residential property differ from those of the State, tribal or local government, the more protective requirement applies.

Section 302 of the LPPPA requires HUD ''to establish procedures to eliminate as far as practicable the hazards of lead-based paint poisoning with respect to any existing housing which may present such hazards and which is covered by an application for mortgage insurance or housing assistance payments under a program administered by the Secretary or otherwise receives more than $5,000 in project-based assistance under a Federal housing program.'' In addition, the LPPPA requires HUD to establish procedures for the inspection and reduction of lead-based paint hazards in Federally owned housing at disposition. Accordingly, this final rule covers all target housing that: (1) HUD is associated with; (2) receives more than $5,000 in project-based assistance under a program of an agency other than HUD; and (3) is being disposed of by the Federal government.

Since 1975, when it first proposed regulations implementing section 302, HUD has taken a broad interpretation of the phrase ''covered by an application for mortgage insurance or housing assistance payments under a program administered by the Secretary.'' The scope of HUD's lead-based paint regulations has always included all HUD-associated housing, and this final rule continues that policy. The phrase, ''or otherwise receives more than $5,000 in project-based assistance under a Federal housing program,'' was added to section 302 by Title X in 1992. HUD's interpretation of that phrase is explained below.

1. *Housing Receiving Less Than $5,000 in Project-Based Rental Assistance.* Section 1012(a) amends the first sentence of the Lead-Based Paint Poisoning Prevention Act to add the phrase ''or otherwise receives more than $5,000 in project-based assistance under a Federal housing program'' so that 42 U.S.C. 4822(a) now reads as follows: ''The Secretary of Housing and Urban Development * * * shall establish procedures to eliminate as far as practicable the hazards of lead-based paint poisoning with respect to any existing housing which may present such hazards and which is covered by an application for mortgage insurance or housing assistance payments under a program administered by the Secretary or otherwise receives more than $5,000 in project-based assistance under a Federal housing program.''

One commenter asserted that HUD is ''clearly outside of its statutory authority'' in imposing requirements on multifamily properties receiving less than $5,000 in project-based assistance. Quoting the 1992 amendments, the

commenter declared that despite HUD's imposing only minimal procedures on these under-$5,000 properties, the rule would result in additional costs and regulatory burdens on property owners that the Congress ''never intended to regulate.''

HUD disagrees. The statute does not prohibit the Department from establishing lead-based paint hazard reduction requirements for housing receiving less than $5,000 in project-based assistance under a program administered by the Secretary of HUD. The legislative history makes this clear. The Senate committee report accompanying the bill states, ''Title X would expand the coverage of the LPPPA to include pre-1978 housing suitable for occupancy by families * * * which is covered by an application for mortgage insurance or housing assistance payments *under a HUD program* or receives more than $5,000 in housing assistance *through another federal program*'' (emphasis added, Senate Report 102–332, page 117).

Although the statute gives HUD authority to impose the same requirements on HUD assisted housing receiving less than $5,000 as on that receiving more than $5,000, the Department recognizes that the Congress intended that the stringency of the requirements would be related generally to the amount of financial assistance from the Government. HUD is not requiring, therefore, housing receiving multifamily project-based rental assistance of $5,000 or less per unit per year to comply with the statutorily specified requirements for multifamily housing receiving project-based rental assistance of more than $5,000 per unit per year. Instead, the rule requires such housing to comply with the less stringent procedures established for tenant-based rental assistance.

2. *Tenant-Based Rental Assistance.* Some commenters thought that the Congress never intended for the rule to impose duties on landlords in the tenant-based rental assistance programs. This group argued that there exists a ''statutory, program-wide exemption for housing receiving tenant-based Section 8 assistance.''

The statute is silent on whether the new minimum procedures for lead-based paint hazard notification, evaluation and reduction apply to tenant-based rental assistance. Congress did not amend the first sentence of the Lead-Based Paint Poisoning Prevention Act, set out above, to delete or amend the phrase ''housing assistance payments.'' HUD has historically interpreted this general phrase to cover virtually all types of housing assistance, including tenant-based rental assistance—the type of assistance that it seems to cover most obviously. The legislative history for Title X states, however, that housing receiving tenant-based rental assistance would be exempt from the Lead-Based Paint Poisoning Prevention Act, as amended by Title X. Congress was concerned that, due to the tendency of residential properties to pass in and out of tenant-based Federal assistance programs, it would be unworkable and inequitable to impose greater burdens on owners of such properties than on other private landlords (Senate Report 102–332, page 117).

Clearly, Congress did not intend for HUD to apply the new minimum procedures set out in section 1012(a) of Title X to tenant-based rental assistance. HUD does not believe, however, that Congress intended to abolish HUD's current procedures, which serve to protect, in a minimal way, the children in families receiving this type of housing assistance. Rather, HUD infers that Congress intended for the Department to effectively retain its present lead-based paint requirements for tenant-based rental assistance. In its current regulations, HUD requires units with tenant-based rental assistance occupied by families with children under 6 to meet the minimal standard for lead-based paint found in its Housing Quality Standards (HQS) (see 24 CFR 982.401). In this rule, then, HUD continues to require tenant-based rental property to meet HQS. To streamline requirements, HUD has modified the lead-based paint requirements in the current HQS slightly, in order to be consistent with recent scientific information on how to protect children who are exposed to lead-based paint hazards. The requirements in this rule for tenant-based rental assistance continue to apply only to units in which children of less than 6 years of age reside. HUD does not believe Congress intended that Federal funds be used to subsidize housing that can poison children.

3. *Federally Owned Housing and the Availability of Appropriations.* Section 1013 of Title X amends the Lead-Based Paint Poisoning Prevention Act at section 302 to modify existing requirements for the sale (disposition) of all residential property constructed before 1978 and owned by a Federal agency. Section 302(a)(3)(C) (42 U.S.C. 4822(a)(3)(C)) states that:

''To the extent that subparagraphs (A) and (B) (which contain evaluation and abatement requirements for pre-1960 housing, and evaluation and notification requirements for housing constructed between 1960 and 1978) increase the cost to the Government of outstanding direct loan obligations or loan guarantee commitments, such activities shall be treated as modifications under section 504(e) of the Federal Credit Reform Act of 1990 and shall be subject to the availability of appropriations. To the extent that paragraphs (A) and (B) impose additional costs to the Resolution Trust Corporation and the Federal Deposit Insurance Corporation, its requirements shall be carried out only if appropriations are provided in advance in an appropriations Act. In the absence of appropriations sufficient to cover the costs of subparagraphs (A) and (B), these requirements shall not apply to the affected agency or agencies.''

In the proposed rule, the Department interpreted this language to mean that HUD (and other Federal agencies that own residential property) need not comply with the requirements set out in section 302(a)(3) if sufficient funds are not appropriated to the agency for this purpose. The Department then proposed in the absence of sufficient appropriations to include requirements to identify and treat deteriorated paint in HUD-owned properties (similar to current procedures), even if funding is not made available to the Department to carry out more extensive lead-based paint evaluation and reduction.

Commenters expressed strong objections to basing the rule's requirements on the adequacy of appropriations. Several commenters questioned whether a determination that appropriations were ''inadequate'' would or could ever be made. There was also sentiment against using such a two-pronged system for determining regulatory responsibility at all: ''Letting our standards be set by appropriation levels is dreadful public policy when the health of children [is] at stake.''

A commenter urged HUD to retain high standards in the regulations and ''let the legislative process deal with the fiscal responsibility [for] this community health issue.'' If more costly requirements are optional, money will not be appropriated, predicted another commenter. Others agreed, saying that since adequate (separate) appropriations are not at all likely to be forthcoming for each program, contemplating them confuses ''an already complex regulation.''

State and local funded agencies and others expressed their resentment concerning the ''adequate appropriations'' approach taken in the subparts affecting HUD and other Federal agency responsibilities in the proposed rule: ''HUD has two standards, depending on whether there is a Federal appropriation. We find this interesting as HUD has *refused* to seek an

appropriation since the legislation was passed in 1992. Instead, subpart G (HUD without appropriations) will be used.''

Two commenters posed the question, ''may CDBG and HOME recipients ignore *their* regulations if there is not additional or sufficient funding to properly do the work?''

Another commenter roundly condemned the appropriations-based dichotomy as ''seriously misguided'':

''* * * There will never be explicit 'sufficient' appropriations, and the Secretary is unlikely ever to make an explicit pronouncement that appropriations are 'insufficient.' HUD should be adopting a single set of requirements that stipulate minimum levels of hazard controls as part of the price of doing business, not as a matter of fiscal convenience.''

An environmental health advocacy group discussed the statutory exception that is provided for the disposition of certain federally owned housing—where inspection and risk assessment is called for (under section 302(a)(3)) *except* when compliance would increase the cost to the Government of outstanding direct loan obligations or loan guarantee commitments (or would impose additional costs on RTC or FDIC)—*and* there are no appropriations to fund those increased costs.

The described exception, the commenter maintained, was the *only* such exception/exemption in the statute:

''* * * Absolutely no evidence exists to support the contention that Congress implied or otherwise intended that HUD should be able to grant federal agencies broad discretion to opt out of lead hazard evaluation and control requirements. Such an interpretation would allow federal agencies such as the General Services Administration and the Department of Defense to simply dispose of their properties without paying heed to their condition or habitability * * *.''

The group urged that, in its final property disposition regulations, HUD clearly limit waiver availability only to those agencies that qualify, based on the cited statutory exemptions. The commenter also urged that HUD revise the regulation to describe ''minimum steps'' that even agencies entitled to the waiver must undertake. A ''sweeping exemption'' is clearly unacceptable, the group declared, and HUD ''must not condone such an irresponsible policy and must instead set some floor of minimum requirements with which all federal agencies must comply, regardless of appropriations.''

HUD acknowledges the validity of many of these comments. In the final rule, the Department includes single subparts for HUD-owned single family property and HUD-owned multifamily property, rather than providing separate subparts for when HUD has sufficient appropriations and when HUD does not have sufficient appropriations. An additional subpart is included for residential property owned by Federal agencies other than HUD; the requirements in this subpart are identical to those in Title X. Each affected agency must decide whether the requirements of Title X apply to it; HUD feels that it is inappropriate for the Department to decide this issue for other agencies.

HUD maintains, however, that the language of section 302(a)(3)(C) makes the lead-based paint requirements for HUD-owned residential property conditional on the sufficiency of appropriated funds to be used to conduct inspections and abate lead-based paint hazards in HUD-owned residential property. HUD has never received such an appropriation for these purposes and it did not receive such a line item in the most recent appropriations act. Therefore, in the Department's view, ''appropriations'' are not presently sufficient to conduct the lead-based paint activities required under section 302(a)(3)(A) and (B) and HUD is not required to implement these procedures. If sufficient appropriations become available at a later time, this final rule may have to be amended.

It should be noted that HUD interprets the first sentence of section 302(a)(3)(C) to apply only to HUD programs where the cost of conducting lead-based paint evaluation or abatement activities under section 302(a)(3)(A) and (B) increase HUD's outstanding direct loan obligations or loan guarantee commitments. Since appropriations are not sufficient for the Department to conduct inspections and abatement of lead-based paint hazards in accordance with section 302(a)(3)(A) and (B), a determination of the effect of such activities on HUD's direct loan obligations or loan guarantee commitments is unnecessary.

Although HUD has made the determination for purposes of section 302(a)(3) that it does not have ''sufficient appropriations'' and therefore, the Department is not required to implement the procedures set out in section 302(a)(3) for its HUD-owned properties, the Department nevertheless has included lead-based paint procedures in this final rule which the Department can afford to implement and which, in HUD's view, are fully protective. While Congress under Title X did not require the Department to carry out the requirements in section 302(a)(3)(A) and (B) in the absence of sufficient appropriations, Congress was silent concerning what activities the Department should carry out to reduce lead-based paint hazards in HUD-held properties in the absence of appropriations. This created a ''gap'' for HUD's interpretation. Under *Chevron U.S.A., Inc.* v. *National Resources Defense Council*, 467 U.S. 837 (1984), where a statute is silent or ambiguous on a specific issue, the Department's interpretation of the statute will be upheld if it is based on a permissible or reasonable construction of the statute. The Department believes that Congress did not intend for HUD to ignore lead-based paint in its properties, even in the absence of sufficient appropriations. As a consequence, HUD has developed procedures for HUD-owned properties, as set forth in subparts F and I, which it believes are reasonable.

4. *Soil and Dust Standards.* a. *Legal Issues.* A legal question raised by commenters had to do with the Department's authority to regulate in the area of dust and soil. Two basic questions were raised: authority to regulate in the asserted absence of a nexus with lead-based paint, and authority to regulate in the absence of EPA regulations defining hazardous levels of lead in dust and soil under section 403 of the Toxic Substances Control Act.

One commenter claimed that HUD is exceeding its authority and has moved ''arbitrarily and capriciously'' by setting interim controls and abatement levels for lead in soil and dust without reference to the risk posed by the *type* of lead contained in soil or dust, or to the bioavailability of the lead. Because HUD's action is in advance of EPA's statutorily mandated determinations of soil cleanup levels, HUD is overreaching, in the commenter's opinion, because the Congress intended that EPA's regulatory action—identifying what are hazardous levels of lead in dust and soil—was to be the ''first step'' in rulemaking on that subject matter. According to the commenter, the Congress gave HUD and EPA authority to implement interim controls and abatement with respect to hazards from lead-based *paint*, including the dust *from lead-based paint and soil contaminated by lead-based paint*. Thus, HUD set *ad hoc* standards for lead dust and soil in the absence of any EPA study results *and* without any nexus to lead-based paint.

Further, the commenter stated that HUD was attempting to ''decouple'' dust and soil testing and abatement from any necessary relation to lead-based paint itself. The ''unstated premise'' of HUD's rule would be that all lead in dust is

assumed to come from paint, although this is not the case. HUD's approach would unfairly burden property owners with the costs of cleaning up soil and dust which may have become contaminated from ''sources not under the property owner's control.'' This regulatory requirement, the commenter asserted, would raise the constitutional questions of a ''taking without just compensation and deprivation of property without due process of law under the Fifth Amendment * * *''

The commenter concluded that HUD should not ''decouple'' lead found in dust and soil from the *source* of that lead, and should reconsider its imposition of a single dust-lead standard unrelated to the source of the lead or its bioavailability. Where there is a source of dust related to lead paint, HUD's standards may be workable, the commenter acknowledged, although waiting for EPA's upcoming standards under section 403 of the 1992 Act ''would have been more consistent with Congress' intent.'' HUD's proposed standards, however, would be ''unfair'' to the extent there are other sources of lead involved, because the Department assertedly lacks authority to regulate lead that is from non-paint sources, and because the regulations would bear ''no relationship to cause or risk.''

HUD and EPA, after careful consideration, do not agree with the commenter's argument. EPA, which has the relevant regulatory authority under TSCA section 403, has concluded that the language of Title X supports an interpretation that dust and soil lead are covered regardless of the source of the lead. Definitions in Title X do not limit the source of lead in soil or dust to lead from lead-based paint. The definitions of ''lead-contaminated dust'' and ''lead-contaminated soil'' do not specify that the source of lead in the dust or soil must be lead-based paint. In fact, the definition of ''lead-based paint hazard'' specifies lead-contaminated dust and soil as sources of lead contamination separate from and not explicitly linked to lead-contaminated paint.

Furthermore, as a practical matter, it is not possible to determine through routine chemical analysis the source of the lead in the dust and soil at any given site, not to mention every site of pre-1978 housing in the nation. Also, it is well known that the scientific literature has determined that lead in dust is an important source of childhood lead exposure and that dust lead is well correlated with paint lead (Lanphear, 1996). It is unlikely, therefore, that the Congress meant to curtail the reduction of lead in dust at each individual property covered by this regulation until it is established that paint is the source of the lead in dust at the site.

HUD acknowledges, however, that owners cannot be expected to have protected their properties from dust-lead deriving from such sources as gasoline combustion, nearby bridge repainting, or nearby industrial activity. It is reasonable that this final rule should give the highest priority to the reduction of lead in old residential paint that may cause lead exposure in children. As explained below in Section III.A.5.b of this preamble, HUD has exempted from the requirements of this final rule residential properties that are found not to contain lead-based paint or that have had all lead-based paint removed. (This exemption is consistent with a similar exemption in the real estate notification and disclosure rule that was issued jointly by HUD and EPA on March 6, 1996.) Thus, in this final rule, dust-lead hazards and soil-lead hazards are regulated only in properties in which lead-based paint is known or presumed to be present.

b. *Coordination With EPA Rulemaking.* With regard to coordination with EPA rulemaking on hazardous levels of lead in dust and soil, HUD agrees that the standards set forth in final regulations promulgated and made effective by EPA pursuant to TSCA section 403 will be relevant to this rule. The final rule states that the section 403 standards shall be referenced when such standards are promulgated and effective. There may be a period of time, however, between the effective date of this final rule and the 403 regulations. Therefore, the Department is including in this final rule interim standards for levels of lead in dust and soil that are based on a recently-completed, peer-reviewed, pooled analysis of virtually all available epidemiological studies that directly measure the relationship between lead in children's blood and lead in dust and soil (Lanphear et al. 1998). This ensures that HUD's interim standards are scientifically valid. The interim standards promulgated in this rule are reasonably consistent with the standards recently proposed by EPA. For further discussion of the interim standards, see Sections III.E.15.a and b of this preamble, below.

The Department does not agree with the comment (cited above in Section III.A.4.a of this preamble) that it should delay all regulatory action pertaining to lead in dust and soil until final 403 regulations are promulgated. HUD has previously established standards for dust lead and soil lead to ensure that hazard controls are properly targeted and are effective in the housing it assists or owns. Such standards were published in Lead-Based Paint: Interim Guidelines for Hazard Identification and Abatement in Public and Indian Housing, September 1990 (Interim Guidelines); and again in Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing, June 1995 (HUD Guidelines). These standards have already been widely used in HUD programs. The scientific literature has confirmed that lead in dust and soil are important pathways to childhood lead exposure, as discussed below in Section III.E.15.b of this preamble.

When EPA regulations implementing TSCA section 403 are final and effective, they will apply to this HUD rule and will supersede most of the HUD interim standards for dust and soil. If the final section 403 rule does not establish a standard for an activity or situation that is covered by the HUD interim standards, there may be a question as to whether that aspect of the interim standards is retained. HUD expects that, after the section 403 rule is published, the Department will publish a technical amendment to this rule or engage in additional rulemaking to make clear what the applicable standards are.

5. *Exemptions.* a. *Housing for the Elderly.* This rule applies most broadly to ''target housing,'' which is defined in Title X as housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in the unit) or any 0-bedroom dwelling unit. As in the proposed rule, HUD interprets the exemptions for elderly and disabled housing to apply only to residential property which is designated exclusively for elderly or disabled use.

Some commenters complained about this restrictive interpretation and urged that it should be enough that elderly or disabled persons reside in a dwelling unit and that no young children are expected to reside there. After careful consideration, HUD has decided to retain the interpretation of the exemption that was adopted in the proposed rule. This is consistent with the definition of target housing used in all regulations issued pursuant to Title X. The statute has never been interpreted as providing an exemption for each dwelling that happens to be occupied by elderly or disabled persons. Such a policy, in the judgment of the Department, would be contrary to the intent of the statute, which is to eliminate as far as practicable lead-based paint hazards in all housing receiving Federal assistance and in federally owned housing at disposition.

Most dwellings currently occupied by elderly persons or persons with disabilities will probably be occupied by a child in the future.

The Department defines the phrase ''expected to reside'' in the statutory definition of target housing as meaning that there is actual knowledge that a child is expected to reside, rather than a general presumption that a child will probably reside in the dwelling unit sometime in the future. If a woman residing in the dwelling unit is known to be pregnant, there is actual knowledge that a child is expected to reside in that unit. However, in the context of most residential real estate transactions it is not advisable to inquire as to whether a woman is pregnant. The term ''expected to reside'' is used in the statutory definition of ''target housing'' in Title X, but it is not defined there. It would not be unreasonable for people seeking to comply with the law to think that the term might refer to the distant future, that is ''expected to reside at some time, however far in the future.'' That uncertain potentiality is not part of HUD's interpretation of statutory intent. Therefore HUD is providing this tightened definition to minimize confusion.

b. *Absence of Lead-Based Paint, or Prior Hazard Reduction.* The proposed rule provided exemptions from certain requirements if a residential property was found to contain no lead-based paint, but such exemptions did not apply to all programs. To streamline the final rule, exemptions are provided for properties found not to have lead-based paint by a certified lead-based paint inspector and for properties in which all lead-based paint has been identified and removed in accordance with procedures established by an EPA-authorized State or tribal program or by EPA in accordance with 40 CFR part 745, subparts L and Q. If the method of abatement is enclosure or encapsulation, this exemption does not apply because lead-based paint is still present.

An owner or recipient of Federal assistance hoping to qualify for this exemption may question whether correcting for possibly incorrect (or outdated) positive findings during lead-based paint inspections is permissible. In the rule, the owner or recipient always retains the option of having additional tests performed by a certified lead-based paint inspector. Nothing in the regulation is intended to revoke or restrict that option. An additional test can sometimes clarify whether lead-based paint is or is not present. Actions may be taken based on the results of the most recent inspection by a certified lead-based paint inspector, provided appropriate technology is used. Laboratory analysis of a properly taken paint sample is a more reliable method of measurement than the use of a portable X-ray fluorescence (XRF) analyzer on site. Therefore a new laboratory analysis of a paint sample can overturn either an old portable XRF reading or an old laboratory test, but a new portable XRF reading can overturn only an old portable XRF reading.

These general exemptions are intended to apply only if the entire residential property is free of lead-based paint or has had all lead-based paint removed. The term ''residential property'' is defined in the rule as including such things as outbuildings, fences, and play equipment affixed to the property as well as dwelling units and common areas.

HUD is providing this exemption to assure that the highest priority in the use of scarce lead-based paint hazard control resources is given to residential properties with lead-based paint. The Department recognizes that some properties have dust-lead hazards and/or soil-lead hazards but do not have any lead-based paint. These properties are expected to be a small proportion of the total affected stock, however.

c. *Housing To Be Demolished.* In response to questions from various sources, the rule provides that housing to be demolished is exempt, provided the housing remains unoccupied until demolition. Owners should be aware, of course, that other local, State and Federal regulations pertaining to environmental protection and occupational safety and health may apply to demolitions.

d. *Nonresidential Property.* The final rule also states explicitly that property that is not and will not be used for human habitation is exempt. In the case of a mixed use property, HUD intends that only those parts of the property normally associated with residential use shall be covered by this rule. For example, retail and office establishments in an apartment building would not be covered, but hallways leading to such uses would be covered if the hallways also service dwelling units that are covered by the rule.

e. *Rehabilitation Disturbing Little or No Painted Surface.* Commenters also complained that existing exemptions in HUD rules for weatherization, emergency repairs, water/sewer hookups, installation of security devices, and other special work were no longer included in the rule, even though, the commenters said, these were ''realistic and necessary'' exemptions. The commenters were concerned primarily with rehabilitation activities funded under the Community Development Block Grant or HOME programs.

With regard to weatherization, the Department believes this is too broad a category on which to base an exemption from this rule. Weatherization often includes window replacement, which can generate lead dust and therefore should be performed with safe work practices. With regard to such activities as water and sewer hookups and installation of security devices, HUD has provided in subpart B of the final rule an exemption for rehabilitation that does not disturb a painted surface. Also, activities that disturb painted surfaces of no more than a ''de minimis'' amount of 2 square feet in any one interior room, 20 square feet on exterior surfaces, or 10 percent of the total surface area on an interior or exterior component with a small surface area are not required to use ''safe work practices,'' and worksite clearances are not required for such work. (This de minimis is stated in the section on safe work practices in subpart R of the rule.) Therefore, installation of security devices under rehabilitation assistance will generally not require special precautions usually associated with lead-based paint hazard reduction. Furthermore, in situations in which security devices are being installed as a part of the operation and maintenance of a residential property that is required under this rule to incorporate ongoing lead-based paint maintenance as a part of the everyday maintenance of the property, the same ''de minimis'' exemption applies.

f. *Emergency Actions and Natural Disasters.* The proposed rule provided a general exemption for properties undergoing emergency repairs in response to natural disaster. The Department believes that there are circumstances in which the time required for compliance could adversely affect life or property and, consequently, an appropriately tailored exemption is needed.

Two commenters requested additional exemptions beyond the ''natural disaster'' exemption set out in the proposed rule. They believed it was too narrow in scope, arguing that *any* form of disaster should be the basis for an exemption from the rule's requirements. On the other hand, others claimed that no justification existed for exempting damaged properties. At a minimum, these properties need risk assessment and full disclosure before any sale, one commenter said.

In the final rule, HUD has provided in subpart B a more carefully worded provision that provides an exception for ''emergency actions immediately necessary to safeguard against an imminent danger to human life, health or safety, or protect property from further structural damage (such as when a property has been damaged by a natural disaster, fire, or structural collapse) * * *'' The exemption states, however, that in such cases ''occupants shall be protected from exposure to lead in dust and debris generated by such emergency actions to the extent practicable.'' It is HUD's intent that such protection would include a thorough cleanup. The exemption extends only to the completion of repairs necessary to respond to the emergency; after that, the requirements of the rule apply.

g. *Law Enforcement Seized Property.* A spokesperson for the Treasury Department's Asset Forfeiture Program urged that law enforcement agencies seizing real properties should be able to dispose of those properties without the financial burden of compliance with the rule, with only a duty to warn potential transferees or purchasers of the possible presence of a lead-based paint hazard. The Justice Department's U.S. Marshals Service made similar comments, adding that the regulations will create ''an economic disincentive to seizing and forfeiting pre-1978 residential property.''

In view of the special nature of law enforcement, HUD has added a provision in subpart B of the final rule that exempts seized properties owned for 270 days or less from the evaluation and hazard reduction requirements of subpart C of this rule, which sets requirements for the disposition of residential properties owned by Federal agencies other than HUD. For seized properties owned longer than 270 days, the requirements of subpart C will apply. Ownership begins upon receipt of a judicial order of forfeiture. Approximately 400 seized, pre-1978 dwelling units are disposed of annually by the Department of the Treasury and the Federal Marshals Service of the Department of Justice combined. HUD expects that the Federal law enforcement agencies, in exercising their managerial responsibilities over seized residential property, will make every reasonable effort to maintain the property in a lead-safe condition.

h. *Emergency Rental and Foreclosure Prevention Assistance.* Some State and local agencies urged that programs providing emergency rental assistance or foreclosure prevention assistance be exempted. The final rule provides a limited exemption for such programs subject to subpart K, Acquisition, Leasing, Support Services, or Operation. The exemption for any specific dwelling unit expires after 100 days. HUD does not intend that multiple households receiving emergency assistance can be recycled through a unit without subjecting the unit to the requirements of subpart K.

i. *Adverse Weather.* In the proposed rule, the subparts covering disposition of HUD-owned single family property included an exception allowing delay of repainting if weather conditions make such work infeasible. In the final rule, the concept behind this exception has been broadened to apply to evaluation and reduction activities under all subparts, allowing delay ''for a reasonable time during a period when weather conditions are unsuitable for conventional construction activities.'' HUD intends that this exception will allow reasonable delay only and will not be an excuse for noncompliance.

j. *Historic Properties.* The National Park Service commented that HUD should provide greater flexibility to allow a balance to be achieved in specific cases between the objectives of the National Historic Preservation Act and those of the Lead-Based Paint Poisoning Prevention Act. Conflicts between the two goals, the protection of historically significant buildings and the creation of lead-safe housing, may occur where abatement is required. For example, the use of artificial siding and the replacement of historic trim and doors is generally not appropriate for historic buildings. In response, HUD has added a general exception in subpart B that allows designated parties to use interim controls instead of abatement methods, if requested by the State Historic Preservation Office, on properties listed or determined to be eligible for listing in the National Register of Historic Places or contributing to a National Register Historic District. If interim controls are conducted, ongoing maintenance and reevaluation shall be conducted as required by the applicable subpart. For comprehensive guidance on eliminating lead-based paint hazards from historic housing without removing historically significant features, see Chapter 18 of the HUD Guidelines or the National Parks Service publication, ''Preservation Brief 37: Appropriate Methods for Reducing Lead Paint Hazards in Historic Housing,'' by S.C. Park and D.C. Hicks, National Parks Service, Washington, DC 20013–7127 (1995).

k. *Insufficient Appropriations.* In the proposed rule, the Department included in the subpart covering disposition of residential property by a Federal agency other than HUD an exemption from that subpart if a Federal agency determines that sufficient funds are not appropriated to carry out the requirements of the subpart. In the final rule, this exemption, which implements a provision of section 1013 Title X, has been moved to the Exemptions section of subpart B (See Section III.A.3 of this preamble).

6. *Deference to Other Agencies.* Commenters sought, in varying forms, ''exemptions'' providing for deference to State or local agencies or other Federal agencies based on State lead-control laws or an agency's demonstrated performance.

In the final rule, the Department has provided such deference in specific situations. First, HUD is requiring that inspections, risk assessments and abatements be conducted in accordance with the work practices standards of a State or Indian Tribe with a program authorized by EPA under subpart Q of 40 CFR part 745 or, in the absence of such a program, with EPA's standards at 40 CFR part 745, subpart L. Therefore HUD is in effect incorporating the opportunity that is built into the EPA regulations for States to determine, within the EPA framework, procedures for evaluation and reduction. With regard to the policies of Federal agencies other than HUD, the final rule gives such agencies the authority to determine whether appropriations are sufficient to implement the requirements of section 1013 of Title X. (See further discussion of this matter in Section III.A.3 of this preamble, above.)

One agency suggested that high-performing public housing agencies with good property maintenance records should be exempt from the additional evaluations provided in the rule. Because the current performance rating instrument used by HUD and public housing agencies does not include a specific grade for lead-based paint activities, HUD does not believe it has a valid way to identify ''high-performing public housing agencies'' for the purposes of this rule. It is not possible, therefore, to provide such a broad exemption at this time.

7. *Changes and Deletions to Current HUD Regulations.* In the proposed rule, HUD did not include specific provisions for the deletion of existing part 35 provisions being replaced by this rule or the numerous lead-based paint requirements set out in various program regulations in Title 24. It was stated, however, in the preamble to the proposed rule that such deletions would be made, and this final rule provides such changes and deletions.

8. *Indian Housing Programs.* In the proposed rule, two subparts were applicable to Indian housing programs: the one pertaining to rehabilitation (which was to apply to the Indian Community Development Block Grant Program), and the one pertaining to public and Indian housing programs (which was to apply to housing owned and operated by Indian housing authorities under public and Indian housing programs). With the enactment of the Native American Housing Assistance and Self Determination Act of 1996 (NAHASDA, Pub. L. 104–330, 25 U.S.C. 4101 *et seq.*), it has been necessary to revise the way this rule applies to Indian housing programs. NAHASDA separated Indian housing from public housing and made funding for Indian housing under the United States Housing Act of 1937 unavailable. The primary program created by NAHASDA is the Indian Housing Block Grant Program, which can be used for many different forms of housing assistance. Therefore the following subparts have been made applicable to the Indian Housing Block Grant program: Subpart H, Project-Based Rental Assistance; subpart J, Rehabilitation (also applicable to the Indian Community Development Block Grant program); subpart K, Acquisition, Leasing, Support Services, or Operation (also applicable to the Indian Community Development Block Grant Program); and subpart M, Tenant-Based Rental Assistance. Tribes and tribally designated housing entities receiving funds from the Indian Housing Block Grant and Indian Community Development Block Grant programs must determine which subpart of this final rule applies based on the type of activity being conducted or assistance being provided to a particular dwelling unit or residential property. If more than one type of assistance is being provided, the most protective requirements apply.

9. *Applicability of Subparts to Programs and Dwelling Units.* Subparts C, D, and F through M of the final rule each set forth requirements for a specific type of Federal housing activity or assistance, such as mortgage insurance, rehabilitation assistance, project-based rental assistance, tenant-based rental assistance, or public housing. Each of these subparts applies to more than one program. For example, there are at least five HUD programs that provide tenant-based rental assistance, so all five are therefore subject to subpart M, which states the lead-based paint requirements for housing receiving tenant-based rental assistance.

In the proposed rule, HUD listed in the applicability section of each subpart the programs to which the subpart was to be applicable. This led to concern within the Department that such lists may be incomplete or go out of date. Therefore, in the final rule these lists have been removed from the applicability sections. In the applicability sections, care has been taken to try to describe clearly what types of housing assistance is and is not covered by each subpart. A current list of programs covered by each subpart is available on the internet at www.hud.gov, or by mail from the National Lead Information Center at 1–800–424–LEAD.

Several HUD housing assistance programs have more than one type of eligible activity, so some programs are subject to more than one subpart of this rule, as was mentioned above in regard to the Indian Housing Block Grant program. In fact, there are at least nine such programs at the time of this writing. These programs, with the subpart designations in parentheses, are as follows: Indian Housing Block Grant program (H, J, K, and M), Indian Community Development Block Grant program (J and K), Home Investment Partnerships program (HOME) (J, K, and M), Community Development Block Grant program (J and K), Supportive Housing Program (H, J, and K), Shelter Plus Care (H and M), Housing Opportunities for Persons With AIDS (HOPWA) (J and M), Homeownership of Multifamily Units (HOPE 2) (J and K), and HOPE for Homeownership of Single Family Homes (HOPE 3) (J and K). Grantees, participating jurisdictions, Indian tribes and other entities administering these flexible programs must decide which subpart or section of this rule applies to the type of assistance being provided to a particular dwelling unit or residential property. If more than one subpart or section applies, the one with the most protective requirements applies. To assist in making this judgment, HUD is providing in subpart B of the rule a table listing subparts and sections in order from the most to least protective initial hazard reduction requirements. In some cases, more than one program as well as more than one subpart or section may apply to a property or dwelling unit. In this case also the most protective requirements apply.

A multifamily residential property may have some dwelling units subject to one set of requirements and other units subject to other requirements. In this case, the owner has the choice of either operating the property with different sets of requirements or operating the entire property at the most protective level. An example of this situation is provided in subpart B of the rule.

B. Structure of the Rule

1. *Organization.* In the interests of simplicity and streamlining, all of the Department's lead-based paint requirements, including the disclosure rule, are now located in part 35. The proposed rule set forth lead-based paint requirements in three parts, including new parts 36 and 37 that, together with part 35, subpart H, were to comprise all of HUD's regulatory requirements for lead-based paint in a single place. Part 36 was to describe the lead-based paint requirements for each program covered under the Lead-Based Paint Poisoning Prevention Act, grouped in subparts according to the agency or office responsible and the type of assistance. Part 37 was to describe the standards and procedures for conducting the lead-based paint evaluation and hazard reduction activities required in part 36, with different activities described in different subparts.

In the preamble to the proposed rule, however, HUD indicated that it was considering consolidating parts 36 and 37 in the final rule. This has been done. The entire rule consists of 12 subparts (B, C, D, F through M, and R, with E and N through Q reserved), all in part 35. Subpart A of part 35 is the rule requiring disclosure of known lead-based paint hazards upon sale or lease of residential property (disclosure rule), which was promulgated on March 6, 1996. EPA published the same rule at 40 CFR part 745, subpart F. In this current rulemaking, HUD is moving the location of the disclosure rule from subpart H to subpart A of 24 CFR part 35. No text or section number changes are being made to the disclosure rule. The general requirements found in subpart A of the proposed rule are located under subpart B of today's final rule.

Subpart B of the final rule provides all the general requirements, definitions, exemptions, and options that apply to subparts B, C, D, F through M, and R. Subpart B does not apply to the Disclosure Rule in subpart A. All residential properties and dwelling units subject to this final rule are also subject to the Disclosure Rule. Subparts C, D, and F through M set forth the requirements for each program or type of assistance. Subpart R of the final rule contains the required standards and methods for conducting evaluation and hazard reduction activities formerly found in part 37 of the proposed rule. The provisions of subpart R are referenced in subparts B, C, D, and F through M. As explained below, the standards and methods requirements of

this rule have been streamlined considerably.

One commenter suggested that the requirements for notice to residents of the results of evaluation and hazard reduction be located at the beginning of the rule so that they need not be repeated for each program or type of housing. This has been done. The notice requirements are found in subpart B at § 35.125 and are referenced in the program-specific subparts.

2. *Simplicity and Overall Strategy.* Several commenters complained that, despite the effort to consolidate lead-paint regulations in a single rule, the format of the proposed rule remained ''program specific''. Others called it ''cumbersome''. Because community development and housing administrators must work with a variety of programs, they will be required to operate under different subparts. Calling the rule lengthy and technical, one commenter said it would be helpful if it could be organized ''in a more user-friendly fashion,'' using cross-references. Several commenters regarded the rule as ''confusing'' or in need of further consolidation.

One commenter complained that there remained ''at least 14 different requirements,'' based on the program authority or on the amount of assistance provided.

In the final rule there are seven evaluation and hazard reduction strategies for HUD housing programs. These strategies vary in stringency, costliness, and lasting effectiveness in preventing childhood lead poisoning. They are applied to the various forms of housing assistance, based generally on: (1) The amount, nature and duration of financial assistance provided under the program; (2) the risk of childhood lead poisoning in the housing (based on year of construction); and (3) whether the housing is generally rental or owner-occupied.

There are two primary differences between the strategies of the final rule and those of the proposed rule: (1) Paint repair has been replaced by paint stabilization; and (2) clearance is required in the final rule after paint stabilization, and the clearance requirement has replaced the dust-testing requirement for pre-1950 housing with tenant-based rental assistance.

In order from least to most stringent, the seven strategies are:

(1) Safe work practices during rehabilitation;

(2) Ongoing lead-based paint maintenance practices to assure that paint is maintained so that it remains intact, and that safe work practices are used (similar to the ''essential maintenance practices'' recommended by the Task Force);

(3) Visual assessment and paint stabilization;

(4) Risk assessment and interim controls (with the option of performing specified standard treatments);

(5) Lead-based paint inspection and risk assessment, and interim controls;

(6) Risk assessment and abatement of lead-based paint hazards; and

(7) Lead-based paint inspection, and abatement of all lead-based paint.

These strategies include the following fundamental principles. Whenever hazard reduction methods are employed (except for disturbances of only a small area of paint surface) clearance is required to ensure that the job is done properly. Second, ongoing lead-based paint maintenance practices are required in rental housing whenever HUD has a continuing relationship with the property. Third, to ensure that the controls are still intact and effective over time, reevaluation is required whenever a risk assessment and interim controls are required and there is a continuing HUD subsidy or ownership of rental housing. Fourth, special procedures are required in programs with a continuing subsidy or HUD ownership of rental housing whenever a child is identified with a blood lead level that calls for environmental assessment and intervention (called an ''environmental intervention blood lead level'' in the rule).

The first strategy, safe work practices during rehabilitation, is applied only to rehabilitation assistance of no more than $5,000 per unit. This is a ''do no harm'' policy that is intended to assure that low-cost rehabilitation does not generate lead-based paint hazards. It allows low-cost rehabilitation to go forward without costly lead-based paint requirements; but it does not necessarily determine whether or not the entire dwelling unit or property is ''lead safe,'' because, for this strategy, clearance must be conducted only for the worksite, which may not include the entire unit.

The goal of the second strategy, ongoing lead-based paint maintenance only, is to ensure that paint is kept stabilized and that the work is done in a safe manner. Clearance is required only of the worksite. This strategy does not provide full assurance that a property is free of lead-based paint hazards, but it will minimize such hazards over time. It is applied to properties that are subject to an application for multifamily mortgage insurance and were built between 1960 and 1977. These are rental properties with no subsidy, only mortgage insurance, but there is a continuing relationship between the Department, the borrower and the lender through the insurance agreement. These properties were built toward the end of the period when lead-based paint was used in housing and are less likely to have lead-based paint hazards than older housing. This strategy is also applied as a transitional requirement for multifamily properties receiving project-based assistance during the phase-in period before a risk assessment is conducted.

The third strategy, visual assessment, paint stabilization and clearance, provides assurance that the housing to which it is applied is ''lead safe.'' To provide such assurance, HUD intends that clearance be unit-wide, not just for the worksite. It should be noted that clearance is required only if paint stabilization is performed, so a unit that passes the initial visual assessment (i.e. no deteriorated paint is identified) undergoes no dust testing. Also, if the housing is in poor physical condition, or if there are high levels of lead in the soil, lead-based paint hazards may reappear. Therefore, ongoing maintenance is required whenever HUD has a continuing relationship with rental property. The final rule applies this strategy to HUD-owned single family housing that is sold with a mortgage insured by HUD; properties with acquisition, leasing, support services, or operation assistance; tenant-based rental assistance programs where a child of less than 6 years of age resides; multifamily housing receiving up to and including $5,000 per unit per year in project-based rental assistance; and single family properties assisted under the project-based certificate or voucher program, the moderate rehabilitation program, or another HUD-funded project-based rental assistance program.

The fourth strategy, risk assessment and interim controls, with the option to conduct standard treatments, provides assurance that all lead-based paint hazards have been eliminated. Unit-wide clearance is always required. Ongoing maintenance of painted surfaces is required whenever HUD has a continuing relationship with the property; and reevaluation is required if HUD is the owner, if there is project-based rental assistance in a multifamily property exceeding $5,000 per unit per year, and in public housing. This strategy is applied to properties that are subject to an application for multifamily mortgage insurance and were built before 1960, housing receiving multifamily project-based assistance of more than $5,000 per unit annually, and housing receiving rehabilitation

assistance of $5,000—$25,000 per unit. A risk assessment and interim controls are also required in public housing developments that have lead-based paint that has not yet been abated.

The fifth strategy, lead-based paint inspection, risk assessment, and interim controls, is applied only to HUD-owned multifamily housing. It differs from the fourth strategy in that it requires a lead-based paint inspection as well as a risk assessment. Most of these properties are being sold, frequently without HUD mortgage insurance, so HUD will not have a continuing relationship with them and thus will not be able to ensure that ongoing lead-based paint maintenance practices and reevaluation are practiced. With a lead-based paint inspection, HUD will provide the buyer with information on the location of any remaining lead-based paint on the property that the buyer and later owners can use to avoid generating dust-lead hazards in the future.

The sixth strategy involves risk assessment and abatement of lead-based paint hazards. This strategy is used when Federal rehabilitation assistance is greater than $25,000 per unit. When Federal funds are used to make such a substantial investment in a property, it is logical that long-term hazard control measures be implemented at a time when substantial concurrent rehabilitation is being done. Paint testing of surfaces to be disturbed during rehabilitation is called for to ensure that new lead-based paint hazards are not inadvertently created, but the designated party has the option to presume the presence of lead-based paint on such surfaces.

The objective of the seventh strategy, lead-based paint inspection and abatement of lead-based paint, is abatement of all lead-based paint. This strategy applies to public housing and to properties that are being converted from nonresidential to residential use or are subject to major rehabilitation and are being financed with HUD/FHA multifamily mortgage insurance. This is not a new requirement for public housing. Current public housing regulations require a lead-based paint inspection and, at the time of modernization, abatement of all lead-based paint. However, because complete modernization (and therefore complete abatement) may not occur for many years in some housing developments, and because modernization (and therefore abatement of lead-based paint) can occur on a piecemeal basis (e.g., kitchens one year, bathrooms another), the final rule, like the proposed rule, adds the requirements of strategy four, risk assessment and interim controls, during the period prior to completion of abatement to assure that all public housing occupied by families will be free of lead-based paint hazards. The requirement for conversions and major rehabilitations financed with multifamily mortgage insurance is new, however. HUD believes that such properties, after undergoing such substantial renovation, should be as free as reasonably possible of any future lead-based paint hazards.

3. *Prescriptiveness.* There were several comments to the effect that the rule was too prescriptive. These commenters generally recommended a movement toward ''performance-based'' requirements, arguing that a performance-based rule would stand up better to future technical innovations.

One commenter recognized that adopting performance-based standards was not always a simple matter. Decisions to do so must be made ''requirement-by-requirement,'' but the commenter urged looking for means to use such standards wherever feasible, and cautioned against ''locking in'' requirements which new technology or research may well show to be inappropriate in the future. For example, the commenter recommended against specifying HEPA vacuuming in the rule, indicating that research underway may suggest that in some cases less specialized equipment or less extensive procedures can be just as effective. Another commenter suggested basing requirements on performance, but including a more prescriptive ''safe harbor'' optional alternative. Sometimes, the commenter observed, performance-based standards are simply unhelpful to those regulated due to lack of clarity or information about the method of obtaining the desired performance.

Several commenters recommended against ''too rigid'' regulatory requirements that would require ''full-blown'' future rule making proceedings to overturn. Some suggested incorporation of guidelines into the rule by reference.

Although the proposed rule included prescriptive requirements, § 37.1(b) of the proposed rule stated that those requirements did *not* apply to lead-based paint inspections, risk assessments and abatements performed by inspectors, risk assessors, abatement supervisors and workers certified in accordance with EPA regulations under the Toxic Substances Control Act (TSCA). Rather, the prescriptive standards in proposed part 37 were to apply only when such activities were performed by individuals who were not certified in accordance with EPA requirements, should certification mechanisms not be in place.

The effective date of the EPA certification requirements and the EPA work practices standards is August 31, 1999. By that date, individuals conducting inspections, risk assessments and abatement must be certified and all such activities must be performed pursuant to the work practices standards in that regulation or in requirements of EPA-authorized State or Tribal programs. There is no need for HUD to issue detailed requirements for risk assessment, inspection and abatement. They have been omitted, therefore, from the final rule, except for interim dust and soil standards.

This leaves the question of whether the proposed requirements for interim controls and related procedures that are not covered by the EPA regulations are too prescriptive. Related procedures include standard treatments, occupant protection and worksite preparation, clearance, ongoing lead-based paint maintenance, reevaluation, and safe work practices. In the final rule, HUD has tried to strike a balance between the need to assure that the procedures will be effective in preventing childhood lead poisoning and the goal of providing flexibility and avoiding rigidity.

C. Effective Date

The proposed rule included an effective date of 12 months after publication of the final rule, and the Department explained in the preamble that this time period was chosen to allow all affected parties time to prepare for implementation of the new requirements.

Some commenters urged that the effective dates in the rule be moved up in whole or in part, while others asked for a further delay to allow affected parties to secure expert assistance or training opportunities. One commenter urged waiting to make the rule effective until EPA's upcoming rule on health-based standards for lead in dust and soil was promulgated and made effective.

Advocates of rapid effectiveness pointed out that the rule already was ''overdue,'' and claimed that important health benefits could be realized by the regulation's becoming operational sooner rather than later. Several commenters advocated immediate effectiveness for portions of the rule dealing with occupant protection, worksite preparation and the prohibitions against unsafe practices.

HUD considered imposing an immediate effective date because the statutory effective date of January 1, 1995 had already passed and because of the risk to the health of children from

a further delay in implementing these requirements. On the other hand, HUD noted that program administrators at all levels of government, as well as property owners and contractors performing lead-based paint activities, would not have adequate time for education, training, planning and budgeting to implement fully the new technical standards, requirements and procedures with an effective date earlier than proposed.

After thorough consideration of these varying points of view HUD has decided to retain the proposed 12-month time period following publication for a phasing in of the effective date of the final rule, with one exception: the prohibition of certain methods of paint removal or surface preparation set forth in § 35.140 shall be effective 60 days after publication of this final rule. In addition, designated parties may choose to comply with the requirements of this final rule before the effective date, instead of complying with existing requirements, if they desire and provided there is not a programmatic limitation that would preclude such an action.

The exception to the 12-month phase-in policy is appropriate for prohibited practices. These are already well known; many are in HUD's current regulations and guidance and are prohibited by the EPA final rule on training and certification, which was published on August 29, 1996. Many States already prohibit these practices, and other safer paint removal methods are well known. (See Section III.E.2.g. of this preamble.)

One commenter requested clarification of the effective date's impact on pre-rule lead-based paint control activities already undertaken and partially completed, and urged that it be made clear that this ongoing work could be carried forward after the effective date ''without revision.'' The Department's policy on this matter varies somewhat from program to program, because of differences in regulations and administrative procedures. Therefore the applicability sections of subparts F through M include statements specific to each program. In subpart F, pertaining to HUD-owned single family housing, any property to be sold with a HUD-insured mortgage and which is offered for sale on or after the effective date of this final rule must comply with the requirements of the rule. In the case of subpart G, pertaining to multifamily mortgage insurance, any property for which a HUD or FHA commitment is made on or after the effective date must comply with the rule. With regard to subpart H, project-based rental assistance, properties that are receiving Section 8 assistance on or after the effective date of this rule must comply. In the case of competitively awarded grants under the HOPWA, Supportive Housing, and Shelter Plus Care programs, the requirements apply to grants awarded pursuant to NOFAs issued on or after October 1, 1999. For formula grants under HOPWA, the requirements apply to activities for which program funds are first obligated on or after September 15, 2000. Subpart I states that HUD-owned multifamily properties and properties for which HUD is mortgagee-in-possession must comply with the rule if they are offered for sale or held or managed by HUD on or after the effective date of this rule. Subpart J, pertaining to rehabilitation assistance, includes program-specific information on the effective date for projects funded under the HOME program, the Community Development Block Grant (CDBG) programs, the Indian Housing Block Grant (IHBG) program, HUD-administered homelessness assistance programs, and the Indian Community Development Block Grant program. Project-specific effective date policies for housing subject to subpart K, Acquisition, Leasing, Support Services, or Operation, are the same as for subpart J. With regard to public housing, subpart L states that all housing to which the subpart applies is covered by the rule as of the effective date of this final rule. Finally, subpart M, which pertains to tenant-based rental assistance, states that housing receiving such assistance becomes subject to the requirements of this rule at the time of an initial or periodic inspection that occurs on or after the effective date of this final rule. (The initial or periodic inspection referred to in the previous sentence is the inspection conducted by the public housing agency (PHA) or other administering agency to determine whether the housing unit meets the requirements of the program. It is not a lead-based paint inspection.)

D. Other General Issues

1. *Policy on Abatement.* Some commenters saw in the proposed rule an undue emphasis on abatement, as opposed to more limited lead hazard control measures. ''As such,'' one organization declared, ''the rule appears inadequately protective of children's health, and unlikely to realize the full benefits predicted by the Economic Analysis as justification for the costs of compliance.'' Abatement should not be a defined term in the rule, nor used at all, this commenter stated. The recommended term was ''hazard abatement,'' used to mean ''any set of measures to permanently eliminate lead-based paint hazards.'' This should be the ''maximum requirement'' of the rule. While abatement of intact lead-based paint would always remain an option, it need not and should not be required, the commenter urged.

The same commenter urged that the definition of abatement should *not* include reference to lead-based paint (i.e., intact paint). By doing so, there is a deviation from the definition of abatement in Title X itself. Failing to make the distinction between intact LBP and lead hazards is likely to ''recreate * * * the scenarios that Title X was supposed to end: Paralyzed non-compliance because of the costs and burdens of performing abatement of non-hazardous intact LBP.''

A commenter who felt the rule didn't stress abatement enough was ''troubled by the rule's implicit acceptance that it is infeasible to abate lead paint from housing.'' Arguing that the societal returns more than justified the cost, the commenter declared that the obstacles to abatement as a predominant policy were ''not economic, but political.''

HUD agrees that abatement should be targeted toward hazards, not the mere presence of lead-based paint, except in public housing, where lead-based paint abatement is required by statute, and for conversions and major rehabilitation projects seeking HUD/FHA multifamily mortgage insurance. The final rule defines abatement accordingly but retains the existing lead-based paint abatement requirements for public housing. The legislative history of Title X shows that Congress did not intend for the existing public housing program requirements to be changed.

2. *Cost of Compliance.* Many commenters—particularly State and local funded agencies, housing developers, and their national and regional spokespersons—expressed serious concerns about the rule's cost.

While many suggestions for change in details of the rule were provided by these commenters, the tenor of their comments was not so much against the rule as against the idea of carrying out its mandate without separate funds earmarked solely for that purpose.

Some commenters felt that HUD had grossly underestimated the costs of compliance and that these costs, in many circumstances, would divert already-limited funding from its principal purpose of providing shelter. Rural housing suppliers, especially, lamented the anticipated problems the rule would bring. One commenter expressed the fear that the rule would ''severely hamper rehabilitation in rural,

small communities and would potentially drive the cost of doing business so high that many communities may decide that it is simply not worth it to try and repair existing, older substandard housing.''

Some commenters suggested that the dangers of lead paint were exaggerated or that local health department controls were adequate to locate children with high blood lead levels and cope with the problem on a case-by-case basis.

Other public agency commenters were more positively disposed toward the goal of preventing childhood lead poisoning *before* a child is poisoned, instead of waiting until the damage has already been done, but still worried about funding. Typical of these comments was that of a middle sized city with an active lead-hazard control program. Calling the rule (and Title X) an ''unfunded mandate,'' the commenter cited the staff costs associated with the rule's monitoring expectations, calling them unrealistic: ''If additional funds were provided for hard and soft rehabilitation as well as staff costs, this [rule] would be a good policy initiative that we could fully support and implement. However, without additional funds, * * * it presents a major problem for cities trying to address an overall need for affordable housing.''

A frequent suggestion was that the rule would cause ''redundant and unnecessary'' lead-based paint work to be performed. The focus, these commenters argued, should be on reducing and controlling lead hazards in units occupied by small children or children who had already been lead poisoned.

A major housing industry organization asserted that the proposal contains unnecessary impediments to the performance of paint repair work and interim control tasks by employees of owners and managers, or by the owners themselves, and urged the Department to eliminate these wherever feasible.

One commenter, a municipal health department lead poisoning prevention program, predicted that the proposed rule's changes would ''seem daunting'' to community-based agencies at first. The commenter generally agreed with the rule's approach and predicted that compliance costs would be ''minimal.'' The commenter said, however, that ''government support and leadership to ensure that training, inspection/risk assessment services, and dust wipe resources are available and sometimes subsidized could prove to be instrumental in effective implementation.''

In response to these comments, HUD does not believe that the childhood lead poisoning problem has been ''overblown,'' in light of the results of the National Health and Nutrition Evaluation Survey (described in Section II.A of this preamble, above) showing that approximately 900,000 children still have blood lead levels equal to or greater than 10 μg/dL, the CDC level of concern. HUD also disagrees that the rule should impose requirements only on units housing young children. HUD believes that it is not practical in most housing programs to expect managers to know when children are or are not residing in particular units, especially in light of the significant resident turnover rates and inconsistencies in program administration among comparable units receiving comparable Federal assistance. Title X holds that it is far better to identify and correct lead-based paint hazards before a child is poisoned. Such prevention is especially important, because some effects of lead poisoning appear to be irreversible. The one exception to this policy is in the tenant-based rental assistance programs, in which income certification requirements facilitate the determination of childhood occupancy and for which there is legislative history indicating Congressional concern that lead-based paint requirements could deter landlords from program participation.

With regard to the cost of the rehabilitation requirements, it is important to note that the requirements of the rule are limited for housing receiving up to and including $5,000 per unit in rehabilitation assistance. Also, the option to perform standard treatments instead of a risk assessment and interim controls may reduce costs in certain situations. (See further discussion below in Section III.E.10 of this preamble.) HUD intends to work closely with local housing and community development agencies to further develop ways to efficiently meld lead-based paint hazard reduction with rehabilitation.

With regard to the public housing program, HUD does not believe that long-term annual cost increases will be significant, although there will be one-time risk assessment and interim control costs in the short term for some housing agencies. HUD encourages public housing agencies to schedule completion of abatement of lead-based paint in order to put this issue behind them.

3. *TUse of Task Force Recommendations.* Numerous commenters called upon HUD to assure that the rule maintain consistency with the 1995 report of the Task Force on Lead-Based Paint Hazard Reduction and Financing (Task Force), which was a Federal advisory committee appointed by the Secretary of HUD pursuant to section 1015 of Title X.

Two recommendations of particular interest are the standards or procedures referred to as ''essential maintenance practices'' and ''standard treatments.'' These procedures were directed toward rental housing. Essential maintenance practices are the steps the recommended steps that a landlord should take to reduce the risk of childhood lead poisoning in pre-1978 dwelling units and associated common areas. Standard treatments are more aggressive measures to assure that possible lead-based paint hazards are controlled in older housing. These procedures were not incorporated by name in the proposed rule, although many of their elements or concepts were included.

In the final rule, HUD is requiring that all rental housing which has a continuing financial or regulatory involvement with HUD must be maintained in a manner similar to that recommended in the Task Force's essential maintenance practices. Also, the Department has adopted the concept of standard treatments, as set forth in the Task Force report, as an option to the basic requirement of a risk assessment and interim controls. This option is set forth in § 35.120(a). Clearance testing is required after standard treatments as well as interim controls.

Another Task Force recommendation mentioned favorably by some commenters is the ''lead hazard control plan,'' which is a plan to be developed by a property owner that lays out when and where certain hazard control measures will be conducted within a residential property. The plan allows an owner to prioritize the work and undertake the most important tasks or dwelling units first, followed by lower priority work later, as for example at apartment turnover. The proposed rule did provide for a hazard reduction plan for multifamily properties receiving more than $5,000 per unit in HUD project-based assistance.

Although the lead hazard control plan was intended to provide property owners with flexibility in scheduling lead-hazard control work, many commenters perceived the plan requirement as ''red tape'' of limited value and questioned whether HUD would have the staff resources and expertise to review and approve such plans on a timely basis. HUD shares these concerns and, in the interests of regulatory streamlining, has decided to

delete the plan requirement. The Department continues to believe that it would be a useful document for property managers, especially those with responsibility for large multifamily developments, and encourages owners to develop such plans. The American Society for Testing and Materials (ASTM, West Conshohocken, PA 19428–2959) has developed a Standard Guide for Evaluation, Management, and Control of Lead Hazards in Facilities, and is developing an accompanying user guidebook. These materials can provide the basis for developing a lead hazard control plan. They are particularly appropriate for owners of multifamily dwellings.

4. *De Minimis Exceptions.* The proposed rule included de minimis levels of paint deterioration, consistent with the HUD Guidelines, below which no action would be required. These de minimis levels were defined as not more than 10 square feet of deteriorated paint on an exterior wall; not more than 2 square feet on an interior component with a large surface area including, but not limited to, interior walls, ceilings, floors and doors; or not more than 10 percent of the total surface area on an interior or exterior component with a small surface area including, but not limited to, window sills, baseboards and trim.

Commenters objected to the de minimis levels on four grounds: (1) That the de minimis exception is arbitrary and not supported by science; (2) that the levels are too large, potentially allowing a total of over ten square feet of defective paint per room (counting four walls plus a ceiling plus small components); (3) that some owners or inspectors may use the de minimis exception as an excuse for overlooking hazardous conditions; and (4) that it is likely to shift the attention of workers from the importance of practicing lead hazard control and maintaining painted surfaces in a lead-safe manner to measuring the size of defective paint surfaces in order to document that surfaces fall above or below the de minimis level.

HUD acknowledges the merit of these comments, and after careful consideration has decided to eliminate the de minimis exception for deteriorated paint from the final rule. All deteriorated lead-based paint (either known or presumed to be lead-based paint) must be addressed. This will simplify the rule's implementation considerably. HUD *did* retain, however, a de minimis exemption for safe work practices and clearance, which is consistent with the EPA provision at 40 CFR 745.227(e) that allows dry scraping during abatement on surfaces totaling no more than 2 square feet per room or 20 square feet on exterior surfaces. This de minimis exemption is separate from the safety-related exception allowing dry scraping in conjunction with the use of heat guns or within 1 foot of electrical outlets; that is, the area covered by the safety-based exception is not part of the area covered by the safe work practices de minimis exemption).

5. *Distinction Between HUD Programs and Those of Other Federal Agencies.* Several commenters asserted that the rule distinguishes between HUD-assisted housing and that assisted by other Federal agencies without any statutory basis and without providing any justification. The Department's response is that, although the Secretary is given authority to develop regulations for other agencies (with respect to project-based assistance and Federally-owned property), HUD cannot and should not make lead-based paint policy decisions for other agencies beyond what is set forth in Title X. HUD does not have the knowledge of other agencies' housing programs that is necessary to draft detailed lead-based paint regulations for all other Federal agencies, and achieving consensus among all agencies on such regulations is unlikely. The sections concerning HUD project-based assistance and HUD-owned property, therefore, should remain separate from the sections provided for other agencies. Other Federal agencies can be expected to develop their own regulations or guidance, using HUD's regulations as a starting point.

6. *Response to Children with Lead Poisoning.* The Department's primary focus in this rule is on prevention of childhood lead poisoning, not on case management of children who have already been poisoned. Title X specifically calls for the identification and correction of hazards in all housing. Nevertheless, HUD feels special requirements are needed for lead-poisoned children who have already been poisoned by lead-based paint hazards. HUD cannot ignore the possible connection between a child's blood lead level and the condition of the dwelling unit where the child lives, particularly in view of research on the relation of dust-lead to blood-lead levels (see Section III.E.15.b of the preamble, below). Therefore, in housing where the Federal Government maintains a continuing financial or ownership relationship, requirements were included in the proposed rule to evaluate and reduce lead-based paint hazards when a child with an elevated blood lead level (EBL) is identified. Such requirements have existed in current HUD regulations for many years. In the final rule, as in the proposed rule, they are included in the subparts pertaining to project-based rental assistance, disposition of HUD-owned and mortgagee-in-possession multifamily housing, public housing, and tenant-based rental assistance.

Commenters addressing EBL-related requirements raised several different concerns: The measurement standards that trigger environmental intervention, the terminology used to refer to such a level, information exchange requirements between housing authorities and health departments, hazard control requirements for units occupied by young children with an EBL condition, reoccupancy requirements for dwelling units that were previously occupied by an EBL child but have not undergone evaluation or hazard reduction, relocation requirements, and the potential for discrimination by landlords against families with young children generally and EBL children in particular.

In the proposed rule, HUD defined ''elevated blood lead level (EBL) (requiring the evaluation of lead hazards)'' as meaning ''an excessive absorption of lead that is a confirmed concentration of lead in whole blood of 20 μg/dL (micrograms of lead per deciliter of whole blood) for a single venous test or of 15–19 μg/dL in two consecutive venous tests taken 3 to 4 months apart.'' One commenter argued that HUD should not use a standard other than 10 μg/dL, which is the basic CDC level of concern, because it is ''illogical to take no action when we know a child is poisoned * * * but instead to wait until the child is more poisoned,'' and because defining an EBL at a level higher than that known to cause adverse effects will create potential liability for public housing authorities and assisted owners.

HUD has consulted again with CDC and has concluded, as it did prior to issuance of the proposed rule, that CDC did not and does not intend to recommend a full home inspection or assessment in response to blood lead levels below 15 μg/dL. CDC advises that a blood lead level of 10–14 μg/dL should trigger monitoring, certain parental actions, and perhaps community-wide education, but not hazard control in an individual child's home. CDC recommends follow-up blood lead testing of such children in about 3 months, the provision of information to parents on lead hazards, nutrition and housekeeping if appropriate, and the taking of an environmental history to try to identify

an obvious source of lead exposure (CDC 1997).

EPA noted that it is confusing to define the term ''elevated blood lead level'' or ''EBL'' differently than normal usage. The agency pointed out that CDC, in their 1997 screening guidelines, uses the term to refer 10 µg/dL or greater and that most public health agencies and others in the field of lead poisoning prevention do the same. HUD agrees that this is potentially confusing and has therefore substituted in the final rule the term ''environmental intervention blood lead level'' to replace ''elevated blood lead level'' or ''EBL'' when the latter terms refer to the blood lead level requiring evaluation and hazard reduction of the child's home.

One State public health department urged HUD to modify the rule's standards for determining when environmental intervention is needed. Requiring tests showing *two* blood lead levels of 15–19 micrograms per deciliter in consecutive tests three to four months apart is ''problematic,'' the commenter said, because many children do not get follow-up tests at the required three-four month interval, but rather more frequently—or less. Two tests showing levels of 15 or higher, *whether or not consecutive, and whether or not at a fixed time interval,* should be adequate to identify the child, and it is important that the rule not define the test intervals too strictly. It is not in the best interests of the child to recognize test results that come in only at precise intervals, the commenter said. A child may have two tests of 15–19 µg/dL, but because of seasonal variations in lead exposure, the high-level results may not be consecutive. At least two commenters recommended that this standard should be consistent with CDC guidance.

HUD agrees. In the final rule, the Department has defined environmental intervention blood lead level to conform to the new guidelines by CDC issued in 1997 (CDC 1997b). The revised definition is ''a confirmed concentration of lead in whole blood equal to or greater than 20 µg/dL (micrograms of lead per deciliter) for a single test or of 15–19 µg/dL in two tests taken at least 3 months apart.'' This revision removes the word, ''consecutive,'' and allows for nonconsecutive readings that are more than 3 months apart. The final rule has also removed the requirement that blood lead levels be determined only by venous blood specimens. This decision is best left to the child's health care provider, and may be affected by technological advances. HUD expects housing agencies, grantees, property owners, and other parties to which this rule applies to rely on medical health care providers where judgment is required in interpreting this definition.

Another issue is how best to make housing agencies aware of when there is a child with an environmental intervention blood lead level living in a dwelling unit under tenant-based rental assistance or under another program to which the requirements of subpart M of this rule apply. The proposed rule required that, to the extent practicable, the housing agency or other administering agency would attempt to obtain annually from the State or local health department the names and addresses of children less than age 6 identified with environmental intervention blood lead levels. The housing agency was then required to match this information with the names and addresses of families receiving Federal assistance. If a match occurred, the agency was to require a risk assessment and interim controls in the child's home. These requirements are similar to those currently in HUD regulations pertaining to tenant-based rental assistance. They were issued in response to the United States General Accounting Office report entitled ''Children in Section 8 Tenant-Based Housing are not Adequately Protected'' (GAO/RCED–94–137, May 13, 1994). The intent of this requirement is to ensure that families with young children that receive tenant-based rental assistance are obtaining housing free of lead-based paint hazards. At the same time, the CDC is urging local public health departments to provide environmental intervention blood lead level-related information to housing agencies.

A few commenters indicated that they had encountered difficulty in securing the cooperation of health authorities in making these records available because of the authorities' concerns about the privacy of medical information. While these access problems can be overcome, one commenter said, by securing a release signed by the child's parent or guardian, there are other concerns besides the question of invasion of privacy. If the agency administering the tenant-based assistance program has information concerning the environmental intervention blood lead level status of a family's children and the information is disclosed to potential landlords, the information ''becomes a barrier for the family in its housing search,'' because some landlords may illegally refuse to rent to the family.

Several other commenters expressed concern about the potential for housing discrimination against families with children in general, and those with children with identified environmental intervention blood lead levels in particular. These comments ranged from suggestions to penalize the landlords involved to indications that, in the absence of funding assistance, it was unfair to ''penalize (owners) for participating in the Section 8 (Voucher and Certificate) Program in a way *not required of owners in the private market.*'' (Emphasis in original.) In response, HUD believes that the environmental intervention blood lead level requirements in this rule are *not* in fact fundamentally different than those covering private-sector owners who do not receive subsidies. Local ordinances often permit health or housing departments to order lead hazard control work in any home where an environmental intervention blood lead level child is identified. For an explanation of the antidiscrimination provisions of the Fair Housing Act, see Section IV.D.7 of this preamble.

The Department has concluded that it is very important that local housing agencies know when there is a child with an environmental intervention blood lead level residing in an assisted unit and that owners comply with requirements designed to make the units free of lead-based paint hazards. It is well known that, while local health departments are able to identify poisoned children, they often do not have the resources to correct the cause.

HUD is making, therefore, the following changes to the requirements pertaining to exchange of information on environmental intervention blood lead level conditions:

(1) The housing agency or other local agency administering tenant-based rental assistance must attempt at least quarterly (instead of annually as in the proposed rule) to obtain from the State or local public health department, or the Indian Health Service as applicable, the names and/or addresses of children of less than 6 years of age with environmental intervention blood lead levels. This change is being made to assure that poisoned children will receive help on a more timely basis. The Department encourages health departments and housing agencies to voluntarily enter into agreements to exchange information more frequently, e.g., monthly, especially in jurisdictions in which childhood lead poisoning is a frequent occurrence in housing occupied by families receiving tenant-based rental assistance.

(2) Also on a quarterly basis, the housing agency or other local agency administering the tenant-based rental assistance must provide health departments with addresses of assisted units (as well as attempt to obtain

addresses of environmental intervention blood lead level children from the health department), except that such a report to the health department is not required if the health department states that it does not wish to receive it.

(3) The address match may be done by either the housing or the health agency. HUD's intent is to encourage workable cooperative arrangements between the two types of agencies for the purpose of matching environmental intervention blood lead level and housing assistance information on a timely basis.

With regard to the evaluation and hazard reduction that must be done if a child with an environmental intervention blood lead level is found to be residing in a HUD-assisted or HUD-owned unit, the final rule sets one uniform requirement for all programs: risk assessment and interim controls, followed by ongoing lead-based paint maintenance. One commenter complained that the proposed rule failed to require anything beyond interim controls—a standard, the commenter said, that is ''too low and ineffective in the face of a poisoned child.'' Current information shows that interim controls are as effective as abatement methods in the short term and will continue to provide adequate protection if continuing maintenance standards are met (National Center 1998). In the final rule, ongoing lead-based paint maintenance is required in all HUD housing programs for which there is also a requirement that interim controls be conducted in response to a case of a child with an environmental intervention blood lead level. To ensure that these requirements are not avoided, the rule states that the requirements apply regardless of whether the child with the environmental intervention blood lead level is or is not still living in the assisted unit. Furthermore, it is HUD's intent that the requirements apply to the unit even if no child of less than six years of age resides in the unit, because the requirements were triggered when a child was in residence. Also, if a public health department performs the evaluation of the dwelling unit or, after the hazard reduction work is performed, certifies the unit to be lead safe, it is not necessary for the housing agency or other designated party to perform those functions. Finally, in the case of housing to which subpart M (tenant-based rental assistance) applies, if the hazard reduction is not performed, the unit does not meet Housing Quality Standards.

Some local housing agencies have asked for guidance on what their response should be to information on a child's blood lead level if the information is brought to the agency by a party other than a medical health care provider. In response, the Department is including a provision requiring verification of such data with the public health department or other medical health care provider. If it is verified that a child has an environmental intervention blood lead level, the agency, owner, or HUD (as the case may be) must complete a risk assessment and conduct interim controls of identified hazards.

7. *Fair Housing Requirements.* Several commenters expressed concern about the potential for housing discrimination against families with children in general, and those with children with environmental intervention blood lead levels in particular. Therefore HUD is providing the following discussion of the application of the Fair Housing Act and other laws pertaining to persons with disabilities to lead-based paint issues.

The Fair Housing Act prohibits discrimination in housing based on race, color, national origin, religion, sex, disability, and familial status. Familial status, for purposes of the Fair Housing Act, includes children under 18 (regardless of age or number), pregnant women, and people seeking custody of children under 18. Only providers of housing that meets the specific definition of housing for older persons may refuse to rent to families with children. Children with elevated blood lead levels and persons with Multiple Chemical Sensitivity (MCS) may fall under the definition of persons with disabilities. Among the actions prohibited under the Fair Housing Act are any action which differentiates on a prohibited basis for any of the following: Refusal to rent or sell housing; refusal to negotiate for housing; making a dwelling unavailable; denying a dwelling; providing different housing services or facilities; falsely stating that housing is not available for inspection, sale, or rental; refusing to make a mortgage loan; imposing different terms or conditions on a loan; setting different terms, conditions, or privileges for sale or rental of a dwelling; segregating a portion of the population into special buildings or areas; maintaining different lease conditions; and advertising or making any statement that indicates a limitation or preference based on any prohibited basis of the Fair Housing Act.

Based on this law, it is illegal for owners of housing to discriminate against families with children, or EBL children, even if the unit is known to have lead-based paint hazards. The prohibitions of the Fair Housing Act would further make it inadvisable to ask questions about EBL status, pregnancy, or intentions to become pregnant. Restrictive covenants against children, including EBL children, are also illegal. Therefore, no renter or buyer may be asked to sign a statement that a child, or EBL child, is not expected to reside in the dwelling. Owners of rental housing may eliminate lead-based paint hazards in a percentage of units and hold those units available for families with children and affirmatively market them to appropriate families. An owner may also tell families of the danger of moving into a unit which has not been treated and recommend an alternative comparable unit. In no case may an owner refuse to allow a family to occupy the unit, however, because of the presence of a child or require that a family move because lead is found. Laws against discrimination will be enforced by HUD.

Title II of the Americans With Disabilities Act (ADA) establishes a clear and comprehensive prohibition against discrimination on the basis of disability in State and local government services. Section 504 of the Rehabilitation Act of 1973 provides for nondiscrimination against persons with disabilities in Federally-assisted housing. Both laws define a person with a disability as any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of an impairment, or is regarded by others as having such an impairment. Under both laws, EBL children and persons with MCS may fall under the definition of persons with disabilities. Among the actions prohibited under Title II of the ADA and Section 504 are those which discriminate, on the basis of disabilities, in Federally-assisted programs, services, and activities. Such actions include a refusal to (1) allow participation in a program, service, or activity; (2) provide programs, services and activities in an integrated setting, unless separate or different measures are necessary to ensure equal opportunity; (3) eliminate unnecessary eligibility standards or rules that deny an equal opportunity to enjoy a program, service or activity unless ''necessary'' for the provisions of the program, service or activity; (4) make reasonable modifications in policies, practices, and procedures that deny equal access, unless a fundamental alteration in the program would result; (5) make reasonable accommodations, unless an undue burden or fundamental alteration would result, e.g., furnish auxiliary aids and services when necessary to ensure effective

communication (e.g., interpreters, or accessible formats, such as braille, large print, or audio cassette) and/or provide notice to and relocate residents with MCS prior to removing lead-based paint hazards with harmful toxic chemicals; and (6) operate programs so that, when viewed in their entirety, they are readily accessible to, and usable by, individuals with disabilities. A covered housing provider must not impose special charges to pay for measures necessary to ensure nondiscriminatory treatments, such as relocation expenses when necessary to remove lead-based paint hazards, or making modifications to provide accessibility. Finally, it is unlawful under these laws for a covered housing provider to make inquiries into the nature and severity of a person's disability, although that information may be volunteered when a reasonable accommodation is requested.

8. *Qualification Requirements.* The proposed rule required that most lead-based paint inspections, risk assessments and abatements be conducted by individuals or firms that are certified in accordance with national EPA requirements for lead-based paint activities developed pursuant to sections 402 and 404 of the Toxic Substances Control Act (TSCA). EPA published a final rule on August 29, 1996 that takes full effect on August 29, 1999. After that time, all lead-based paint inspections, risk assessments, and abatements nationwide will have to be conducted in accordance with the EPA work practices standards at 40 CFR 745.227 or State or tribal standards that have been authorized by EPA under procedures set forth at 40 CFR part 745, subpart Q. Recognizing that there might be temporary limitations on the supply of certified personnel, HUD proposed to provide for the possibility of temporary qualifications.

The proposed rule included two apparent exceptions to this general certification requirement. Public and Indian housing agencies (''HAs'') conducting dust and soil testing for public and Indian housing were not required to be certified in accordance with the EPA requirements. The Department pointed out that HAs were required to complete lead-based paint inspections by December 6, 1994, and that many HAs have already taken the initiative to conduct risk assessments in housing projects. Further, HUD did not extend the certification requirement to dust testing conducted by HAs for the Section 8 tenant-based rental assistance program. The Department, however, did require that a risk assessment conducted in response to an identified environmental intervention blood lead level child be conducted by a certified risk assessor.

Certification requirements in the proposed rule were somewhat different for interim controls than for abatement. Recognizing that the EPA regulations do not cover interim controls, HUD proposed that all workers performing interim controls be trained in accordance with the basic Occupational Safety and Health Administration (OSHA) hazard communication standard at 29 CFR 1926.59 and supervised by a certified abatement supervisor.

Comments on the qualifications requirements dealt with five issues: (1) Whether housing agency personnel had to be certified to perform dust and soil testing; (2) the availability of qualified personnel and firms, and temporary qualifications in case of an inadequate supply of certified personnel; (3) qualification requirements for interim controls; (4) the independence of the clearance examiner; and (5) the authority of a trained technician to perform clearance examinations.

EPA objected to the exemption of public and Indian housing authorities from certification requirements related to dust and soil testing. EPA did not accept HUD's rationale for suggesting that noncertified personnel could perform lead-based-paint-related functions for public and Indian housing agencies, other than under emergency circumstances. On the other hand, another commenter said he was ''pleased'' that dust testing would be permitted in that program by non-licensed Housing Quality Standards (HQS) inspectors trained in lead-hazard evaluation. The commenter recommended that ''non-licensed, but trained'' rehabilitation inspectors similarly be allowed to accomplish clearance testing in the funded rehabilitation programs. A public interest commenter remarked that ''HUD should begin the process of educating these workers at once, so that a qualified work force is available when the requirements go into effect.''

A local funded agency indicated that its State law would not allow Section 8 housing inspectors to perform inspections requiring dust wipes, and the agency went on to say that licensure for inspectors costs $250, renewable every two years, and that risk assessment training ran to $300 per person. Costs to housing authorities, and to landlords, for importing licensed personnel to perform inspections and assessments were regarded as prohibitive by the commenter.

The Department has decided to require in the final rule that dust and soil testing in public housing be conducted by personnel certified in accordance with an EPA-authorized State or tribal program or EPA regulations, a provision that is also in accordance with many State laws. Also, dust testing in housing assisted through tenant-based rental assistance will not be required at the evaluation stage, so the qualification issue for that function is no longer relevant; but clearance of the dwelling unit (or, in some cases, only the worksite) will be required if paint stabilization, interim controls or abatement is required. See the discussion below of the authority of trained technicians to perform clearance examinations.

There was much concern among commenters about the availability of a qualified (and affordable) work force of persons certified (or otherwise adequately trained) to perform the necessary work called for in the rule. Rural housing suppliers claimed such trained people would have to be imported from far away—and at premium rates. There were also calls for reciprocity for State-approved training programs until the EPA-approved programs are implemented.

HUD expects that most States will have EPA authorized certification programs by the effective date of this rule. Those that do not will be covered by the EPA certification program directly. After August 29, 1999, inspections, risk assessments and abatements must be done in accordance with the standards of EPA or an authorized State or tribal program. While this fact does not in itself eliminate the possibility that there will be shortages in the supply of certified personnel for inspections, risk assessments and abatements in some parts of the country, it increases the likelihood that the certification mechanisms will be in place in most of the nation when this rule becomes effective. At the time of this writing, 37 States have already enacted lead-based paint hazard control laws. In the final rule, the Department has made one change to the qualifications requirements that may result in increased availability of persons qualified to perform clearances. See the discussion below of the authority of technicians to perform clearance examinations.

The Department intends to monitor the availability of qualified personnel. One source of information is likely to be the ''Lead Listing,'' a nationwide listing of inspectors and risk assessors developed by the National Lead Assessment and Abatement Council (NLAC) with HUD assistance. The

''Lead Listing'' can be accessed by calling 1–888-LEADLIST (this is a toll-free number) or can be found on the Internet at www.leadlisting.org. HUD notes the constructive suggestion by one commenter that such monitoring should be done in cooperation with the States, as is being done with the development and maintenance of the Lead Listing. HUD would also expect to coordinate with EPA in the development of such information and in determining whether any further Federal response is needed.

One national organization questioned the requirement that workers performing ''interim control treatments'' be supervised by a certified abatement supervisor. Arguing that the definition of ''interim controls'' was too broad, the commenter recommended breaking the definition down so that ''painting, maintenance and similar routine tasks'' could be performed without a certified supervisor. Such a change, the commenter said, would be in accord with Congress' intent that certification requirements not be imposed on interim control workers, and the change would decrease routine property maintenance costs. A similar complaint was directed at the requirement that the appropriate worksite preparation be determined by a certified risk assessor, abatement supervisor or planner/designer. The commenter feared that the rule could be construed as requiring professional worksite design for ''mere paint repair work and for such basic interim control tasks as rehanging of doors. . .'' and asked that the rule be clarified to eliminate the worksite preparation requirement for interim control work.

Noting that the Task Force had recommended a one-day training course for maintenance supervisors, one commenter advocated HUD/EPA cooperation in developing a short course geared for maintenance workers that is inexpensive, requires one day or less to complete, and is frequently offered. Other commenters endorsed the short training course idea. The idea was a popular one, not only among cost-conscious funded agencies, but with public interest organizations as well.

A national environmental group disagreed with the emphasis on limiting the occasions for use of expert personnel. All hazard control activities, *including* paint repairs, should be conducted by trained personnel, the organization declared. A landlord who has permitted paint to become deteriorated to the point that it presents a lead hazard is ''unlikely to have the skills or inclination to perform a paint repair in a manner that does not increase exposure,'' the group said.

HUD agrees that persons performing interim controls should be prepared to protect themselves and the occupants from exposure to lead, should know how to protect interior and exterior environments from contamination and how to clean up the worksite, and should understand the importance of an independent clearance examination. In the final rule, HUD is requiring that persons performing interim controls, including paint stabilization, be trained in lead hazards in accordance with OSHA regulations at 29 CFR 1926.59 and either be supervised by a certified abatement supervisor (the requirement of the proposed rule) or successfully complete one of the following training courses: (1) An accredited abatement supervisor course; (2) an accredited lead-based paint worker course; (3) the Lead-Based Paint Maintenance Training Program, developed by the National Environmental Training Association for EPA and HUD; (4) the Remodeler's and Renovator's Lead-Based Paint Training Program, prepared by HUD and the National Association of the Remodeling Industry (NARI); or (5) another course approved for this purpose by HUD after consultation with EPA. HUD intends that any person performing hands-on, interim controls work on the worksite in compliance with the final rule must have satisfied one of the optional requirements. With regard to the OSHA training requirements, OSHA regulations at 29 CFR 1926.62 require that workers exposed to airborne lead below the OSHA action level of 30 μg/cu.m. be trained under the hazard communication construction standard, which is at 29 CFR 1926.59. If airborne lead is at or above the action level, OSHA requires a more complete training program. Workers performing interim controls of lead-based paint hazards are not expected to be exposed to airborne lead above 30 μg/cu.m. Therefore the final rule states that the required training must be in accordance with 29 CFR 1926.59.

A national housing organization questioned the language barring a clearance examiner from being ''affiliated with, paid, employed or otherwise compensated by the entity performing the hazard reduction and cleanup.'' The provision assumes, the commenter said, that the hazard reduction work has been performed by an independent contractor. In the case of paint stabilization and interim controls, this assumption will often be incorrect. Where only paint stabilization and simple interim controls are required, it was argued, the rule should permit owners and their employees to perform the work themselves. The ''independence'' provision would make this impossible. The commenter recommended, first, eliminating the clearance testing requirement for hazard reduction work involving only ''basic interim controls.'' A second solution would be to remove from the quoted provision the words ''paid'' and ''or otherwise compensated'', so that clearance testing by employees and affiliates of a contractor would be prohibited, but the owner could retain an independent, certified risk assessor to perform the clearance testing work.

HUD agrees that a property owner or manager should be able to employ both hazard reduction and clearance personnel. The final rule requires that clearance examinations and hazard reduction activities be conducted by entities that are independent of each other unless the owner or designated party uses qualified in-house employees to conduct clearance. The final rule, however, does not permit the same individual employee to conduct both hazard reduction and clearance, due to the clear conflict of interest this would pose.

As mentioned, HUD has made a change in the final rule that may increase the availability of persons qualified to perform clearance examinations, and thus may reduce the cost. The proposed rule required that clearances be performed by either a certified risk assessor or a certified lead-based paint inspector. One group of commenters urged that a technician with less training than a risk assessor or inspector be authorized to perform clearances in situations where interim controls of lead-based paint hazards or ongoing lead-based paint maintenance has been conducted. These commenters argued that the skills needed for the clearance function are modest compared to those required for lead-based paint inspections or risk assessments and, further, that the speed and affordability of clearance is of critical importance to the practical workability of the system of requirements to be set forth in the rule.

In the conference report on the VA–HUD–Independent Agencies Appropriations Act for FY 1999, the Congress urged EPA ''to develop a relevant one-day sampling technician training course and to encourage the recognition of this discipline.'' As of this writing, it is HUD's understanding that EPA plans to develop such a course and that an important purpose of the course will be to train people to perform clearance examinations. Therefore, anticipating that trained clearance technicians may be available, HUD is

providing in the final rule two ways they could perform clearances following interim controls or maintenance: first, as a technician who is uncertified or unlicensed and whose work must be approved in writing by a certified risk assessor or lead-based paint inspector; or, second, as a technician who is certified or licensed to perform clearance examinations without the approval of a risk assessor or inspector. Uncertified or unlicensed clearance technicians must have successfully completed a training course on clearance examinations (or similar title) that is developed or accepted by EPA or by a State or tribal program authorized by EPA pursuant to 40 CFR part 745, subpart Q (the EPA regulations implementing TSCA section 404). The course must be given by a training provider accredited by a State, Indian tribe or the EPA for training in lead-based paint inspection or risk assessment. HUD assumes that certified or licensed clearance technicians would also be required to complete such training. Certification or licensing of clearance technicians must be by a State or Indian tribe or EPA.

With regard to the training course taken by an unlicensed or uncertified clearance technician, there are several possible arrangements that are acceptable to HUD under this rule. The course can be developed by EPA, or it can be developed by a State or Indian tribe with a program authorized by EPA pursuant to TSCA section 404. A State or Indian tribe may adopt or accept a course prepared by another EPA authorized State or tribe. While the training provider from whom the course is taken must be accredited by EPA or an EPA-authorized State or tribal program, it is not necessary from HUD's point of view that the technician be trained within the State or Indian nation where the clearance is being performed or by a training provider accredited by that State or tribe. The ultimate responsibility for quality control rests with the certified lead-based paint inspector or risk assessor who approves the work of the technician and signs the clearance report.

Under this policy, an unlicensed or uncertified but properly trained clearance technician could perform a clearance examination on site, prepare the report, and send the report (by e-mail, fax, or other method) to a certified risk assessor or certified lead-based paint inspector, who may be located in another area. The risk assessor or inspector could review and sign the report and forward it to the client, taking responsibility for the quality of the clearance examination and report. The Department assumes that the risk assessor or lead-based paint inspector would require the technician to work as an apprentice until the inspector or assessor is satisfied that the technician's work is of satisfactory quality, but HUD leaves that process and decision to the risk assessor or inspector. In the rule, HUD places no restrictions on the scope or scale of clearance examinations that could be performed in this manner.

HUD is setting a limitation, however, on the authority of a certified or licensed technician who is taking full responsibility for the clearance examination without written approval of a risk assessor or lead-based paint inspector. In this case, the authority extends, under the HUD rule, only to clearances of single family units or individual units and associated common areas in a multi-unit property. The authority does not extend to clearance examinations of multifamily properties, or parts thereof, in which the clearance examiner engages in random sampling of dwelling units and common areas. In the opinion of the Department, it is unlikely that a one-day course will be adequate to teach all the techniques, procedures and judgments required to conduct random sampling of dwelling units and common areas in large multifamily clearance examinations. Under the HUD final rule, however, clearance technicians may perform multifamily clearances involving random sampling with the written approval of a certified risk assessor or lead-based paint inspector. Furthermore, certified clearance technicians may, without written approval of an inspector or risk assessor, conduct clearance examinations of any number of individual dwelling units and associated common areas in multifamily properties, provided results from the units and areas in which clearance examinations are conducted are not used to represent units and areas for which no examination or testing has been conducted.

Under this policy on technicians, people can prepare themselves to perform clearances with less investment in training and equipment than is required to become a risk assessor or lead-based paint inspector. HUD is hopeful, therefore, that the policy will contribute to an increased availability of persons authorized to perform clearances and a reduction in the cost of clearances. The policy retains the reliance on a certification or licensing process. Certification by a State or other entity provides a way to take action against fraudulent or otherwise unprofessional clearance examiners.

HUD recognizes that performance of clearance examinations by a certified or uncertified technician may not be permissible under some State or tribal regulations, even with the written approval of a risk assessor or lead-based paint inspector. Where that is the case, the State or tribal regulation would apply. HUD also recognizes that EPA may, in the future, establish certification procedures for clearance technicians (or a similar discipline) and, at that time, may make it illegal nationwide for uncertified technicians to perform the on-site work of a clearance examination. However, HUD thinks it will be efficient to have trained technicians, certified or not, working with higher level certified personnel and encourages other regulatory entities to permit it.

9. *Paint Stabilization vs. Paint Repair.* The proposed rule established a procedure called ''paint repair,'' which was a repainting of a deteriorated paint surface using safe work practices to minimize the generation of dust, protect occupants and the environment, and leave the site clean. The procedure was widely used in the rule; it was required in the subparts or sections applicable to single family mortgage insurance, disposition of HUD-owned single family property (without sufficient appropriations), multifamily insured property, disposition of HUD-owned and mortgagee-in-possession property (without sufficient appropriations), residential property receiving an average of less than $5,000 per unit in Federal rehabilitation assistance, CPD non-rehabilitation, and tenant-based rental assistance.

Many commenters questioned this procedure. The most common position was a caution against leaving anything in the rule that implied that ''mere overpainting'' of surfaces, without addressing the substrate, could ever be considered an appropriate course of action. A typical comment was the following: ''HUD's final regulations should require that whenever deteriorated paint is repaired, the cause of the deterioration must be corrected and the substrate stabilized.'' Another commenter argued that paint repair, by itself, was ''inconsistent with the HUD Guidelines.''

HUD agrees that it can be ineffective to try to put paint on a damaged substrate, such as crumbling plaster. Old lead-based paint on such a surface could shortly become deteriorated again after repainting. On the other hand, HUD is aware that substrate stabilization requires case-by-case judgment in the field as to when substrate repair is necessary and what extent and method of repair is

appropriate. There is reason to be concerned that cautious administrators may sometimes insist on repairs that are overly expensive or that others will not correct the underlying problem.

After careful consideration, the Department has eliminated ''paint repair'' throughout the final rule and instead is requiring ''paint stabilization,'' which calls for the repair of any physical defect in the substrate of a painted surface or component that is causing deterioration of the surface or component. It should be noted that the purpose of this requirement is not complete renovation but merely to try to assure that the integrity of the repainting will survive for a reasonable period of time. Also, if a substrate is being damaged because of a water leak, repair of the leak would be necessary in any case to meet housing or building codes. In situations in which a costly repair may be necessary to stabilize a damaged substrate, designated parties should always determine through paint testing whether or not the surface has lead-based paint. Frequently the paint will not be leaded at the Federal standard of 1.0 mg/sq.cm., so paint stabilization will not be required under this rule. If the deteriorated paint is lead-based paint, the designated party may consider alternative methods for controlling the hazard, such as enclosure of the surface.

E. Subparts

1. *Subpart A—Disclosure of Known Lead-Based Paint Hazards Upon Sale or Lease of Residential Property*. This subpart contains the requirements for disclosure of known lead-based paint and/or lead-based paint hazards in the sale or lease of target housing. This joint HUD/EPA regulation was promulgated as required by section 1018 of Title X (42 U.S.C. 4852d), and was originally published at 24 CFR part 35, subpart H. Subpart H has been transferred unchanged to this subpart A, so the regulations implementing sections 1012 and 1013 of Title X can be published in consecutive subparts B, C, D, F through M, and R.

2. *Subpart B—General Lead-Based Paint Requirements and Definitions For All Programs*. This subpart sets out general requirements for federally owned residential property and housing receiving Federal assistance.

a. *Definitions*. In the proposed rule, HUD used the definitions, where possible, that were included in section 1004 of Title X (42 U.S.C. 4851b). In cases where the statute either failed to define terms, or where the definition was inadequate for the purpose of a regulation, the Department drew definitions from the HUD Guidelines, existing HUD or EPA regulations, and from definitions compiled and set forth by the American Society for Testing and Materials (ASTM), West Conshohocken, PA 19428–2959, in a document entitled ''Standard Terminology Relating to Abatement of Hazards from Lead-Based Paint in Buildings and Related Structures'' (ASTM Standard E 1605–94).

In most cases public comments on definitions concerned the scope of the definition rather than the meaning, and the commenters wanted the scope to be either expanded or limited. In response to comments, the definition of *residential property* was revised in the final rule to more precisely define its scope to ''a dwelling unit, common areas, building exterior surfaces, and any surrounding land, including outbuildings, fences, and play equipment affixed to the land belonging to an owner and available for use by residents but not including land used for agricultural, commercial, industrial, or other non-residential purposes, and not including paint on the pavement of parking lots, garages, or roadways'' rather than the proposed rule language of ''a dwelling unit, common areas and any surrounding land belonging to an owner and accessible to occupants.'' Paint striping on parking lots, garages, and roadways will not be covered by this rule. *Common area* was expanded in scope to mean ''a portion of a residential property that is available for use by occupants of more than one dwelling unit'' rather than ''generally accessible to occupants of all dwelling units''. Throughout the final rule, HUD has avoided using the term ''accessible'' if its meaning might be confused with that in regulations implementing the Americans With Disabilities Act. *Hazard reduction* was expanded to include standard treatments. *Paint testing* was added, replacing the proposed-rule's *limited paint inspection* for reasons explained below in the discussion of options in Section III.E.2.c.(4) of this preamble.

The publication of the EPA regulation at 40 CFR part 745, subparts L and Q, significantly affected the definitions section as it did the remainder of this regulation. The definitions of several technical terms have been deleted from the final rule, since they were associated with the evaluation and hazard reduction activities now covered by the EPA regulation.

In the definition of *abatement*, the statement that ''permanent means at least 20 years effective life'' was relocated to a separate definition of ''permanent.'' This was done to conform the definition of abatement more closely to that in Title X. Also the terms ''lead-contaminated dust'' and ''lead-contaminated soil'' were changed to ''dust-lead hazard'' and ''soil-lead hazard'' respectively to conform with terminology being used by EPA in their proposed regulation implementing TSCA section 403, which was published on June 3, 1998 (63 FR 30301–55). The latter change of terminology has been made throughout this final rule; the definitions of *lead-contaminated dust* and *lead-contaminated soil* have been replaced with definitions of *dust-lead hazard* and *soil-lead* hazard respectively, and the same substitution of terms has been made in the definition of *lead-based paint hazard*. In the proposed section 403 rule, EPA has adopted the position that ''lead-contaminated dust'' and ''lead-contaminated soil'' are general terms referring to dust and soil with varying levels of lead concentration but not necessarily to levels that are considered hazardous. In the definition of ''soil-lead hazard'' in this final rule, HUD is including a de minimis area of bare soil outside of play areas that is not considered a hazard. To be considered a soil-lead hazard according to this definition, spots or areas of bare soil outside of play areas must total more than 9 square feet per residential property and have a lead concentration of an average of equal to or exceeding 2000 micrograms per gram.

The term *accessible (chewable) surface* has been replaced with *chewable surface*. This was done for two reasons: (1) It avoids confusion with the use of the word ''accessible'' in regulations and guidance implementing the Americans With Disabilities Act (ADA), which is an important law affecting residential real estate; and (2) it substitutes an easily understood term, ''chewable,'' for a somewhat ambiguous term, ''accessible,'' that might imply ''reachable'' as well as ''chewable.'' The substitution of ''chewable'' for ''accessible'' was also made in the definition of ''lead-based paint hazard.'' In response to many requests for further clarity as to what constitutes a chewable surface, HUD has added to the definition of ''chewable surface'' a statement that, ''Hard metal substrates and other materials that cannot be dented by the bite of a young child are not considered chewable.'' In most homes, the only chewable surfaces are likely to be protruding, interior wooden window sills.

A new term, *designated party*, has been added to simplify and reduce the length of the rule. It means ''a Federal agency, grantee, subrecipient,

participating jurisdiction, housing agency, CILP recipient, tribe, tribally designated housing entity (TDHE), sponsor, or property owner responsible for complying with applicable requirements.'' The definition of the term *dwelling unit* has been changed to conform to the Title X definition of ''residential dwelling.'' The substantive meaning does not change. As in the proposed rule, HUD prefers to use ''dwelling unit'' instead of ''residential dwelling'' because the former term is more commonly used and understood and is more distinct from a related term used in the rule, ''residential property.'' As explained in Section III.D.6 of this preamble above, in the discussion of policy on responding to children with elevated blood lead levels, the defined term *elevated blood lead level (EBL)* has been changed to *environmental intervention blood lead level*, and the definition has been changed slightly to conform to CDC guidance. The term *emergency repair* has been removed from the definitions section, because it is only used once in the rule, in the section later in subpart B setting forth the exception for emergency actions; and its meaning there is clear.

The definition of *evaluation* has been changed. Title X defines this important term as meaning a risk assessment, inspection, or combination of the two. The proposed rule added ''visual evaluation'' and made the determination of the presence of deteriorated paint one of the purposes of evaluation as well as the determination of the presence of lead-based paint hazards and lead-based paint. In the final rule, HUD has removed ''visual evaluation'' from the definition of ''evaluation,'' has removed the related purpose of identifying deteriorated paint, and has added ''lead hazard screen'' and ''paint testing'' as evaluation methods. ''Visual evaluation'' was removed because it is quite different from the activities mentioned in the statutory definition of ''evaluation.'' It does not involve any testing of paint, dust or soil for lead concentration, nor does it determine the presence or absence of lead-based paint hazards or lead-based paint. Therefore it does not produce ''evaluation'' results that, in the opinion of the Department, have to be reported to occupants. For additional clarity, HUD has changed the term *visual evaluation* to *visual assessment*. A ''lead hazard screen'' and ''paint testing,'' however, do involve testing and produce reportable results. *Lead hazard screen* means a limited risk assessment that involves paint testing, dust testing and soil testing. If a property passes a screen using the criteria in subpart R, it is not necessary to conduct a full risk assessment. This term was not defined or used in the proposed rule, but HUD now believes that the option to conduct such a screen should be available, because it is potentially less costly than and often as effective as a full risk assessment, especially in housing built after 1959 that is in good condition. The term *paint testing* replaces the proposed-rule term *limited paint inspection* in response to a comment from EPA that it would be helpful to differentiate more clearly between a full ''inspection,'' as specified in the EPA rule implementing TSCA section 402, and a more limited procedure to determine the presence of lead-based paint only on deteriorated paint surfaces or surfaces to be disturbed by rehabilitation.

Title X exempts housing for the elderly and persons with disabilities unless a child of less than 6 years of age resides or is expected to reside in such housing. Believing that *expected to reside* requires interpretation, the Department is introducing in this final rule a definition stating that ''expected to reside'' means there is actual knowledge that a child will reside and that if a resident woman is known to be pregnant there is actual knowledge that a child will reside in the dwelling unit. (As mentioned, it is not advisable to inquire as to pregnancy status in most real estate transactions. See Section III.D.7 of this preamble, above, on fair housing requirements.)

Firm commitment, a term used only in subpart G, Multifamily Mortgage Insurance, is defined for purposes of clarity to mean a valid commitment issued by HUD or the Federal Housing Commissioner setting forth the terms and conditions upon which a mortgage will be insured or guaranteed. In this rule, *grantee* is a term used only in subparts J, Rehabilitation, and K, Acquisition, Leasing, Support Services or Operation. It is defined to mean any State or local government, Indian tribe, IHBG recipient, or insular area that has been designated by HUD to administer Federal housing assistance under a program covered by subparts J and K, except the HOME program or the Flexible Subsidy-Capital Improvement Loan Program (CILP). The defined term *participating jurisdiction* is used in the HOME program, and *CILP recipient* is the defined term used to mean an owner of a multifamily property which is undergoing rehabilitation funded by the CILP program. The definition of *hard costs of rehabilitation* has been changed, in response to comments requesting greater clarity, to add the following statement: ''Hard costs do not include administrative costs (e.g., overhead for administering a rehabilitation program, processing fees, etc.).''

The definition of *HEPA vacuum* has been made more precise. The proposed rule definition was ''a vacuum with an attached high-efficiency particulate air (HEPA) filter capable of removing particles of 0.3 microns or larger from air at 99.97 percent efficiency.'' The final definition requires that a HEPA filter be integral to the vacuum cleaner and gives an actual-performance, rather than potential-performance, definition of HEPA filter. Both definitions use performance measures of filter collection efficiency, with values common in the hazardous dust standard setting, e.g., EPA in asbestos rules (40 CFR 763.83, 763.121), OSHA in a lead rule (29 CFR 1926.62(f)(3)), and DOE in a HEPA filter specification (DOE-STD–3020–97). Current technology for assessing personal respirator filter performance is used by NIOSH in its respirator rule (42 CFR 84.181), by OSHA in citing the NIOSH rule (63 FR 1297, January 8, 1998), and by DOE in the specification cited above.

The technological precision reflected in the regulations just cited is not seen in the HEPA vacuum industry, however, so the rule can not specify the procedure for testing conformance. Performance and operational criteria of the manufacturer(s) of the filter and the vacuum unit as a whole are to be used for filter efficiency and particle size criteria. HUD is promoting research and development of standards on collection efficiency measurement applicable to HEPA vacuums. For example, it supports research at the University of Cincinnati (Cincinnati, OH 45267–0056) on vacuum cleaner dust penetration. HUD staff participates on the American Society for Testing and Materials' (West Conshohocken, PA 19428–2959) Task Force F11.23.01 on vacuum cleaner system filtration efficiency working on a vacuum dust penetration measurement standard. HUD is aware of the American Society of Mechanical Engineers' (New York, NY 10017–2392) Air and Gas Cleaning Group work on protocols to assess HEPA filter application performance. DOE cites the testing procedures of ASME Code AG–1, Section FC, HEPA Filters. Because the standards above are not yet directly applicable to fully assessing HEPA vacuums, HUD will monitor and support research and standards development, and revise its definition as needed. HUD welcomes data on research and measurement criteria for HEPA vacuums and HEPA filters.

The proposed-rule definition of *HUD-owned property* has been changed to

conform to the definition of *federally owned property* that is in Title X. The definition in the final rule is ''residential property owned or managed by HUD, or for which HUD is a trustee or conservator.'' The Department acknowledges, however, that although this definition conforms word for word to the Title X definition, it does not represent common usage. For practical and programmatic purposes, HUD considers property it owns to be only that to which it has title; it distinguishes between owned and managed property. However, this distinction does not affect the application of the rule. The rule covers both HUD-owned and HUD-managed property. Subpart I of the rule applies to multifamily property that is HUD-owned or for which HUD is ''mortgagee-in-possession.'' A property for which HUD is mortgagee-in-possession is one for which title has not passed to HUD but which is being managed by HUD prior to foreclosure.

The definition of *Indian tribe (tribe)* has been changed to conform to the Native American Housing Assistance and Self Determination Act of 1996 (Pub. L. 104–330). The proposed rule term ''paint inspection'' has been changed to *lead-based paint inspection* in the final rule to avoid confusion with inspections of paint that are conducted for purposes other than determining the presence of lead-based paint. The definition of *project-based assistance* is changed for purposes of clarity to indicate that the term applies to *rental* assistance and that it does not include Federal rehabilitation assistance or assistance to public housing developments. In the proposed rule, the definition of *risk assessment* was identical to that in Title X. In the final rule, the specificity of this definition has been reduced to minimize regulatory rigidity and to avoid potential conflict with EPA regulatory definitions and work practices standards.

Finally, the definition of *lead-based paint* has been edited somewhat. Although no substantive change has been made, one modification is worthy of note. The definition in the proposed rule, after the phrase ''equal to or exceeding 1.0 milligram per square centimeter or 0.5 percent by weight or 5,000 parts per million,'' included the phrase ''or another level that may be established by the Secretary.'' The latter phrase has been removed from the definition in the final rule to avoid possible confusion that might result from the absence of such a phrase in other recent regulations promulgated pursuant to Title X. Its inclusion in the proposed rule was based on the statutory provision found in section 302(c) of the Lead-Based Paint Poisoning Prevention Act, which states that ''the Secretary (of HUD) shall periodically review and reduce the level below 1.0 milligram per centimeter squared or 0.5 percent by weight to the extent that reliable technology makes feasible the detection of a lower level and medical evidence supports the imposition of a lower level.'' While HUD has no plans to propose a lower level, the statutory responsibility remains whether it is mentioned in the rule or not.

b. *Exemptions.* A detailed discussion of the exemptions provided in subpart B is found in Section III.A.5 of this preamble, above.

c. *Options.* In addition to exemptions, the final rule provides several options that HUD believes will provide owners and other parties with flexibility and thus greater efficiency in carrying out evaluation and hazard reduction activities.

(1) *Standard treatments.* Where interim controls are required, the designated party has the option to presume that lead-based paint or lead-based paint hazards or both are present throughout the property, omit the risk assessment or lead-based paint inspection or both, and conduct standard treatments in accordance with requirements set forth in subpart R of part 35 in lieu of interim controls. Standard treatments are: (a) Stabilization of all deteriorated paint, interior and exterior; (b) the provision of smooth and cleanable horizontal hard surfaces; (c) the correction of dust-generating conditions (i.e., conditions causing rubbing, binding, or crushing of surfaces known or presumed to be coated with lead-based paint); and (d) treatment of bare soil to control known or presumed soil-lead hazards. Safe work practices and clearance are required. Individuals performing standard treatments must be trained in how to control lead-based paint hazards. The training requirement is identical to that for interim controls. This option, which was not provided in the proposed rule, derives from a recommendation by the Task Force on Lead-Based Paint Hazard Reduction and Financing. The Task Force recommended standard treatments as an option to the risk assessment/interim control approach because standard treatments ''offer the advantage of devoting resources directly to hazard control—and their cost may be minimal for units in good condition.'' Also, the Task Force noted that standard treatments can be carried out by ''in-house maintenance staff who have sufficient knowledge of lead-based paint hazards.'' On the other hand, because no risk assessment is done, standard treatments may be implemented in some units that have no lead-based paint hazards, and resources may be expended unnecessarily. HUD is including the standard treatments option in the final rule in response to public comments that certified risk assessors may be in short supply in some parts of the nation, that the cost of risk assessments may be excessive, and because the decision to test is best left to the discretion of the designated party.

(2) *Presumption in the case of abatement.* Where abatement is required, the designated party may presume that lead-based paint or lead-based paint hazards or both are present throughout the property, omit the evaluation, and conduct abatement on *all* painted surfaces. This option, however, is not available in public housing, because a lead-based paint inspection has been a statutory requirement for all target housing that is public housing since 1994.

(3) *Lead hazard screen.* Where a risk assessment is required by this rule, the designated party may choose to first conduct a lead hazard screen to determine whether a full risk assessment is necessary. The lead hazard screen is a limited risk assessment activity that involves dust sampling and soil sampling, and may include paint testing on deteriorated paint surfaces (if present). The screen must be conducted in accordance with State or tribal work practices standards under an EPA-authorized program or in accordance with EPA standards at 40 CFR part 745, subpart L. Because EPA regulations do not include specific standards for dust lead in lead hazard screens, HUD, in this final rule, is setting such standards at approximately one-half those of a full risk assessment (see Section III.E.15.a and b of this preamble, below). The standards for soil are the same for a lead hazard screen as for a risk assessment. If State or tribal standards for a lead hazard screen are more stringent than those in this rule, the State or tribal standards prevail. If they are less stringent, the standards of this rule apply. The standard for lead-based paint is the same for the screen as for a risk assessment or lead-based paint inspection. If a dust sample is found to be positive, i.e. have a level of lead equal to or greater than the dust-lead standards for the lead hazard screen, or there is lead-based paint on a deteriorated paint surface, a full risk assessment must be performed. If the lead hazard screen is negative, the risk assessment is not required. The lead

hazard screen option was not provided in the proposed rule because the cost differential between a full risk assessment and a screen was perceived to be small (essentially the cost of soil testing and a somewhat more elaborate report) and because HUD felt that a certified risk assessor would be empowered by EPA and/or State or tribal regulations to use a screen anyway. HUD is including explicit mention of the screen in the final rule to assure that all parties will be aware that the option is available to try to achieve cost savings, which are most likely in post-1959 properties in good condition.

(4) *Paint testing.* Under the proposed rule the requirements of certain subparts of the rule would not apply for a specific deteriorated paint surface to be disturbed if a ''limited paint inspection'' indicated the absence of lead-based paint on that surface. EPA objected to the proposed rule's definition of ''limited paint inspection,'' noting that EPA work practices standards for inspections (40 CFR 745.227) do not include or envision a ''limited'' paint inspection or any other inspection activity not including a ''comprehensive inventory of all of the lead-painted surfaces in a residential dwelling.'' Accordingly, a ''limited'' paint inspection would be a violation of EPA work practice standards. If a similar procedure is retained, EPA said, the use of the word ''inspection'' in the definition should be dropped, and HUD should identify the circumstances under which this ''limited'' activity would be conducted, set out procedures and requirements for conducting it, and state the qualifications required for individuals who would conduct the activity. Another comment from a legal services organization recommended elimination from the regulation of the ''limited paint inspection'' option.

In the final rule, the term ''limited paint inspection'' has been replaced with the term ''paint testing.'' Where paint stabilization or interim controls of a deteriorated paint surface is required by this rule, paint testing of non-intact paint surfaces may be conducted to determine the presence of lead-based paint instead of conducting a complete lead-based paint inspection or presuming the presence of lead-based paint. Paint testing may also be employed to determine if intact paint on a surface to be disturbed during rehabilitation contains lead-based paint. If the paint testing indicates the absence of lead-based paint, paint stabilization, interim controls or abatement of that surface is not required. Paint testing must be performed by a certified lead-based paint inspector or risk assessor.

d. *Notice of Evaluation and Hazard Reduction Activities.* Title X requires the provision of notice to occupants describing the nature and scope of any risk assessment, lead-based paint inspection, or hazard reduction activities undertaken. In general, the Department believes that detailed matters of notice, format and distribution are best determined by the property owner or other recipient of Federal housing assistance, under the general framework provided in this rule. In the final rule as well as the proposed rule, the Department has interpreted this provision to require the following: (1) Within 15 calendar days of receiving a risk assessment, lead-based paint inspection, or paint testing report, a written notice must be provided to occupants containing a summary of the nature, scope and results of the evaluation and a contact for more information or access to the actual reports; and (2) within 15 calendar days of completing hazard reduction activities, a notice must be provided to occupants of actual hazard reduction activities conducted. The notice must contain a summary of the nature, scope and results of the hazard reduction activities, a contact for more information, and information on any identified remaining lead-based paint on a surface-by-surface basis. This notice shall be updated, based on any reevaluation of the dwelling unit or if additional lead-based paint hazard reduction work is conducted. The notices must be posted in centrally located common areas or distributed to each occupied dwelling unit, must be of a size and type that are easily read by occupants, and must be made available in a format accessible to persons with disabilities, to the extent practicable. The proposed rule required that, if possible, the notice must be provided in the occupant's primary language. The final rule, in response to comments that some apartment projects may have more than a dozen primary languages represented, deleted the ''if possible'' phrase and added the option to provide the notice in the language of the occupant's contract or lease.

The statute does not specifically require that separate notices be provided to occupants after an evaluation has been conducted and again after hazard reduction activities have been undertaken. In the Department's view, however, withholding information of the results of an evaluation until after hazard reduction activities have been performed poses a potential risk to occupants. The sooner occupants are provided with this information, the better they can protect their children and themselves.

The Department requested comment on the content, format and distribution of the notices. One commenter suggested that the notice be provided both when evaluation has taken place, and then again before hazard reduction activities are undertaken. HUD has not adopted this suggestion, because it believes it should not regulate tenant-landlord relations this closely. This comment was made to insure that occupants can prepare their units for hazard reduction activities. Actually, all hazard reduction activities require occupant protection by the owner (or contractor), who would coordinate these actions with the occupant even if no separate notice is provided.

Some commenters recommended that the notice be given to each occupant. HUD continues to believe that it is reasonable to expect that occupants can read the notice if it is posted in central locations. In the final rule, this decision is left to the discretion of the owner or other designated party, except that the notice must be distributed to the dwelling unit of a head of a tenant household if the owner knows that the head of household is a person with a disability that would make a posted notice inaccessible to that person.

One commenter asked for more time to provide occupants with the notice of evaluation results. The commenter felt that 15 days is not enough time for management to digest the evaluation and prepare the documentation needed to explain the results to residents. In response, HUD has added to the final rule a strong recommendation, but not a requirement, that paint inspectors and risk assessors provide summary statements of inspections and risk assessments suitable for posting or distribution. This provision is located in § 35.1320, in subpart R. For further discussion and sample formats, see Section III.E.15.c, of this preamble below, and appendices B through E of the rule.

One commenter noted that the proposed rule did not include notice requirements for HUD-owned properties. In the final rule, HUD has included notice requirements for HUD-owned properties that are similar to those for other housing programs, even though such a requirement is not called for by statute.

e. *Lead Hazard Information Pamphlet.* Title X requires that the lead hazard information pamphlet developed by EPA, CPSC and HUD pursuant to TSCA section 406(a) be provided to purchasers

and tenants of housing affected by section 1012 of the statute. Provision of the pamphlet is not required for housing affected only by section 1013 of Title X. In response to comments, the Department has made three types of changes to the pamphlet-provision requirement that was in the proposed rule. The first change is largely editorial and is intended to increase policy consistency across programs and to reduce the length of the rule. HUD has provided a statement of the general requirement in subpart B, § 35.130, and referenced that section in each of the program-specific subparts where pamphlet provision is required. Section 35.130 states that the designated party shall provide the pamphlet to each occupied dwelling unit. Acknowledgment of receipt is not required, but it is recommended. The program-specific subparts of the rule state more explicitly who shall provide the pamphlet—e.g., the public housing agency, the owner, the sponsor, the grantee, or the participating jurisdiction.

Second, HUD has made substantive changes to further minimize duplicative requirements for the provision of the pamphlet. Section 1012 is one of three different sections of Title X that call for provision of the pamphlet. The other two are section 1018 (which requires provision of the pamphlet and disclosure of known lead-based paint hazards prior to sale or lease), and TSCA section 406(b) (which requires persons performing renovation for compensation to provide the pamphlet before beginning the renovation). The proposed rule recognized potential overlap with the HUD-EPA rule implementing section 1018 (the disclosure rule) but did not discuss EPA's then-proposed rule implementing section 406(b) (the renovation rule).

For most rental housing, HUD's proposed rule required that the pamphlet be provided only if the tenant had taken residence before the effective date of the disclosure rule (which was either September or December 1996, depending on the number of housing units owned by the landlord). This policy did not address the case of a tenant who took residence before the effective date of the disclosure rule but received the pamphlet at the time of renewal or revision of the lease. The proposed-rule policy also did not address the case of a landlord who, acting as a renovator's designated representative, provided the pamphlet to a tenant before renovation in compliance with the renovation rule. Therefore, to allow landlords the flexibility to minimize duplication of pamphlet provision, the final rule, in § 35.130, states simply that it is not necessary to provide the pamphlet if it can be demonstrated that it has already been provided in accordance with the disclosure rule or the section 406(b) renovation rule. Prior provision of the pamphlet is best demonstrated by retaining an acknowledgement by the occupant of receipt of the pamphlet. Such acknowledgment is required by the disclosure rule and, with some exceptions, by the renovation rule.

In the proposed rule, the two subparts pertaining, respectively, to rehabilitation assistance and to CPD non-rehabilitation programs required provision of the pamphlet to the tenant, owner occupant or purchaser regardless of whether the pamphlet had been provided under the disclosure rule. In the final rule, this has been changed to conform with the general policy in § 35.130. HUD expects that most local and State rehabilitation programs will be administered so that provision of the pamphlet by the renovator in compliance with the renovation rule will also meet the requirements of this final rule.

Third, some commenters requested that EPA-approved State equivalents to the pamphlet be specifically permitted. In the interest of streamlining and simplicity, the final rule includes such a provision.

f. *Use of Paint Containing Lead.* The final rule continues the prohibition against use of new paint containing more than 0.06 percent by weight of lead in federally owned or assisted housing. This provision has been in HUD regulations since the late 1970's and is based on the 1977 regulation promulgated by the Consumer Product Safety Commission (16 CFR Part 1303).

If a State or local jurisdiction banned the residential use of paint containing lead before 1978, the rule allows the Secretary to apply a date earlier than 1978 to activities covered by this rule in that jurisdiction.

g. *Prohibited Methods of Paint Removal.* The final rule includes the same prohibited practices as in the proposed rule (open flame burning, machine sanding without HEPA exhaust control, abrasive blasting without HEPA local exhaust control, heat guns operating above 1100 degrees Fahrenheit, dry scraping or sanding except in certain situations), plus one addition: paint stripping using a hazardous volatile substance in a poorly ventilated space. OSHA says that adults exposed to methylene chloride ''are at increased risk of developing cancer, adverse effects on the heart, central nervous system and liver, and skin or eye irritation. Exposure may occur through inhalation, by absorption through the skin, or through contact with the skin.''(62 FR 1493, January 10, 1997).

The Consumer Product Safety Commission/EPA consumer notice, What You Should Know About Using Paint Strippers (CPSC Document 4423, EPA document EPA 747-F–95–002), recommends to persons who ''use paint strippers frequently, (that) it is particularly important that you...Never use any paint stripper in a poorly ventilated area. If work must be done indoors under low ventilation conditions, consider having the work done professionally instead of attempting it yourself.'' This is of particular importance in lead-based paint removal work larger than the de minimis level (such as 2 sq. ft. per room). CPSC and EPA recommend that persons who strip paint ''cross-ventilate (the worksite) by opening all doors and windows (and m)ake sure there is fresh air movement throughout the room.'' This practice deviates from the worksite protection for larger lead-based paint stripping projects, which typically involves protecting the work area and occupants from dispersal of lead debris and dust by sealing off ventilation systems and/or erecting barriers between the work area and the rest of the residence to reduce ventilation (see the HUD Guidelines, chapter 8). The CPSC/EPA notice also recommends precautions for firesafety, eye protection, skin protection, and waste disposal for paint strippers.

Some paint strippers are hazardous, and are addressed as such by regulatory agencies. HUD has considered the type of work in identifying the applicable definition to consider. The definition of ''hazardous substance'' used by the CPSC (see 16 CFR 1500.3), based on the Federal Hazardous Substances Act (15 U.S.C. 1261–74), applies to paint stripping work that does not involve employment, such as paint stripping by the owner of HUD-assisted housing who performs the work personally. The definition of ''hazardous chemical'' used by the Occupational Safety and Health Administration, and based on the Occupational Safety and Health Act (29 U.S.C. 655(a)), applies to paint stripping that does involve employment. OSHA's definition for the general industry at 29 CFR 1910.1200 currently applies to building maintenance, custodial, or construction work, because OSHA's hazard communication standard for the construction industry, at 29 CFR 1926.59, is identical to that for general industry.

Employers of paint removal workers are expected to know that OSHA

recently reduced its permissible exposure limit for methylene chloride in air from 500 to 25 parts per million (29 CFR 1910.1052 for general industry, and the identical 29 CFR 1926.1152 for construction, 62 FR 1492–1619, January 10, 1997). Methylene chloride can not be detected by odor at the permissible exposure limit, and organic vapor cartridge negative pressure respirators are generally ineffective for personal protection against it. Alternative paint strippers may be safer but have their own safety and/or health concerns, as indicated in the CPSC/EPA notice, so caution in the selection and use of any paint stripper is prudent. Paint stripping in a poorly ventilated space using a volatile substance that is hazardous should be done in accordance with CPSC regulations (16 CFR 1500.3), and/or OSHA's hazard communications standards (29 CFR 1010.1200 or 29 CFR 1926.59, which are currently identical), and with any substance-specific standards applicable to the work.

h. *Compliance With Other State, Tribal, and Local Laws.* In response to comments urging deference to State, tribal and local laws and regulations, HUD has added a provision to the final rule that makes it clear that HUD may modify or waive requirements of subparts B, C, D, F through M, and R, if the Department determines that a State, tribal, or local law provides a comparable level of protection and that such a modification or waiver will promote efficiency.

The final rule also indicates that this regulation is not intended to relieve program participants from compliance with State, tribal or local law.

i. *Minimum Requirements.* The final rule retains the policy included in the proposed rule that the requirements of subparts B, C, D, F through M, and R, are intended to be minimum requirements. Nothing in this rulemaking is intended to preclude designated parties from conducting a more protective method than the one required. Thus, for example, if the requirement is interim controls, a designated party may choose to use an abatement method instead.

Similarly, where more than one requirement covers a condition or activity, the most protective shall apply.

j. *Waivers.* Also retained from the proposed rule is the authority of the Secretary of HUD to waive any provision of this rulemaking, subject to statutory limitations. This conforms to, and cites, § 5.110, the general waiver section for HUD programs under title 24.

k. *Prior Evaluation or Hazard Reduction.* Some commenters requested clarification as to the validity under HUD's rule of lead-based paint activities conducted prior to the effective date of the rule. In the final rule, conditions under which a prior evaluation or hazard reduction meets the requirements of the rule have been specified.

Section 1013 of Title X gives the Secretary authority to waive the lead-based paint inspection and risk assessment requirement for federally owned housing built between 1960 and 1978 if a federally funded risk assessment by a certified contractor shows an absence of lead-based paint hazards. The Department believes case-by-case waivers to be inefficient and inappropriate and therefore has developed a broader policy on prior activities that covers all properties for which an acceptable risk assessment, lead-based paint inspection, abatement, or clearance has been performed. The Department believes that the conditions set forth in this section provide the necessary quality control measures for prior lead-based paint activities while avoiding unnecessary duplication.

A lead-based paint inspection or a risk assessment conducted at a residential property or dwelling unit prior to the property or unit becoming subject to the requirements of subparts C, D, F through M, and R, need not be repeated if it was conducted in the following manner or under the following circumstances:

(1) If the lead-based paint inspection or risk assessment was conducted prior to August 30, 1999 (the effective date of the EPA regulations at 40 CFR 745.227), results of the evaluation may be used if it was conducted in accordance with 40 CFR 745.227 or by an individual or firm otherwise certified under a State or Indian tribal lead-based paint inspector or risk assessor certification program, except that the risk assessment must be no more than 12 months old to be considered current; and furthermore a lead-based paint inspection of public or Indian housing meets the requirements of this rule if it was accepted by the housing agency in fulfillment of the lead-based paint inspection requirement of the public and Indian housing program prior to the effective date of this rule.

(2) If the inspection or risk assessment was conducted after August 29, 1999, the results of the evaluation may be used if it was conducted in accordance with 40 CFR part 745, subparts L and/or Q, except that the risk assessment must have been completed no more than 12 months prior to the date of reference.

The provisions in subpart B regarding prior risk assessments do not apply in cases where a risk assessment is required in response to the identification of a child under 6 years of age with an environmental intervention blood lead level. In such cases the risk assessment must be conducted in the child's dwelling unit shortly after the child's blood was last sampled.

Interim controls conducted prior to a property or unit becoming subject to the requirements of subparts B, C, D, F through M, and R, need not be repeated if such controls were conducted in accordance with a risk assessment that meets the requirements of this rule; however, ongoing lead-based paint maintenance and reevaluation must be conducted as required by this final rule.

Abatements conducted before August 30, 1999 and before the property or unit becomes subject to the requirements of subparts B, C, D, F through M, and R, need not be repeated if conducted by an abatement supervisor approved by a State or Indian tribe to perform abatement of lead-based paint or lead-based paint hazards. It is not necessary that the State or tribal approval program had EPA authorization. Abatements conducted after August 29, 1999, must have been conducted by a lead-based paint abatement supervisor certified by a State or Indian tribe with an EPA-authorized lead-based paint certification program or by EPA in accordance with 40 CFR 745.226. State law may impose different requirements. A lead-based paint abatement project meets the requirements of this rule if it was accepted by the housing agency in fulfillment of the abatement requirement of the public or Indian Housing program prior to the effective date of this rule.

With regard to the policy on prior lead-based paint inspections in public and Indian housing, it should be explained that in the late 1980's, pursuant to a statutory requirement, HUD began requiring public and Indian housing agencies to conduct lead-based paint inspections in all pre-1978 family developments. All inspections had to be completed by December 1994. Abatement of any lead-based paint was required at the time of modernization. HUD estimates that by 1998, virtually all of the pre-1978 family developments have been inspected, representing approximately 900,000 dwelling units. Also, HUD estimates that housing agencies have completely abated lead-based paint in over 200,000 units. The Department does not think it would be acceptable now to require that all lead-based paint inspections be redone. However, the rule does recommend that housing agencies conduct quality

assurance testing for all inspections that might be questionable.

l. *Enforcement.* Every commenter who addressed the question of enforcement of the rule remarked that penalties for noncompliance needed to be spelled out in the rule. The Lead-Based Paint Poisoning Prevention Act does not provide any independent enforcement provisions. Remedies will vary based on which program's requirements have been violated. For example, a designated party that is not in compliance with this rule may be considered in default of the regulatory agreement or housing assistance payments contract with the Department, may be debarred from receiving assistance from the Department or denied future participation in HUD programs, may be forced to surrender grant funds or may be otherwise subject to civil money penalties or other sanctions. Recipients of assistance under the Community Development Block Grant program will find enforcement provisions at 24 CFR 570.910, 570.911 and 570.913; those for other programs are found in other parts and sections of the CFR. HUD does not think it necessary to restate each program's sanctions in this lead-based paint rule but has included a general provision under § 35.160 that states the consequences of noncompliance with this regulation. HUD intends to vigorously enforce all requirements of this regulation.

m. *Records.* HUD has retained a record keeping requirement in this final rule for designated parties conducting lead-based paint activities. The Department strongly recommends that designated parties keep for the life of the property a copy of each notice to occupants of the results of evaluation and hazard reduction (including clearance) and each report from a certified individual or firm performing lead-based paint inspections, risk assessments, abatement, or clearance. Such notices and reports document compliance in case of a legal or administrative question; and evaluation and hazard reduction reports provide information on where lead-based paint may remain on the property so it can be managed safely, or, if such reports document that there is no lead-based paint remaining on the property, they can be used to support exemption from the requirements of this rule and the disclosure rule. At a minimum, the Department requires that such documentation be retained for three years. Records applicable to a portion of a residential property for which ongoing maintenance and/or reevaluation activities are required shall be kept until at least three years after such activities are no longer required. This policy is designed to provide a basis for helping ensure that Federal funds have been expended properly.

3. *Subpart C—Disposition of Residential Property Owned by a Federal Agency Other than HUD.* This subpart establishes minimum lead-based paint requirements for residential property built before 1978 that is owned and to be sold by a Federal agency other than HUD and is consequently subject to the requirements of section 1013 of Title X. The subpart basically restates the requirements set out in section 1013 of Title X, with minimal elaboration. The Department believes that the details of how another Federal agency should carry out the requirements of section 1013 are best determined by the affected agency.

The proposed rule required that for residential property built before 1960, the Federal agency shall conduct a lead-based paint inspection and a risk assessment, and shall abate all lead-based paint hazards. In the case of a purchaser who is not to be an owner occupant, the agency could make abatement a condition of sale with sufficient funds escrowed. For properties built after 1959 and before 1978, the proposed rule required that the agency conduct a risk assessment and a lead-based paint inspection. Under the disclosure rule implementing section 1018 of Title X, the agency would be required to provide the results of the risk assessment and inspection to the purchaser.

The Department of the Navy commented that the requirement that both a risk assessment and a lead-based paint inspection be conducted appeared to exceed the statutory requirement. Section 1013 calls for ''the inspection and abatement of lead-based paint hazards'' in pre-1960 housing and ''an inspection for lead-based paint and lead-based paint hazards'' in housing built between 1960 and 1978. HUD is calling for both an inspection and a risk assessment because the statutorily defined term ''inspection'' refers to a procedure that identifies the location of lead-based paint, if any, on a property but does not identify the location of ''lead-based paint hazards,'' as that term is defined in the statute. Identification of lead-based paint hazards is the function of a risk assessment. Thus, because lead-based paint hazards must be identified to comply with section 1013, a risk assessment must be conducted as well as an inspection. HUD expects that the two evaluation procedures will be performed concurrently.

The Air Force, Army and the General Services Administration (GSA) all asked for greater flexibility to permit negotiation with transferees regarding hazard control requirements ''built into the contract of sale.'' These agencies argued that, while the proposed rule allowed abatement to be made a condition of sale, it required the escrow of sufficient funds, and it may not be feasible for a bidder on large blocks of units to escrow large sums for long periods of time. It was pointed out that purchasers do not always know at the time of transfer what the reuse of a property, or a part thereof, will be. It was recommended that other conditions be permitted to be attached to the sale—for example, certification and indemnification requirements not requiring escrow deposits, and deed restrictions. GSA also complained that limiting an agency's authority to make abatement a condition of sale to when the purchaser is not an owner occupant could cause unnecessary complications in the bidding process. Bidders intending not to be owner occupants might discount their bids to account for the cost of the evaluation, while those intending to be owner occupants would not.

HUD believes that allowing the Federal agency a choice of conducting the abatement itself or making it a condition of sale facilitates efficiency and timeliness in the disposition process. The Department finds the agencies' comments about making abatement a condition of sale in pre-1960 properties to be reasonable and has changed the relevant provision to allow that ''where abatement of lead-based paint hazards is not completed before the closing of the sale, the Federal agency *shall be responsible for assuring that the abatement is carried out by the purchaser before occupancy* of the property as target housing'' (emphasis added) and in accordance with the requirements of either a State or tribal program authorized by EPA under subpart Q of 40 CFR part 745 or EPA's requirements at subpart L of 40 CFR part 745. This revised wording is intended to provide agencies more choice, while retaining their responsibility to assure compliance with the statute; and it eliminates the potential for confusion and complications in the bidding process by removing the provision that confined the authority to make abatement a condition of sale only to those sales in which the purchasers will not be owner occupants of the property. Further, it should be noted that it is HUD's interpretation that abatement

will not be required if the reuse is not to be target housing.

With regard to disposal of military property, HUD recognizes that there are several statutory, regulatory and policy requirements pertaining to the cleanup, disposal and reuse of BRAC (base realignment and closure) properties and that agencies of the Department of Defense are using provisions in contracts for sale and deeds to assure that lead-based paint hazards in target housing built before 1960 will be abated prior to occupancy. Typical of such contract or deed provisions is the following: ''Purchaser agrees that purchaser will be responsible for the abatement of any lead-based paint hazards (as defined in Title X and implementing regulations) by a certified contractor in accordance with Title X and implementing regulations before the use and occupancy of such improvements as a residential dwelling (as defined in Title X).'' To document compliance with such a provision, HUD recommends that Federal agencies include as a contractual condition the requirement that the purchaser send a copy of the certified abatement report, including clearance, to the agency.

The Department of the Army recommended that the rule be changed to allow the lead-based paint inspection and risk assessment, as well as the abatement, to be conducted following the sale of the property. HUD is of the opinion that evaluation must be conducted by the Government before the sale for two reasons: (1) Unless the evaluation is done prior to bidding, bidders will be unable to estimate the cost of abatement in pre-1960 properties and to consider that amount in calculating their bids; and (2) for properties built after 1959 and before 1978, the statute explicitly states that ''the results of such inspections shall be made available to prospective purchasers.''

One advocacy organization argued that the regulations should do away with the artificial distinction they create between HUD-owned property and housing owned by some other Federal agency stating that ''the Federal government must provide consistent leadership in ensuring that all housing it sells or * * * disposes of is free of lead hazards.'' HUD's rationale for distinguishing between HUD Programs and those of other Federal agencies is discussed under Section III.D.5 of this preamble, above.

As mentioned above, in Section III.A.3 of this preamble, the statute states that the requirements of section 1013 do not apply ''in the absence of appropriations sufficient to cover the costs.'' Therefore this final rule provides in subpart B, at § 35.115, that each Federal agency other than HUD must determine whether appropriations are sufficient.

With regard to a sale of housing owned by Federal agencies other than HUD and in which more than one Federal agency is party to the sale, HUD leaves to the agencies involved the responsibility to determine which Federal agency is responsible for compliance with this subpart.

4. *Subpart D—Project-Based Assistance Provided by a Federal Agency Other Than HUD.* This subpart sets out minimum requirements, consistent with section 1012, for Federal agencies other than HUD that have housing programs and provide more than $5,000 of project-based assistance. The subpart basically restates the minimum requirements set out in section 1012. Few comments were received on this subpart of the proposed rule and therefore, the requirements remain largely unchanged.

HUD has modified the proposed-rule requirements for notification of occupants about the results of evaluation and hazard reduction. In the final rule, the notification requirements that apply to this subpart are basically the same as those that apply to HUD-assisted housing instead of the more general proposed version. The Department believes that this change will result in more uniform and complete notification practices among all federally owned and assisted housing, consistent with government-wide regulatory streamlining.

In response to a question from the Department of Agriculture regarding how the ''more than $5,000'' figure is to be applied, HUD is indicating in the final rule that the requirements apply to housing that receives annually more than $5,000 *per project.*

5. *Subpart E reserved.* This subpart is reserved for possible future rulemaking on lead-based paint poisoning prevention requirements in single family housing covered by an application for HUD mortgage insurance or guarantee. Existing requirements at 24 CFR part 200, subpart O, as revised by this final rule, shall continue to apply to housing covered by an application for single family mortgage insurance.

6. *Subpart F—HUD-Owned Single Family Property.* This subpart sets out the requirements for HUD-owned single family property. In the proposed rule, two subparts addressed HUD-owned single family property; one subpart set out the requirements when sufficient appropriations were available, and another set out the requirements for such property in the absence of sufficient appropriations. In the case of sufficient appropriations, the requirements were identical to those of section 1013 of Title X: for housing built before 1960, a risk assessment and lead-based paint inspection followed by abatement of lead-based paint hazards; for housing built between 1960 and 1978, a risk assessment and lead-based paint inspection, followed by disclosure as required under the disclosure law. In the case of insufficient appropriations, the requirements were a visual-assessment for deteriorated paint followed by paint repair and cleanup. The Department has removed the appropriations distinction, and set forth a single policy under subpart F, as explained in Section III.A.3 of this preamble, above.

A childhood lead poisoning prevention advocacy group argued for stronger protection in both the single-family and multifamily subparts, asserting that HUD and other Federal agencies selling residential properties have a ''particular responsibility'' to ensure that sold properties contain no lead-based paint hazards. The commenter declared, ''HUD has complete discretion and ample existing authority to require the evaluation and control of lead hazards before the sale of federally owned housing.'' An environmental organization joined in all these points, and remarked that ''one of the most obvious opportunities for lead hazard control is during turnover, such as that accompanying change of ownership. HUD can, and should, be a leader in assuring that hazards are corrected at the time of sale * * *'' The groups called for revisions to include the requirement of a risk assessment and hazard identification and control for any older structure.

In the final rule, the requirements for HUD-owned single family properties being purchased with a mortgage insured by HUD are: a visual assessment to identify deteriorated paint, paint stabilization, and unit-wide clearance. HUD has added the clearance requirement to provide assurance that the work is done properly and that no hazards remain after paint stabilization. Clearance is required only if paint stabilization is conducted. The Department has the option to test deteriorated paint and to confine paint stabilization only to those surfaces with deteriorated lead-based paint. No requirements are established for properties being purchased without a HUD-insured mortgage, except for the requirements of the disclosure rule. Many of the properties purchased

without HUD-insured mortgages are in need of major rehabilitation. The cost of paint stabilization and cleanup would be substantial relative to the value of the property, and there is a high likelihood that subsequent rehabilitation would negate the effectiveness of the cleanup in removing dust-lead hazards. HUD will acquaint purchasers of the risks of generating lead-based paint hazards during rehabilitation; this will occur during the notification and disclosure required by subpart A of 24 CFR part 35. Approximately one-half of all HUD-owned single family properties are purchased with HUD-insured mortgages.

This subpart does not require specific action regarding an environmental intervention blood lead level child. Less than 1 percent of single family properties are occupied when HUD acquires ownership, and, in most cases, HUD-owned single family property is vacant within three months of the transfer of ownership to HUD. Further, HUD-owned single family properties are generally sold within six months after acquisition. Because of the limited occupancy and relatively short HUD involvement with these properties, the Department finds it impracticable to impose environmental intervention blood lead level requirements.

7. *Subpart G-Multifamily Mortgage Insurance.* This subpart sets out the requirements for the Department's multifamily mortgage insurance programs. As in the proposed rule, applications for mortgage insurance in connection with a refinancing transaction are excluded from coverage if an appraisal is not required under the applicable procedures established by HUD. This exemption, which affects applications under section 223(a)(7) of the National Housing Act, is sensible because the properties are already under mortgage insurance, the mortgage amount is not being changed, there is no equity-take out, and the processing is very streamlined, often involving no on-site inspection by HUD.

The proposed rule required visual assessment for deteriorated paint, paint repair and cleanup for these programs. One commenter said that the HUD regulation will serve as ''a model standard of care for the private mortgage insurance industry'' and asked that HUD require the implementation of essential maintenance practices, risk assessments and lead hazard controls in all pre-1960 multifamily insured properties, and essential maintenance practices and risk assessments in all other federally insured properties. HUD agrees that rental housing must receive greater protection from lead-based paint hazards than owner-occupied housing because tenants have less ability than owners to make the repairs necessary to reduce hazards. The Department has revised, therefore, the procedures of the proposed rule to ensure, to the extent HUD considers practicable, that pre-1960 units are free of lead-based paint hazards and that the risk of lead exposure is minimized in housing built after 1959.

A major housing industry organization pointed out that it would not be practicable to implement the proposed-rule requirement that deteriorated paint in a multifamily property be repaired ''before the issuance of a firm commitment,'' because it would compel a mortgagor to expend sums on paint repair ''based on chance and speculation.'' Other factors could prevent issuance of the commitment, or market conditions might prevent closing on the commitment's terms. It was suggested that HUD escrow 125–150% of the estimated cost of the repair work, and permit the paint to be repaired within 90 days after closing, using a repair escrow. The Department has addressed this comment by providing for a repair escrow in the final rule.

In the final rule, a multifamily insured property constructed before 1960 must have a risk assessment before the issuance of a firm commitment, and interim controls of identified lead-based paint hazards must be completed before firm commitment or made a condition of the sale and insurance agreement with sufficient funds escrowed. Also, there must be notices to occupants regarding the results of the evaluation and hazard reduction. The sponsor must also agree to incorporate ongoing lead-based paint maintenance into regular building operations. Ongoing maintenance activities in this final rule are comprised of many of the same elements as the essential maintenance practices recommended by the Task Force. The Department is not requiring reevaluation in housing covered by this subpart, because there is no continuing Federal subsidy. For a multifamily insured property constructed after 1959 and before 1978, no evaluation or hazard reduction is required in the final rule; but for these properties, the sponsor must agree to incorporate ongoing lead-based paint maintenance practices into regular building operations. Due to the limited relationship between the purchaser and the Federal government, HUD deemed it impracticable to include in this subpart requirements for responding to a child with an environmental intervention blood lead level. In cases where multifamily mortgage insurance is combined with another HUD program (e.g., project-based assistance), the environmental intervention blood lead level requirements for that program would apply.

A new section has been added to this subpart of the final rule to clarify Departmental mortgage insurance policy on lead-based paint in buildings being converted from nonresidential use to multifamily residential use (conversions) and in multifamily residential properties undergoing major rehabilitation. Major rehabilitation is defined as rehabilitation that is estimated to cost more than 50 percent of the estimated replacement cost after rehabilitation. The requirement for both types of property is that all lead-based paint be abated and that the abatement methods be, to the extent practicable, paint removal or component replacement. Enclosure or encapsulation may be used if paint removal or component replacement are not practicable, as for example if they would damage substrate material considered architecturally significant. If the building is an historic property, interim controls can be used at the request of the State Historic Preservation Office (as explained in Section III.E.2.b of this preamble, above).

HUD considers conversions and major rehabilitations a special case because they usually involve major renovation of the interior, including new partitioning, new heating, ventilating, mechanical and electrical systems, plus new windows and doors. Also, conversions are, in effect, newly built housing. Such major construction activity provides an opportunity to remove lead-based paint and thus assure that such properties will be free of any possibility that lead-based paint hazards will be generated in the future as a result of the disturbance of paint during building operations, maintenance or future renovations. The incremental cost of abatement of all lead-based paint relative to the total conversion or rehabilitation cost will, in most cases, be modest, and, once done, the properties will be free of lead-based paint requirements, except to monitor any encapsulation or enclosure treatments or to engage in ongoing lead-based paint maintenance if interim controls are used in an historic property.

8. *Subpart H-Project-Based Rental Assistance.* This subpart sets out the requirements for the Department's project-based rental assistance programs. The Indian Housing Block Grant Program has been added as a covered program under this subpart.

The legislative history of Title X indicates that it was the intent of Congress that the requirements of a risk assessment and interim controls would apply to housing receiving project-based assistance. Therefore these procedures are required in the final rule, as they were in the proposed rule. The final rule also requires ongoing maintenance and reevaluation to assure that the housing remains lead safe, which is similar to the monitoring requirement in the proposed rule, and it has additional requirements to respond to a case of a child with an environmental intervention blood lead level, as did the proposed rule.

There is ample evidence, however, in the statute and in legislative history that Congress felt that evaluation and hazard reduction requirements should be reasonably related to the level of Federal financial assistance. Therefore, as in the proposed rule, the requirements of a risk assessment and interim controls apply only to multifamily properties receiving more than $5,000 per dwelling unit annually in project-based rental assistance, calculated as an average of per assisted unit. For all other properties receiving project-based rental assistance under a HUD program, the initial evaluation and hazard reduction requirements are: A visual assessment to identify deteriorated paint, stabilization of deteriorated paint, and clearance (if paint stabilization is required). This less stringent requirement applies to multifamily properties receiving an average of up to and including $5,000 per assisted dwelling unit annually in project-based rental assistance and all single family properties receiving Section 8 Moderate Rehabilitation or Project-Based Certificate assistance or project-based rental assistance from another HUD program. The stringency of the requirement is less for these properties because the amount of financial assistance is less and because the Department wanted to relieve owners of single family rental property with limited financial resources from the more extensive lead-based paint requirements that apply to owners of large multifamily projects with a high level of rental assistance. On average, the costs per dwelling unit of evaluation and hazard reduction are significantly higher for single family than for multifamily housing.

A commenter believed that the rule's definition of ''project-based assistance'' could be read to include assistance delivered by local governments using HUD's Community Planning and Development (CPD) program funds. It is the Department's expectation and intent that most housing-related programs using CPD program funds will be covered by subparts J (rehabilitation), K (acquisition, leasing, support services, and operation), and M (tenant-based rental assistance). However, a CPD-funded program may be covered by subpart H if it is providing rental assistance that is tied to a particular property through contract or agreement.

The Department has decided that the term ''project-based'' should be given its traditional meaning of housing assistance payment programs where the funding is tied to the residential property and not to the tenant. Further, the requirement for risk assessment only makes sense when it is applied to traditionally ''project-based'' housing assistance payment programs, where HUD maintains an ongoing relationship with the owner and is able to require a phase-in of risk assessment requirements.

Section 1012 of Title X (at 42 U.S.C. 4822(a)(1)(B)) sets out a schedule in which risk assessments and interim controls must be performed, i.e., all pre-1960 dwelling units before January 1, 1996; 25 percent of 1960–1978 dwelling units by January 1, 1998; not less than 50 percent of 1960–1978 dwelling units by January 1, 2000; and the remainder by January 1, 2002. The Department is not issuing a final lead-based paint rule in time to meet the January 1, 1996 deadline. Therefore, the Department has delayed the start of the risk assessment schedule but is establishing an expedited phase-in schedule that is somewhat simpler than that in the statute: September 17, 2001, for properties constructed before 1960, and September 15, 2003, for properties constructed after 1959 and before 1978.

This risk assessment phase-in schedule applies only to multifamily properties receiving more than $5,000 per unit annually in project-based rental assistance. The schedule for all other properties covered by subpart H is based on the schedule of initial or periodic inspections.

The revised schedule for risk assessments is based on the comments received on the proposed rule's risk assessment schedule, and it also takes into account the delay in meeting the deadlines established by the Congress. It is HUD's view that the revised schedule still provides adequate time for education and training in order to implement the new technical standards, requirements and procedures. The proposed rule provision that allows the Secretary to develop an alternative schedule, if necessary, remains in this subpart. The provision was included to provide the Department with flexibility in working with HUD clients whose housing assistance payment contracts are due to expire close to the required date for completing risk assessments—an issue raised by commenters.

The final rule does not include the proposed rule's requirement that an owner develop a hazard reduction plan. The hazard reduction plan, a concept suggested by the Task Force, was intended to provide the owner with flexibility to design his or her own schedule for completing interim controls. However, it was perceived by commenters and by the Department to be a paperwork requirement that could be a burden for owners and an unsolvable administrative problem for the Department. HUD has established, therefore, the following schedule for interim controls: Dwelling units occupied by families with children under 6 years of age and common areas servicing those units shall have interim controls completed no later than 90 days after the completion of the risk assessment for those units. Dwelling units not occupied by families with children under 6 years of age, common areas servicing those units, shall have interim controls completed within 12 months of the completion of the risk assessment for those units. If the owner chooses to conduct standard treatments rather than a risk assessment and interim controls (see ''Options'' above), standard treatments for units occupied by children of less than 6 years of age must be completed no later than 90 days after the final date for completion of a risk assessment, and for other units no later than 12 months following the final date for completion of a risk assessment. Completion of standard treatments as well as interim controls includes clearance testing.

These policies regarding interim controls and the standard treatment option must be complied with only by owners of properties receiving more than $5,000 per unit annually in project-based rental assistance. Other properties must complete paint stabilization and clearance, if needed, within 30 days of receiving notification of the results of the visual assessment.

HUD assumed in drafting the proposed rule that multifamily properties receiving more than $5,000 per unit annually in project-based rental assistance would be subject to the same lead-based paint requirements that currently apply until they are required to comply with this new regulation. Commenters pointed out that more clarity and precision is needed on requirements during the phase-in period. Therefore the Department is adding to this subpart a paragraph on transitional requirements that will be

effective on September 15, 2000. Until the phase-in date that is applicable to a property, or until the owner conducts a risk assessment, whichever is first, the owner must practice ongoing lead-based paint maintenance. This consists mainly of three activities: (1) Visually assessing, at least once a year, the condition of painted surfaces to identify deteriorated paint; (2) stabilizing any deteriorated paint; and (3) using safe work practices when performing any maintenance or renovation that disturbs paint that may be lead-based paint.

As explained in Section III.D.6 of this preamble, above, environmental intervention blood lead level requirements that apply to this subpart have been revised.

9. *Subpart I-HUD-Owned and Mortgagee-in-Possession Multifamily Property.* In the proposed rule, two subparts addressed the disposition of HUD-owned multifamily property; one subpart set out the requirements that would apply when sufficient appropriations were available to comply with the statutory requirements of section 1013, and another set out the requirements in the absence of sufficient appropriations. The section 1013 requirements are: for pre-1960 properties, an inspection and risk assessment followed by abatement of lead-based paint hazards, and, for properties built after 1959 and before 1978, an inspection and risk assessment followed by disclosure. In the absence of sufficient appropriations, the proposed rule called for a visual evaluation to identify deteriorated paint followed by repair of deteriorated paint and cleanup of the worksite. Additional requirements were included in the case of a child with an environmental intervention blood lead level, and monitoring of paint conditions was required for properties retained in the HUD-owned inventory for more than one year. No distinction was made for the period of construction, e.g., before or after 1960.

In the final rule, the Department has removed the appropriations distinction, and set forth a single policy under this subpart, as discussed under Section III.A.3 of this preamble, above. The Department's intent in setting lead-based paint policy for HUD-owned and mortgagee-in-possession multifamily property in this final rule is to make the requirements similar to those for multifamily properties receiving more than $5,000 per unit annually in project-based rental assistance while recognizing the intent of Congress as expressed in section 1013 of Title X. HUD finds no reason to require of itself a less stringent standard than it requires of private owners of assisted multifamily housing. The Department must conduct a lead-based paint inspection and risk assessment before publicly advertising the property for sale, followed by interim controls of all identified lead-based paint hazards. A lead-based paint inspection is required as well as a risk assessment so information on the location of lead-based paint can be given to the purchaser pursuant to the disclosure rule at subpart A of 24 CFR part 35, who can then use it to assure that lead-based paint hazards are not generated inadvertently during future maintenance or renovation work. For dwelling units occupied by families with children of less than 6 years of age and common areas servicing such units, interim controls shall be completed no later than 90 days after the completion of the risk assessment; while dwelling units not occupied by families with children younger than 6 and associated common areas must have interim controls and clearance completed no later than 12 months after the risk assessment. If a unit becomes newly occupied by a family with a child of less than 6 years of age or such a child moves into a unit, interim controls must be completed within 90 days after said move-in if they have not already been completed. The schedule for completion of standard treatments is also the same as for multifamily housing receiving more than $5,000 per unit annually in project-based rental assistance. The Department must provide a notice to occupants if evaluation or hazard reduction is undertaken.

If conveyance of the title by the Department at a sale of a HUD-owned property or a foreclosure sale caused by the Secretary when HUD is mortgagee-in-possession occurs before the required schedule for completion of interim controls or standard treatments, the Department must complete the hazard reduction before conveyance or foreclosure sale, or the Department shall be responsible for assuring that interim controls are carried out by the purchaser according to the following schedule: (1) In units occupied by families with children of less than 6 years of age and common areas servicing such units, no less than 90 days after the date of closing of the sale or 90 days after a family with a child less than 6 moves in; and (2) in all other units and associated common areas, no later than 180 days after the closing of the sale. The schedule for completion of hazard reduction by the purchaser is keyed to the closing date, because it is only at that time that the purchaser can begin to make firm arrangements to conduct the treatments; but the duration of time from the closing date is somewhat less than that which HUD must meet in relation to the risk assessment date because of concern that the risk assessment may go out of date. Similar to requirements for multifamily properties receiving project-based assistance, ongoing maintenance and reevaluation are required under this subpart if the Department retains ownership of the property for more than 1 year.

This subpart requires specific actions in response to a child with an environmental intervention blood lead level; the requirements are similar to those for housing receiving project-based rental assistance.

10. *Subpart J–Rehabilitation.* This subpart sets out the requirements for the Department's programs which provide assistance for housing rehabilitation. The majority of this assistance is provided through programs administered by the Office of Community Planning and Development (CPD), principally the Community Development Block Grant program and the HOME program. Other rehabilitation assistance is provided under the Flexible Subsidy-Capital Improvement Loan Program (CILP) and the Mark-to-Market Program for multifamily property. Rehabilitation assistance may also be provided under the Indian Community Development Block Grant Program and the Indian Housing Block Grant Program. This subpart does not apply to the following HUD programs that may have rehabilitation activities: Mortgage insurance programs, the Section 8 Moderate Rehabilitation program, and the public housing modernization programs. Those programs are covered by other subparts.

The requirements of Title X pertaining to federally assisted residential rehabilitation are quite specific. The statute sought to take advantage of the rehabilitation event as a cost-effective opportunity to sharply reduce lead-based paint hazards in the assisted stock. Many types of rehabilitation, such as window replacement or installation of new walls or doors, often reduce lead-based paint hazards. Section 1012 requires at a minimum: (1) Inspection for the presence of lead-based paint prior to federally-funded renovation or rehabilitation that is likely to disturb painted surfaces; (2) interim controls of lead-based paint hazards in housing receiving less than $25,000 per unit in Federal rehabilitation assistance; and (3) abatement of lead-based paint hazards

in housing receiving more than $25,000 per unit.

Among those commenters on the proposed rule who directed their remarks towards specific HUD programs, the rehabilitation programs drew by far the most attention, largely because compliance was perceived as complex and costly. Some commenters felt that the rule would reduce the impact that rehabilitation assistance funds can have on the community and would make smaller communities determine that rehabilitation projects are ''not worth it.'' Pointing out that some local rehabilitation assistance is provided in the form of a loan, local agencies feared that they would have difficulty getting homeowners to borrow the additional funds needed to comply with the lead-based paint hazard reduction requirements. As a long time proponent and funder of housing rehabilitation, the Department understands and shares these concerns and has attempted to provide local agencies with ways to incorporate as efficiently as possible the statutory requirements of Title X into their rehabilitation programs.

At the outset, it should be noted that rehabilitation that does not disturb a painted surface is exempt from this rule. Thus, for example, roof repairs or heating system improvements are likely to be exempt unless such activities disturb painted surfaces.

In both the proposed rule and the final rule, HUD has interpreted the statutory requirement of a lead-based paint inspection to apply only to surfaces to be disturbed by rehabilitation. In the proposed rule this procedure was called a ''limited paint inspection.'' In response to concerns of EPA regarding possible confusion if the word ''inspection'' is used differently than in EPA regulations, HUD is using the term ''paint testing'' instead (see Section III.E.2.c. of this preamble, above). Furthermore, HUD provides the option of either conducting paint testing of the painted surfaces to be disturbed or replaced during rehabilitation or presuming that all such painted surfaces are coated with lead-based paint. Paint testing is not necessary if a complete lead-based paint inspection has been conducted of the property.

In the final rule as well as in the proposed rule, the Department has added a category of housing receiving up to and including $5,000 per unit in Federal rehabilitation assistance to allow a lower level of lead-based paint treatment for rehabilitation of modest expenditure. HUD's intent in setting requirements for housing in this category of assistance is to allow low level rehabilitation to occur without incurring the full expense of the statutory lead-based paint requirements but at the same time to minimize the possibility of exposure to lead-based paint hazards as a result of the assisted rehabilitation work. This has been referred to as a ''do-no-harm'' policy. The impact of this policy is significant. HUD estimates that the average amount of rehabilitation assistance per unit from the Community Development Block Grant program is between $5,000 and $6,000. The proposed rule would have required visual assessment to identify deteriorated paint on surfaces to be disturbed by rehabilitation, repair of such deteriorated paint surfaces, and cleanup of the worksite. The final rule requires paint testing of surfaces to be disturbed or presumption of lead-based paint, and, if the paint is found or presumed to be lead-based paint, the following are required: safe work practices (as specified in subpart R of the final rule) during rehabilitation, repair of any paint disturbed during rehabilitation, and clearance of the worksite. The main differences between the proposed and final rules are (1) the more explicit emphasis on safe work practices during rehabilitation as the way to avoid causing exposure to lead-based paint hazards, and (2) the clearance requirement, which assures that no lead-based paint hazards are left at the worksite. The worksite consists of only those rooms or areas where the rehabilitation is conducted. Safe work practices include the following: Not using prohibited practices of paint removal, occupant protection and worksite preparation, and specialized cleaning. These practices were included in the requirements of the proposed rule for paint repair. HUD estimates that the average cost per unit of complying with today's rule for housing receiving no more than $5,000 in Federal rehabilitation assistance will be approximately $150 for single family and $115 for multifamily units.

For housing receiving more than $5,000 and up to and including $25,000 in Federal rehabilitation assistance, the final rule makes one significant change to the requirements in the proposed rule (which derive directly from the statute), and that is the standard treatment option. This option allows the use of standard treatments (as suggested by the Task Force; see Section III.D.3 of this preamble, above) instead of conducting a risk assessment and interim controls. If standard treatments are used, no evaluation is required. Standard treatments include stabilization of deteriorated paint, the provision of smooth and cleanable horizontal surfaces, the correction of conditions causing rubbing, binding or crushing of painted surfaces, and the treatment of bare soil—all using safe work practices and followed by clearance. When conducted as a part of rehabilitation, standard treatments must include stabilization of paint disturbed as a result of the rehabilitation work, and clearance must be conducted after completion of rehabilitation, as is the case if interim controls are conducted. Standard treatments may be an appropriate option in housing in which experience indicates there is a high likelihood of extensive lead-based paint hazards. In such housing the risk assessment would just confirm what is expected. Standard treatments may also be appropriate in housing that is otherwise in good condition but is undergoing rehabilitation in one or more confined areas, in which case the extent of deteriorated paint, surfaces that are not smooth and cleanable, and dust-generating conditions might be minor. Another potential advantage of standard treatments is that they are a known and limited group of activities that crews can be trained to perform efficiently. A possible disadvantage is that such treatments may be performed unnecessarily on surfaces without lead-based paint, because no testing is conducted.

In Title X, the statutory requirement for hazard reduction in properties receiving more than $25,000 per unit in Federal rehabilitation assistance is ''abatement of lead-based paint hazards in the course of substantial rehabilitation projects.'' In the proposed rule, the statutory phrase ''in the course of * * * rehabilitation'' was interpreted to mean that lead-based paint hazards on surfaces to be disturbed by rehabilitation were to be abated (i.e. permanently eliminated), while hazard reduction (which includes less costly, but more temporary, interim controls as a minimum) could be conducted on lead-based paint hazards on other surfaces. This interpretation was questioned by those who thought the Congress meant that all lead-based paint hazards should be abated in these major rehabilitation projects, regardless of whether the surface was or was not being disturbed by the rehabilitation. Supporters of the proposed-rule interpretation claimed that the cost of abating lead-based paint hazards on the exterior of old houses with wood siding would be exorbitant. In the final rule, the Department has revised the proposed-rule requirement to require abatement of all lead-based hazards

identified by paint testing and/or a risk assessment and any lead-based paint hazards created as a result of the rehabilitation work, *except* that interim controls are acceptable on exterior surfaces that are not disturbed by rehabilitation.

HUD believes that the exemptions and options in this rule provide designated parties with enough flexibility to achieve the statutory objectives with maximum efficiency. For instance, in very old housing with a high likelihood of extensive lead-based paint and undergoing Federally assisted rehabilitation of between $5,000 and $25,000 per unit, the grantee, participating jurisdiction or CILP recipient may find it most efficient to forego the evaluation, presume the presence of lead-based paint and lead-based paint hazards, and conduct standard treatments using trained and efficient crews. Conversely, if the presence of lead-based paint or lead-based paint hazards is questionable, a grantee, participating jurisdiction or CILP recipient may choose to test the paint and conduct a risk assessment to determine whether it is necessary to treat all, some or any of the paint as lead-based paint.

Beyond the broad objections regarding the cost impact of the rule, commenters had many questions and concerns. A frequent complaint among commenters was their inability to determine, from the proposed rule, ''exactly what rehabilitation is, what are rehab soft costs, and exactly what activities are to be used to determine the various types of costs.'' In the final rule, HUD has adopted the policy that the determination of the category of assistance (up to and including $5,000, more than $5,000 and up to and including $25,000, or more than $25,000) will be based on the hard costs of ordinary rehabilitation, not including the additional costs of complying with this rule. The Department has made efforts to clarify the definition of hard and soft rehabilitation costs through the use of examples.

A commenter also questioned the Department's decision not to include additional provisions for dwellings occupied by children with environmental intervention blood lead levels under rehabilitation-related rules. In general, the requirements for units receiving rehabilitation assistance of more than $5,000 (risk assessment and either interim controls or abatement of lead-based paint hazards) are similar to or more stringent than the activities that would be required in the case of an environmental intervention blood lead level child. Also, rehabilitation assistance is usually provided at one point in time, so there is often no continuing financial involvement of HUD with the property. However, in the case of a multifamily property receiving Federal rehabilitation assistance under the HOME program or the Flexible-Subsidy-CILP program, the grantee, participating jurisdiction or CILP recipient must require the property owner to incorporate ongoing lead-based paint maintenance activities into regular building operations. Ongoing lead-based paint maintenance practices are designed to ensure that new lead-based paint hazards do not occur in the property.

A commenter representing developers noted that ''subrecipient'' was defined to exclude an owner or developer receiving rehabilitation assistance. ''Thus the responsibility of performing subrecipient duties must fall on the local government grantee.* * *'' The commenter urged that the final rule permit duties to be delegated to the owner or developer, with only monitoring and oversight functions necessarily remaining with local government grantees. Although many of the requirements under this subpart refer to the grantee or participating jurisdiction, as is the case with many CPD programs, it is the Department's intent that the grantee or participating jurisdiction may require virtually all of these functions to be performed by a subrecipient or other designated party. The exclusion of an owner or developer, however, from the definition is retained in the final rule to permit at least some degree of independent oversight of the use of public funds.

Another funded agency commenter said that the rule's requirements would ''cripple'' the agency's ancillary programs. The commenter stated that the agency provides funds to an organization that implements an emergency rehabilitation program for county residents. This program, the commenter argued, is staffed by volunteers, and will not be able to comply with the extensive lead-based paint requirements. The Department has attempted to respond to this concern by tailoring the requirements to the amount of Federal assistance. While even the minimum requirements of the $5,000-or-less category may require workers to undergo a modest amount of training, such training may be necessary to protect children who may live in the unit, and it should not be inefficient where such workers are volunteers who work on multiple projects.

In the final rule, the Department has established separate requirements for insular areas operating rehabilitation programs under the HOME and Community Development Block Grant (CDBG) programs. Insular areas include the U.S. Virgin Islands, Guam, Northern Mariana Islands, and American Samoa. The requirements for insular areas are less stringent than the regular requirements for properties receiving more than $5,000 per dwelling unit in Federal rehabilitation assistance. There is no difference in requirements for properties receiving up to $5,000 per unit in rehabilitation assistance. The rationale for the lesser requirements is that insular areas do not currently have the capacity to comply with more stringent requirements applicable to other CDBG grantees and HOME participating jurisdictions, nor is it likely that capacity can be developed in the foreseeable future. The remote location of the insular areas, their small populations and the limited volume of HOME- and CDBG-funded housing activity makes the development of a competitive lead ''industry'' (i.e., certified lead inspectors, risk assessors and contractors) unlikely.

For properties receiving more than $5,000 per unit in rehabilitation assistance, the final rule requires, in insular areas, stabilization of all deteriorated paint and paint being disturbed by rehabilitation instead of the normal requirements of a risk assessment and interim controls or abatement of lead-based paint hazards. (As is always the case, stabilization is not required of paint found by a certified lead-based paint inspector not to be lead-based paint.) Safe work practices must be used, including occupant protection, worksite preparation and clearance. HUD believes that clearance is very important and that, if laboratory analysis of dust samples is not available on an island, it can be obtained at reasonable cost through air mail of samples and electronic response by the laboratory, as is often the practice elsewhere in the United States.

These separate requirements for rehabilitation assistance of more than $5,000 per unit in insular areas are protective of children and other occupants. They are the same as those in the final rule for units receiving tenant-based rental assistance (subpart M), assistance for acquisition, leasing, support services or operation (subpart K), and HUD-owned single family properties at disposition (subpart F). However, when undertaking Federally-funded rehabilitation, the Department encourages insular areas to use, to the maximum extent feasible and in consultation with their respective Field Office, the more rigorous and thorough

methods and procedures required of other grantees and participating jurisdictions in subpart J.

Finally, subpart J requires that all occupants shall be provided with the lead hazard information pamphlet by the grantee, participating jurisdiction or CILP recipient (or their representative). In all cases where evaluation or hazard reduction or both are undertaken, each grantee, participating jurisdiction or CILP recipient shall post or distribute a notice to occupants of the results of the evaluation. The grantee, participating jurisdiction or CILP recipient shall also post or distribute a notice of the results of the hazard reduction activities.

11. *Subpart K—Acquisition, Leasing, Support Services, or Operation.* This subpart sets out the requirements for certain CPD programs and the Indian Community Development Block Grant program and the Indian Housing Block Grant program when such programs are providing Federal funding for acquisition, leasing, operating or support services for a residential property. In the proposed rule, this subpart was entitled ''Community Planning and Development (CPD) Non-Rehabilitation Programs.'' The title has been changed because of the addition of Indian programs to the coverage of the subpart and because the new title is more descriptive than the term, ''non-rehabilitation,'' used in the proposed rule. The main CPD programs that fund activities covered by this subpart are the HOME program, the Community Development Block Grant program, the Supportive Housing program, the Emergency Shelter Grant program, and Housing Opportunities for Persons with AIDS (HOPWA). Persons with AIDS are considered persons with disabilities, so assisted housing for them is exempt from the rule except when there is a child of less than 6 years of age who resides or is expected to reside in the dwelling unit.

Examples of the types of housing assistance to which subpart K applies are acquisition or leasing of a homeless facility, downpayment assistance, mortgage and utility payments for persons with AIDS (if a child under 6 resides), and payment of security deposits. Other examples are payment of the day-to-day operating expenses of housing for the homeless and assistance for various support services that are provided on site at a residential facility, such as child care, employment assistance, outpatient health care including drug treatment or counseling, case management, nutritional counseling, security arrangements, and assistance in getting permanent housing.

For properties built between 1950 and 1978, the lead-based paint requirements for these activities in the proposed rule were visual assessment, paint repair and cleanup. For properties built before 1950, the requirements were visual assessment, dust testing for the presence of dust-lead hazards, paint repair, cleanup of the dwelling unit if the dust testing finds dust-lead hazards, or cleanup only of the paint-repair worksite if the dust testing does not find dust-lead hazards. In certain instances, ongoing monitoring of paint conditions was required. For all activities, provision of the pamphlet developed by EPA under TSCA section 406 was required.

Some commenters expressed concern regarding the adverse impact that these requirements would have on small-grant acquisition assistance programs. The Department believes that families receiving such assistance should be able to move into lead-safe housing. HUD has a statutory responsibility under the Lead-Based Paint Poisoning Prevention Act to establish procedures that achieve that objective to the extent practicable.

In the final rule, as in the proposed rule, HUD has set requirements for this subpart that are the same in most aspects as those for tenant-based rental assistance, which is covered by subpart M. The basic strategy set forth in the final rule consists of a visual assessment to identify deteriorated paint, stabilization of deteriorated paint, clearance of the dwelling unit, and, where there is a continuing and active financial relationship with the property, ongoing lead-based paint maintenance. This procedure is the minimum needed to assure that the housing is lead-safe. Many of the households inhabiting residential properties assisted through programs covered by subpart K include young children. Many of the assisted households are homeless. A basic level of protection against exposure to lead-based paint hazards is essential.

In the final rule, HUD has changed the proposed rule's requirement of paint repair to paint stabilization, as it has throughout the final rule. This is explained above in Section III.D.9 of this preamble. Also, the dust testing requirement in pre-1950 housing has been eliminated, and in its place the Department has required clearance of the dwelling unit, as it has for all other HUD-assisted and HUD-owned housing. Clearance is required, however, only if paint stabilization is required. Also, the final rule eliminates the proposed rule's distinction between pre-1950 and post-1949 housing. In the interest of regulatory streamlining, a single set of requirements applies to all pre-1978 housing. As in the proposed rule, the grantee or participating jurisdiction must provide the lead hazard information pamphlet to all occupants except those who have received the pamphlet under the disclosure rule. Also, each grantee or participating jurisdiction must provide a notice to occupants describing the results of the clearance examination. The notice requirement does not apply to the visual assessment but does apply to clearance results after paint stabilization, because the clearance report provides known information about the presence or absence of lead-based paint hazards. Finally, the final rule requires that ongoing maintenance of painted surfaces and safe work practices be incorporated into regular building operations, where appropriate under HUD-administered programs.

The Department has given the grantee or participating jurisdiction the discretion to determine whether the cost of paint stabilization and clearance is to be borne by the owner/developer, the grantee or a combination of the owner/developer and the grantee, based on program requirements and local program design. This helps to ensure maximum flexibility for local authorities and is consistent with HUD's reinvention initiative. Because the relationship between the HUD grantee or participating jurisdiction and the property owner or developer is often a one-time event, HUD deemed it impracticable to include special requirements in the case of a child with an environmental intervention blood lead level.

12. *Subpart L—Public Housing Programs.* This subpart sets forth requirements for eliminating lead-based paint hazards in public housing. The proposed rule included Indian housing under this subpart, but, as explained above in Section III.A.8 of this preamble, Indian housing programs are now covered under other subparts of this rule. Section 1012 of Title X does not specifically add new requirements to public housing. The Senate Committee Report states that Congress did not intend the changes to the Lead-Based Paint Poisoning Prevention Act introduced by Title X to pose a barrier to ongoing efforts by public and Indian housing agencies to conduct risk assessments, lead-based paint inspections and abatement activities. According to the Report, ''the changes made by Title X to the public housing provision of the LPPPA are intended merely to conform the terminology of Title X's definition of terms'' (Senate Report 102–332, page 118). Nevertheless, in order to consolidate all

of the lead-based paint requirements for HUD in a single place, the Department is including subpart L for public housing in this rulemaking. This subpart implements the requirements set out in 42 U.S.C. 4822(d)(1)(3) prior to Title X; where necessary, however, the Department has modified these requirements in order to be consistent with the intent of Title X. Such modifications are noted below.

The Lead-Based Paint Poisoning Prevention Act requires PHAs to complete lead-based paint inspections of all pre-1978 family developments by December 6, 1994. This statutory requirement has existed since 1987. HUD has data indicating that most developments have been inspected, as mandated by Congress. Those that have not must be inspected no later than the effective date of this final rule, which is September 15, 2000. Where a PHA has not complied with the statutory requirement to complete lead-based paint inspections of pre-1978 family units, the PHA is eligible only for Emergency Modernization or work needed to complete the inspections as described in 24 CFR 968.210. The Lead-Based Paint Poisoning Prevention Act also has required for many years that PHAs abate all lead-based paint found in the inspections. This is a continuing activity conducted at the time of modernization.

The Department's primary concern in developing this rule is with the safety of occupants of housing developments that have lead-based paint but have not yet been abated. In such cases, modernization (and hence abatement) may be years or decades away, and nothing is required in the interim to control lead-based paint hazards. In the proposed rule, HUD set forth the following additional requirements for these developments with the goal of assuring that they are lead-safe: visual assessment for deteriorated paint, matching the visual assessment with the lead-based paint inspection to identify the locations of deteriorated lead-based paint, dust and soil testing to determine the presence of dust-lead hazards or soil-lead hazards, and interim controls of lead-based hazards found.

A principal concern of commenters was the financial burden, the asserted ''unfunded requirement,'' the rule would place on public housing agencies. Based on these financial hardships, a group representing public housing agency interests recommended eliminating the rule's new requirements (dust and soil testing and interim controls) as they pertained to public and Indian housing. Acknowledging the need for addressing the issue of lead in the environment, one commenter asserted that most local housing agencies already had made a good faith effort to comply with the requirement to complete lead-based paint inspections by the end of 1994.

A more specific issue addressed by some commenters was the acceptance by the proposed rule of dust and soil testing by non-certified personnel. Some commenters objected to this because it appeared to violate the requirements of EPA's regulations implementing TSCA sections 402 and 404. Others urged HUD to establish a major training activity to assure that public housing maintenance staff would be able to conduct such sampling properly and interpret the results accurately.

In the final rule, HUD is requiring that, instead of soil and dust testing by non-certified personnel, risk assessments must be conducted by certified risk assessors in developments with lead-based paint that has not yet been abated. The Department has concluded after careful consideration that it would be wasteful and ineffective to allow PHAs to skirt the EPA certification requirements for dust and soil testing. For further discussion of this issue, see Section III.D.8 of this preamble, above.

Another question has to do with the reliability of the lead-based paint inspections that have already been conducted. In a study of prior inspections in public housing, HUD has found that approximately 13 percent of the inspections were of questionable accuracy. In the proposed rule HUD, therefore, encouraged PHAs to engage in quality control activities to determine whether a lead-based paint inspection is reliable. The final rule continues this policy. HUD's Office of Public and Indian Housing issued a detailed Notice in 1995 (PIH 95–8(HA)) explaining how quality control can be implemented for lead-based paint inspections that have already occurred.

The final rule also continues the proposed rule requirement that occupants be informed of the results of all evaluation and hazard reduction activities, and it continues the additional requirements that are triggered if a child with an environmental intervention blood lead level is identified in a public housing development. The basic requirement is that a risk assessment and interim controls be completed in the dwelling unit quickly. A more detailed explanation of the requirements for response to a child with an environmental intervention blood lead level is provided above in Section III.D.6 of this preamble.

Under this subpart the Department has included references to the liability insurance provisions found in the pubic housing program requirements. Also, the rule describes the circumstance under which a PHA may use financial assistance received under the modernization program for the evaluation and reduction of lead-based paint hazards, and references sections of the public housing regulations for additional information on eligible costs.

13. *Subpart M—Tenant-Based Rental Assistance.* This subpart sets out lead-based paint requirements for the Department's tenant-based rental assistance programs, including those operated under the HOME, Housing Opportunities for Persons With AIDS (HOPWA), Shelter Plus Care, and Indian Housing Block Grant programs as well as Section 8. Because there are different types of local organizations that administer tenant-based rental assistance under HUD programs, this subpart uses the general term ''designated party'' to refer to housing agencies, grantees, participating jurisdictions or Indian Housing Block Grant recipients. Unlike other subparts, this subpart applies only to housing occupied by families with children of less than 6 years of age.

The lead-based paint requirements for tenant-based rental assistance in the proposed rule were virtually the same as those proposed for the subpart now titled Acquisition, Leasing, Support Services, or Operation (formerly CPD Non-Rehabilitation). For properties built between 1950 and 1978, visual assessment, paint repair and cleanup; for properties built before 1950, visual evaluation, dust testing for the presence of dust-lead hazards, paint repair, cleanup of the dwelling unit if the dust testing finds dust-lead hazards, or cleanup only of the paint repair worksite if the dust testing does not find dust-lead hazards.

Comments ranged from declarations that it was illegal under the statute to apply the rule to tenant-based programs to assertions that stringent lead-control standards must be applied, *especially* in the case of the tenant-based programs. Commenters opposed to the requirements argued that there exists a ''statutory, program-wide exemption for housing receiving tenant-based Section 8 assistance.'' One commenter asserted that only landlords agreeing to accept assistance under a section 1011 grant (i.e., the HUD Lead-Based Paint Hazard Control Grant program) are required to adhere to requirements associated with lead-based paint testing and control. HUD disagrees. The Department's response to the question of the legality

of imposing lead-based paint requirements on tenant-based rental assistance programs is discussed above, under Section III.A.2. of this preamble.

Many commenters discussed the fair housing implications of the rule because of its focus on families with young children. Some commenters advocated simply relocating a family to another unit upon discovery of a lead hazard (leaving the unit available for other families without small children). Others advocated making special funding available in pilot programs for particular localities, to finance any necessary control or abatement activities, or providing tax or other special incentives to owners faced with unexpected repair costs arising out of the discovery of a lead hazard. Still other commenters advocated coverage for all tenant-based units without regard to family makeup.

The Department believes limiting the requirements of subpart M to dwelling units in which a family with a child less than age 6 resides is a reasonable policy because of the unique ability of designated parties to identify changes in the composition of an assisted family through the income certification process. In addition, the designated parties are able to monitor the property owner's compliance with lead-based paint requirements through initial and periodic dwelling unit inspections. These two safeguards will help to ensure that a designated party will know whether a child of less than 6 years of age resides in a dwelling unit. An owner who refuses to rent a dwelling unit to a family with a child under the age of 6 may be in violation of the provisions of the Fair Housing Act prohibiting discrimination on the basis of familial status. The same possibility applies to a designated party that requires that a family with a young child make an involuntary relocation. (See the discussion of the requirements of anti-discrimination statutes in Section III.D.7 of this preamble above.)

Comments included repeated expressions of fear that the cost of compliance with this subpart would result in a ''shortfall'' of housing available to families with tenant-based rental assistance, and assertions that new contractual duties were being imposed on owners that were not a part of the owners' existing agreements with the designated party. Landlords will be discouraged from participating, commenters claimed, and the rule will drive up their operating costs, without any certainty of additional compensation. Both rural housing authorities and agencies in the largest cities worried about tight rental markets and the inability of participating families to locate lead-safe units.

Taking the more protective point of view, other commenters noted that the rule's requirements for tenant-based programs were less demanding than those set out for project-based programs and advocated applying the stricter standards uniformly. Some commenters urged that HUD impose the same protection that the Task Force on Lead-Based Paint Hazard Reduction and Financing recommended for all private units. A health department believed that because housing assistance programs were shifting toward tenant-based assistance, ''the most stringent of requirements probably should be on this (type) of housing.''

In considering how to respond to these comments, HUD took into account the recommendations of the Task Force. In their report, the Task Force recognized most of the concerns expressed by commenters on the proposed rule, not the least of which was the fear that expensive standards could reduce participation in the program by private landlords. It is noteworthy that the Task Force concluded that lead-based paint requirements for tenant-based assistance programs should be similar to the standards recommended by the Task Force for rental housing in general.

Under current regulations, HUD requires that designated parties administering tenant-based rental assistance programs visually inspect pre-1978 dwelling units that are to be occupied by children under the age of 6 to identify defective paint, and that owners correct any defective paint surfaces and clean up the worksite carefully. Except for the explicit cleanup requirement, which was issued in 1995, these requirements have been part of the Housing Quality Standards (HQS) for over ten years.

In the final rule, as in the proposed rule, HUD is retaining the requirement of a visual assessment to identify deteriorated paint to be performed usually by a housing quality inspector at initial and periodic inspections. (There is no effective difference between the meaning of ''defective paint,'' the term used in the current regulations, and ''deteriorated paint,'' which is the term used in Title X.) Also, the final rule retains the proposed rule requirement that such inspectors be trained to perform the activities required of them by this rule. The Department is developing a training course that will enable such inspectors to meet this requirement. The purpose of the course is to assure that persons performing the visual assessment understand why they are doing it, what they should look for, and why deteriorated paint should be stabilized. The course was pilot tested in 1998 and will be available well before the effective date of this final rule.

The basic concept of treating defective paint is being retained, but the final rule modifies the details of the standard applying to that requirement. First, as explained above in Section III.D.4 of this preamble, the minimum area of defective paint that must be treated has been changed. The minimum that was promulgated in the Housing Quality Standards in 1995, and was included in the proposed rule, is being withdrawn at the request of many housing agencies, health departments and other commenters who found it complicated, difficult to administer, and contrary to the purpose of the regulations. As was the case before 1995, all deteriorated paint must be treated.

Second, the painted surfaces that are subject to the rule have changed.

Current requirements apply to all interior surfaces within the dwelling unit, the entrance and hallway serving the unit in a multi-unit building, and exterior surfaces up to five feet from the floor or ground that are readily accessible to children under 6 years of age, but excluding outbuildings. The proposed rule was the same as the current regulations, except for the addition of playground equipment and fences surrounding an exterior play area. The final rule sets no limits to the surfaces covered by the requirement, saying only that the designated party shall conduct a visual assessment of ''all painted surfaces.'' It is HUD's intent that such surfaces shall include all surfaces within the dwelling unit, all surfaces on the exterior of the structure regardless of height from the ground, and all common areas servicing the dwelling unit. The definition of ''common area'' in the rule includes all areas on the property available for use by occupants of more than one unit, including outbuildings such as garages.

Third, in the final rule the details regarding the method of treatment are somewhat different than those in current regulations and in the proposed rule. Current regulations require removal of defective paint (using specified acceptable methods) and covering surfaces ''with durable materials with joints and edges sealed and caulked as needed to prevent escape of dust.'' The proposed rule called for ''paint repair'', which was repainting with proper surface preparation using safe practices and including occupant protection and cleanup. The final rule requires ''paint stabilization,'' which is the same as

paint repair except that it includes the additional requirement that any physical defect in the substrate that is causing deterioration be repaired. Such defects include dry-rot, rust, moisture, crumbling plaster, and missing siding or other components that are not securely fastened. As discussed above in Section III.D.9 of this preamble, HUD is uniformly requiring paint stabilization across this final rule, because otherwise the treatment of the deteriorated paint will be ineffective.

The fourth change to the standard for treating deteriorated paint is the requirement in the final rule that there be clearance of the dwelling unit if paint stabilization is conducted. As explained above, this is also a uniform requirement across this rule whenever hazard reduction is conducted. It does not exist in current regulations nor was it required for tenant-based rental assistance programs in the proposed rule. HUD believes unit-wide clearance is an essential factor in establishing that a dwelling unit is lead safe, and therefore is requiring that clearance tests be conducted by certified risk assessors or certified lead-based paint inspectors. The final rule eliminates the dust testing requirement for pre-1950 housing that was in the proposed rule and the distinction between pre-1950 and post-1949 housing. In the interest of regulatory streamlining, a single set of requirements applies to all pre-1978 housing.

All occupants shall be provided the lead hazard information pamphlet by the owner, except that a pamphlet does not have to be provided if it has already been provided by the owner or other designated party pursuant to the disclosure rule. Also, the owner must provide a notice to occupants describing the results of the clearance examination. Finally, the final rule requires that ongoing maintenance of painted surfaces and safe work practices be incorporated into regular building operations, where appropriate under HUD-administered programs.

HUD estimates in the Economic Analysis for this rule that the average cost of the new requirements imposed by this subpart will be approximately $250 per unit in single family units and $100 per unit in multifamily units during the first year after the effective date. In subsequent years, costs will doubtless be less. Net benefits are clearly positive. For single family units, the estimated average net benefit (benefits minus costs) is $850 per unit using a discount rate of three percent for increased lifetime earnings and $125 per unit using a seven percent rate. For multifamily units, the comparable net benefits are $840 and $150. For further information on costs and benefits of the rule, see Section VI. of this preamble, below.

Another subject of public comment was the policy on responding to the existence of an environmental intervention blood lead level child in the home of a family receiving tenant-based rental assistance. Some commenters felt that the proposed policy of requiring a risk assessment and interim controls would reduce participation in the program by property owners. HUD believes that compliance with the basic policy of paint stabilization and unit clearance, combined with ongoing maintenance is so inexpensive and will so reduce the likelihood of environmental intervention blood lead level cases in these dwellings that landlords will not leave the program. To ensure that the designated party is aware of environmental intervention blood lead level cases in assisted families, the final rule clarifies the requirements of the proposed rule for exchanging information between public health departments and designated parties and matching environmental intervention blood lead level addresses with those of assisted families. (See further discussion in Section III.D.6 of this preamble, above.) Also, for purposes of clarity, the rule states that if a dwelling unit does not comply with the requirements of this rule, the unit does not meet Housing Quality Standards (HQS). If a family is occupying a unit that is out of compliance, the designated party may offer the family the right to move to another unit. If the family refuses to move, the designated party may curtail assistance.

14. *Subparts N–Q reserved.*

15. *Subpart R—Methods and Standards for Lead—Based Paint Hazard Evaluation and Reduction Activities.* This subpart replaces part 37 of the proposed rule. It is shorter than the proposed part 37 because it references methods and standards established by EPA-authorized State or tribal programs or by EPA itself for risk assessment, lead-based paint inspection and abatement. Revised, streamlined sections are provided on interim controls (including paint stabilization), occupant protection and worksite preparation, and ongoing lead-based paint maintenance and reevaluation (called ''monitoring'' in the proposed rule). New sections are provided on standard treatments and safe work practices, concepts recommended by the Task Force (see Section I.D.2 of this preamble, above).

a. *Standards.* Although HUD defers to a large extent to methods and standards set by States, Indian tribes or EPA for lead-based paint inspections, risk assessments, lead-hazard screens and abatements, the Department is requiring that Federal standards for lead-based paint, dust-lead hazards and soil-lead hazards be used when conducting evaluations and hazard reductions in housing covered by this final rule unless a State, tribal or local government requirement is more protective.

As explained above in Section III.D.4 of this preamble, above, the standard for deteriorated paint in the proposed rule contained de minimis areas that are not included in the final rule. The definition of lead-based paint, however, is the same. HUD is including interim standards for dust-lead hazards and soil-lead hazards pending effective EPA standards pursuant to TSCA section 403. The interim standard for soil-lead hazards, and the concentration for abating bare soil, are unchanged from the proposed rule; but the interim dust-lead standards have changed. The proposed dust-lead standard for risk assessments and reevaluations was 100 μg/sq.ft (micrograms per square foot) for interior floors (both hard and carpeted) and 500 μg/sq.ft for interior window sills; there was no proposed standard for window troughs (sometimes called window wells); the standards for clearance were the same as for risk assessments; and there was no standard for lead hazard screens, which were not recognized in the proposed rule. In the final rule, the interim dust-lead standard for risk assessments and reevaluations is 40 μg/sq.ft for interior floors (both hard and carpeted) and 250 μg/sq.ft for interior window sills. Risk assessments and reevaluations do not have a standard for window troughs. Standards for clearance and lead hazard screens are also provided. Exterior floors, such as unenclosed porches, and patios, do not have a standard; the floor standard applies to enclosed porches. A complete discussion of dust-lead standards is provided below in Section III.E.15.b of this preamble, ''Adequacy of Dust-Lead Standards.''

One commenter questioned the advisability of HUD specifying a dust standard in the proposed rule for carpets, arguing that there is no consensus about how to test for dust hazards in carpets or what level of lead is dangerous. HUD agrees with the commenter that research on this question is needed, and it initiated such studies in 1997. It is known, however, that carpeting can be a dust reservoir with significant amounts of lead (Battelle 1997). The Department believes that it would be wrong to do nothing to protect children in this situation. The

effect of failing to provide a standard for carpeted floors would mean that the children who happen to be living in homes that are covered by the rule and have wall-to-wall carpeting would remain unprotected from floor dust-lead hazards, and the children living with area rugs would be only partially protected. Preliminary data from the HUD Evaluation of the Lead-Based Paint Hazard Control Grant program indicate that about 25–30 percent of the bedrooms and living rooms in the study had carpeting, with the percentage much higher in certain areas.

HUD acknowledges that the proposed EPA rule implementing TSCA section 403 did not include a dust-lead standard for carpets because EPA felt that currently available data are insufficient for establishing a health-based standard and because it is not clear what hazard reduction methods are effective. EPA acknowledged that ''the lack of a standard for carpeted floors is a significant limitation'' and requested comment on the impact of not having a standard and on information that would be helpful in setting such a standard.

As explained below under ''Adequacy of Dust-Lead Standards,'' a study by the University of Rochester (Lanphear 1996) shows a significant correlation between dust lead in carpets and children's blood lead. Furthermore, HUD provides in subpart R of the rule a method for dust-lead hazard control in carpets or rugs. This method relies on thorough vacuuming and is based on the HUD Guidelines and on recent data from the Evaluation of the HUD Lead-Based Paint Hazard Control Grant program. The feasibility of removing dust lead from carpets to achieve the interim standard is discussed below in Section III.E.15.b. of this preamble. Therefore, HUD is including in the final rule an interim standard for dust lead in carpeting using a wipe sampling method, pending the issuance by EPA of a health-based standard pursuant to TSCA section 433.

The HUD interim standard for clearance in the final rule is the same as for risk assessments on floors and interior window sills, but a clearance standard of 800 μg/sq.ft is added for window troughs. The Department's intent in setting a clearance standard for window troughs is to encourage their cleaning. It is not unusual for window troughs to have very high loadings of lead in dust, perhaps because they are perceived as an exterior surface and are rarely cleaned, and perhaps because lead-based paint on window friction surfaces contributes to the dust lead loading in the trough. In the evaluation of HUD's Lead-Based Paint Hazard Control Grant Program, the median pre-intervention dust-lead loading on troughs for occupied dwelling units was over 11,500 μg/sq.ft, and 10 percent of the units had loadings over 100,000 μg/sq.ft. Comments were both for and against sampling troughs. A large city housing agency agreed with the policy on troughs in the proposed rule. A State agency disagreed, pointing out that, in the Rochester study of the relationship between dust lead and childhood blood lead, dust lead in troughs correlated well with blood lead.

In the final rule HUD has included an option to conduct a lead hazard screen, and, as in the HUD Guidelines, the dust-lead standard is set at approximately one-half the risk assessment standard: 25 μg/sq.ft. for floors and 125 μg/sq.ft. for interior window sills. The floor standard for the lead hazard screen was set at 25 μg/sq.ft. instead of 20, reflecting practical laboratory detection limits.

Several commenters addressed aspects of the proposed rule's treatment of soil-lead standards or soil treatments. EPA questioned HUD's interpretation of the soil-lead levels in EPA's guidance on lead in soil (60 FR 47248, September 11, 1995). In its guidance, EPA recommended that when lead levels in bare soil exceed 400 ppm at ''areas expected or intended to be used by children,'' interim controls be undertaken to change use patterns and/or create barriers between children and contaminated soil. ''Where bare soil-lead levels are found to be 2,000 ppm or more, interim controls should be implemented even if the area is not frequented by children.'' At 5,000 ppm or more, EPA recommended abatement of bare soil. In the proposed rule, HUD applied the 400 ppm standard to bare soil ''in play areas;'' the 2,000 ppm standard was applied to bare soil in ''other areas.'' EPA called this interpretation incorrect, indicating that permitting 2000 ppm levels anywhere near areas occupied by children ''may present an unreasonable risk.'' The Agency recommended that the 400 ppm standard apply to the entire yard. HUD believes that its interpretation of the guidance is reasonable and also that it reflects the guidance on this matter given in the HUD Guidelines, which is referenced in the EPA regulation. In the final rule, HUD has retained, therefore, the same interpretation as in the proposed rule. The standard for soil-lead hazards addresses bare soil in play areas frequented by children under 6 years of age. HUD intends that these play areas include those intended for these children's routine use, as demonstrated by such evidence as the presence of play equipment or similar attractions, collections of toys or other children's possessions, or observations of children's play patterns.

EPA questioned the basis for the proposed rule standard of no more than 200 μg/g for material used to cover soil-lead hazards. While conclusive scientific data on which to base the standard are not available, HUD believes that a standard is needed and that making it one-half of the level considered to be a soil-lead hazard in children's play areas is reasonable.

Throughout the rule, units of measurement are provided in metric forms as well as corresponding conventional unit values, in accordance with the Metric Conversion Act of 1975, as amended by Public Law 100–418, at 15 U.S.C. 205b; and Executive Order 12770, ''Metric Usage in Federal Government Programs'' (56 FR 35801, July 25, 1991). Persons covered by the rule should consistently apply the units they use routinely in their work. For example, lead-based paint professionals who use conventional units (such as feet) in their work should use the risk assessment standards of micrograms per square foot ($\mu g/ft^2$); professionals who use metric units (such as meters) in their work should use the fully metric standards of micrograms per square meter ($\mu g/m^2$).

HUD is aware of efforts by voluntary consensus standards bodies to develop private-sector standards in the lead-based paint hazard evaluation, management and control areas, and on related subjects. HUD has been supportive of, and participated in, some of these efforts. For example, over a dozen standards of the American Society for Testing and Materials (ASTM, West Conshohocken, PA 19428–2392) are cited in the HUD Guidelines. The Guidelines, in turn, are cited by subpart R itself and in the EPA rule on lead hazard control work practices (40 CFR 745.227(a)(3)), which is cited by subpart R. ASTM and other committees are continuing to develop standards in the lead-based paint hazard field (such as occupant notices with more detail). The Department will review these standards, when issued, for their applicability to and practicality for the programs covered by this rule.

b. *Adequacy of Dust-Lead Standards.* One commenter stated that the permissible levels of lead in dust referenced in the proposed rule would not be sufficiently protective of children and cited several recent scientific studies as evidence. Other commenters stated that HUD failed to require clearance testing in all programs to determine if housing units undergoing lead hazard reduction activities were

safe to reoccupy. The proposed rule contained standards for lead in dust of 100 μg/ft² on floors and 500 μg/ft² on window sills for both risk assessment and clearance purposes. The proposed rule eliminated an earlier standard of 800 μg/ft² for window troughs. In preparing the final rule, HUD considered the health benefits and feasibility of lead dust standards for both clearance and risk assessment purposes.

(1) *Health Benefits.* Clark and coworkers reported a study of 23 homes in Cincinnati where the floor dust-lead level required to prevent 95% of the children from exceeding a blood lead level of 10 μg/dL was found to be almost an order of magnitude lower than the existing standard of 100 μg/ft² (Clark 1996). In a study of 205 children in Rochester, NY, Lanphear et al. found that approximately 20% of children exposed to a floor dust-lead level of 40 μg/ft² had blood lead levels greater than 10 μg/dL (Lanphear 1996).

Earlier studies have demonstrated the importance of establishing adequate dust-lead standards. From data collected in 1990, Ashengrau reported an *increase* in blood lead level of 6.5 μg/dL (p=0.05) in children who had baseline blood lead levels below 20 μg/dL and whose houses were treated for lead-based paint hazards using a floor clearance standard of 200 μg/ft² (Ashengrau 1997). These houses were also treated mainly through extensive dry scraping, which under this rule is now a prohibited method of paint removal in federally-assisted or federally-owned housing.

In a study conducted between 1987 and 1990 where clearance testing may not have been conducted at all and where children had baseline blood lead levels less than 20 μg/dL, only 35% of the children had lower blood lead levels following hazard control work. The mean blood lead level *increased* significantly from 16.8 μg/dL to 19.3 μg/dL ($p<0.05$) (Swindell 1990).

These studies demonstrate that without clearance testing and without adequate dust-lead standards, children's blood lead levels may worsen as a result of lead-based paint hazard control work in housing. Therefore, HUD has provided for clearance testing when lead hazard control work is done in housing covered by this rule.

Although each of the studies cited above have limitations, it is clear that the weight of the scientific evidence suggests that children may not be adequately protected under the dust-lead standards in HUD's proposed rule. As a result of such studies, HUD has progressively lowered its dust-lead standard over the years. In 1990, HUD used a floor dust-lead standard of 200 μg/ft² in its Interim Guidelines, based primarily on a standard adopted by the State of Maryland and research conducted at Johns Hopkins University (Farfel 1990).

At that time, the Centers for Disease Control and Prevention (CDC) had established a blood lead level of concern of 25 μg/dL. In 1991, CDC adopted a new multi-tier blood lead level response system. That system indicated that blood lead levels of 10–14 μg/dL in many children in a community should trigger community-wide childhood lead poisoning prevention activities. A blood lead level of 15–19 μg/dL that persists in an individual child should result in an environmental investigation and intervention. Higher blood lead levels require more intensive medical evaluation and pharmacologic treatment. Because CDC lowered the blood lead level of concern, it is logical that dust-lead standards would also need to be reduced. Consequently, HUD reduced its floor dust-lead standard to 100 μg/ft² in its 1994 draft Guidelines, which was released in final form in 1995. EPA adopted the same guidance dust-lead level in 1994 and published it the next year (60 FR 47248, September 11, 1995).

Dust-lead standards in this rule will be used in risk assessments to determine whether hazard reduction should be conducted and in clearance examinations to determine whether dust in housing units, common areas and/or work sites has been properly cleaned and removed after hazard reduction activities. The goal of these activities is to protect children from exposure to lead at or above the CDC level of concern, 10 μg/dL. As explained below, HUD has considered both cost and feasibility in setting the interim standards.

To better understand the existing science, HUD conducted a study pooling the data from virtually all available epidemiological studies that examined the relationship between dust-lead and blood-lead levels, taking into account differences across the studies (Lanphear et al. 1998). After combining data sets from each study, a cohort of 1,861 children aged 6 to 36 months was created. This age group has been found to have the clearest relationship between dust lead and blood lead. The pooled analysis excluded children who had been individually selected for study on the basis of high blood lead, due to the bias this could introduce. Environmental lead measurements and other variables (season, presence of industrial sources of exposure, year of study, race, sex, socioeconomic status and measurement error) were standardized across all studies.

The pooled analysis of epidemiological studies estimated the expected prevalence rate of blood lead levels greater than or equal to 10 and 15 μg/dL in young children using a number of different candidate dust-lead standards and holding all other environmental variables and other covariates at their national averages. Table 1 shows the results of this analysis.

TABLE 1.—FLOOR DUST LEAD AND CHILDREN'S BLOOD LEAD LEVELS

Floor dust-lead loading (μg/ft²)	Percentage of children with blood lead levels greater than or Equal to 10 μg/dL (95% confidence intervals)	Percentage of children with blood lead levels greater than or equal to 15 μg/dL (95% confidence intervals)
1	1.0 (0.3–3.8)	0.1 (0.0–0.6)
5	4.4 (1.7–11.0)	0.7 (0.4–2.6)
10	7.4 (3.1–16.5)	1.4 (0.4–4.6)
20	12 (5–24)	2.7 (0.9–7.8)
25	14 (6–27)	3.2 (1–9)
40	18 (9–33)	4.7 (2–13)
70	24 (12–42)	7.2 (3–18)

TABLE 1.—FLOOR DUST LEAD AND CHILDREN'S BLOOD LEAD LEVELS—Continued

Floor dust-lead loading (μg/ft²)	Percentage of children with blood lead levels greater than or Equal to 10 μg/dL (95% confidence intervals)	Percentage of children with blood lead levels greater than or equal to 15 μg/dL (95% confidence intervals)
100	28 (14–48)	9.3 (4–23)

The pooled analysis indicates that, using the old standard (i.e., 100 μg/sq.ft. on floors), 28 percent of young children may have a blood lead level greater than or equal to 10 μg/dL, and nearly 10 percent may have a blood lead level equal to or greater than 15 μg/dL. Using a floor dust-lead standard of 40 μg/sq.ft., 18 percent of young children may have a blood level of 10 μg/dL or greater, and less than 5 percent will be a 15 μg/dL or greater. To achieve a prevalence of only 5 percent of young children with blood levels at 10 μg/dL or greater, the analysis indicates that dust-lead loadings on floors would have to be at 5 μg/sq.ft.

For reasons of feasibility, HUD is setting an interim dust-lead standard for floors of 40 μg/sq.ft. The feasibility issues are discussed in the following paragraphs. It is noteworthy that, based on Table 1, a standard of 40 μg/sq.ft. is expected to protect more than 95 percent of young children against exposure to lead in blood equal to or greater than 15 μg/dL, which is the level recommended by CDC at which environmental intervention should be conducted. This is also the environmental intervention blood lead level used in this rule, as explained above in Section III.D.6 of this preamble.

With regard to carpeted floors, Lanphear *et al.* found a significant correlation between dust lead in carpets (using wipe sampling) and children's blood lead levels (Lanphear 1996). Furthermore, the study showed that about 19.8 percent of children would have blood lead levels at or above 10 μg/dL with carpeted floors at 40 μg/sq.ft., a percentage that is not significantly different from the 18 percent found with hard-floor dust lead at 40 μg/sq.ft. Therefore HUD is setting an interim dust lead standard for carpeted floors that is the same as that for hard floors.

(2) *Feasibility.* There are two issues that affect the feasibility and cost of any given dust-lead standard: (1) The ability of cleaning techniques to meet a given level of cleanliness and the percentage of houses that can be expected to pass and maintain a given dust-lead standard; and (2) the ability to measure dust-lead levels in the range of interest using readily available analytical techniques (and the increased cost of using more sensitive detection methods if needed).

The largest study of residential lead hazard control conducted to date is HUD's on-going evaluation of its first 14 grantees under the Lead-Based Paint Hazard Control Grant program. These grantees are State and local governments receiving grants to address lead-based paint hazards in low-income, privately owned dwelling units. Almost 3,000 dwelling units are enrolled in this evaluation. Using modern hazard control techniques, this study provides important insights into the degree of cleanliness that is feasible using current measurement, cleaning and hazard reduction technologies. The final report will not be issued until after the year 2000 due to on-going evaluation of the dwellings and the children who live in them.

Interim results show that, on average, initial floor dust-lead levels are below 20 μg/ft² (National Center 1998). Furthermore, the data show that dust-lead levels on floors do not reaccumulate continuously, as assumed in the Economic Analysis for the proposed rule, which was prepared before these reaccumulation data were available. The new data show that median dust-lead levels on floors continue to drop for at least the first year following the hazard control work, from 19 μg/ft² to 14 μg/ft² twelve months later. The average dwelling unit undergoing lead hazard control had a median floor dust-lead level of 17 μg/ft² immediately following hazard control work. That level declined to 14 μg/ft² six months later and remained at the same level one year following the work. Therefore, it is feasible to reach and maintain a floor dust-lead standard of 40 μg/ft².

The pooled epidemiological analysis also shows that a floor dust-lead standard of 5 μg/ft² would be required to ensure that 95 percent of children do not have a blood lead level greater than or equal to 10 μg/dL. However, modern hazard reduction techniques do not appear to be capable of reaching a floor dust-lead level of 5 μg/ft² routinely, since the median level following hazard control work is three to four times greater (see also the discussion below about detection limits).

Importantly, many of the units treated under the HUD lead hazard control grant program are high-risk houses and often initially contain children with seriously elevated blood lead levels. In more typical dwelling units, it is likely that even lower dust-lead levels can be achieved. Indeed, HUD's 1990 National Survey of Lead-Based Paint Hazards in Private Housing found that the average dust-lead loading on floors (converted to wipe sampling) was estimated to be only 5 μg/ft². This survey did not include houses where lead hazard reduction had occurred.

The HUD Evaluation Study data show that 17.4 percent of these high risk houses have floor dust-lead levels above 100 μg/ft² (the existing standard). A dust-lead standard of 40 μg/ft² would increase the percentage of ''high risk'' houses above the standard to about 26 percent. This is fairly consistent with the blood lead levels found in this population, because 28.9% of the children enrolled had environmental intervention blood lead levels.

More typical houses that are served by other HUD programs are likely to have a far lower percentage failing the reduced dust-lead interim standard, because these programs do not target housing with lead-poisoned children. For example, data from HUD's National Survey show that the percentage of all U.S. housing exceeding a floor dust-lead level of 100 μg/ft² is 7.6 percent in ''dry'' rooms (i.e., rooms without plumbing fixtures). The percentage exceeding a floor dust-lead level of 40 μg/ft² is 10.2 percent in dry rooms. In short, the lower floor dust-lead interim standard of 40 μg/ft² will increase the percentage of houses requiring hazard control by a modest 2.6 percent.

With regard to carpeted floors, preliminary data from the HUD Evaluation indicate that only 15 percent of carpeted entry areas and 8 percent of

other carpeted rooms had dust-lead loadings equal to or greater than 40 μg/sq.ft. based on wipe sampling. The Evaluation data also indicate that grantees were able to reduce dust-lead loadings in carpets, but the data are limited by the fact that grantees were working with a clearance standard of 100 μg/sq.ft. instead of 40 μg/sq.ft.

(3) *Detection Limits.* Detection limits of dust wipe analysis also have an effect on the feasibility of lower dust-lead standards. A standard cannot be set at a level that cannot be measured reliably. Many analytical laboratories currently report method detection limits of 25 μg/wipe. For floors, this means a method detection limit of 25 μg/ft^2, since a one square foot area is typically sampled. A method detection limit at least 4 times lower than the regulatory standard is desirable to ensure reliable results.

For all laboratories in the HUD Evaluation Study, the average method detection limit is currently 11 μg/wipe. Therefore, HUD believes that laboratories will be able to report detection limits of 10 μg/wipe without having to resort to more sensitive and more expensive types of analytical procedures. In short, no increase in analytical cost is expected in order to achieve a detection limit of 10 μg/wipe, which is one-fourth the new floor dust-lead standard of 40 μg/ft^2. This will ensure that reliable measures of dust-lead loading can be made.

A floor dust-lead standard of 5 μg/ft^2 is well below method detection limits reported by most laboratories and is therefore not feasible to implement.

(4) *Window Dust Standards.* For interior window sills and window troughs, epidemiological data are less available than for floors, because only a few studies have collected samples from these areas. For interior window sills, the final rule establishes a dust-lead standard of 250 μg/ft^2, which is based on a study in Rochester, NY (Lanphear 1996). This standard also should protect virtually all children from developing an environmental intervention blood lead level. In the high risk houses enrolled in the HUD Evaluation Study, 47.5 percent of the units had baseline window sill dust lead levels below 250 μg/ft^2, which is close to the percentage of children who had blood lead levels below 10 μg/dL in the evaluation (54.3 percent). At clearance following lead hazard control work, the median dust-lead level on window sills was 44 μg/ft^2 at the time of clearance, 83 μg/ft^2 six months later, and 88 μg/ft^2 12 months later. For more typical houses, the HUD National Survey found that the percentage of interior window sills failing a new dust-lead standard of 250 μg/ft^2 would increase by a modest 5.4 percent (compared to the current standard of 500 μg/ft^2).

In short, the window sill standard is both feasible and health-based. It is feasible because dust-lead levels at the new interim standard can be reached and maintained and because the increase in the percentage of houses failing the new standard is small. It is health-based because the percentage of houses failing the standard is about the same as the percentage of children with blood lead levels greater than 10 μg/dL in the HUD Evaluation Study.

In the proposed rule, HUD did not include the window trough standard of 800 μg/ft^2 it had established in the HUD Guidelines and the 1990 Interim Guidelines. However, several commenters indicated that a window trough standard should be retained for clearance purposes, as a way of ensuring that window troughs are cleaned and/or treated during hazard reduction work. The HUD Evaluation Study shows that median dust-lead levels in window troughs immediately following hazard reduction work is 72 μg/ft^2, indicating that it is feasible to implement a window trough clearance standard of 800 μg/ft^2.

On the other hand, development of a feasible window trough risk assessment standard is more problematic, because nearly all pre-1978 dwellings have very high window trough dust-lead levels. For example, data from HUD's Evaluation Study indicate that the median window trough dust-lead level for occupied dwelling units prior to hazard control work is more than 11,500 μg/ft^2. Because HUD believes it is important to have a reliable way to determine whether or not window troughs were cleaned during hazard reduction work, and because window trough lead dust does appear to contribute to children's exposure, HUD has reestablished a window trough clearance standard of 800 μg/ft^2 in the final rule. Because most dwelling units have window trough levels above 800 μg/ft^2, HUD believes it is not feasible to establish a window trough dust-lead standard for risk assessment and reevaluation purposes at this time. Therefore, the window trough dust standard of 800 μg/ft^2 is used for clearance purposes only. To meet this clearance requirement, window troughs should be cleaned as a routine part of all lead hazard control work.

(5) *Lead Hazard Screen Standards.* The lead hazard screen levels for floor and interior window sill dust lead in this rule are 25 μg/ft^2 and 125 μg/ft^2, respectively. These are about half of the standards used for risk assessment purposes. This ensures that the screen will be sufficiently sensitive to uncover those houses that should have a full risk assessment.

Lead hazard screens are a form of risk assessment applied to housing in good condition where lead-based paint hazards are unlikely to be present. The protocol for a lead hazard screen referenced in the HUD Guidelines involves (among other things) collection of two composite dust samples: one from floors and a second from window troughs. Each composite sample consists of 4 individual samples collected from a like surface. If a level found in the screen is more than one half of the applicable risk assessment dust-lead standard, then a full risk assessment is to be conducted to determine if lead-based paint hazards are actually present.

In this final regulation, HUD has modified slightly the lead hazard screen protocol of the HUD Guidelines regarding dust. In the final rule, interior window sills are sampled instead of window troughs for three reasons: (1) Interior window sills are easier to wipe-sample than troughs; (2) dust-lead loadings on troughs may reflect exterior sources not related to the residential structure itself; and (3) dust-wipe loadings on sills and troughs are highly correlated (the correlation coefficient of the logarithms of the loadings is 0.60, which is higher than that for any other pairs of paint- or dust-lead measurements (Lanphear 1995)). EPA made a similar judgment in deciding not to propose a window trough dust-lead hazard standard in the proposed regulations pursuant to TSCA section 403 (63 FR 30335–6, June 3, 1998). Future research or technological advances may result in different recommendations, which the Department will review.

Similarly, HUD is noting that single-wipe samples may be used instead of composite samples as part of the lead hazard screen. When two or more single-wipe samples are used for a single building component type (such as two or more interior widow sills), the dust loadings for that component type are averaged to give the equivalent composite sample result. Users may wish to take single-wipe samples, rather than composite samples, as part of lead hazard screens for several reasons: the cost of laboratory analyses is low enough for many users that they may perceive little economic benefit to analyzing composite samples instead of single-wipe samples, and the EPA's National Lead Laboratory Accreditation Program (NLLAP) does not, at the time of issuance of this rule, have a formal

quality assurance program for composite dust samples. EPA is working on this latter issue, and will advise NLLAP participants and others if and when such a program becomes available. Potential users of composite dust wipe analyses may contact the National Lead Information Center Clearinghouse toll-free at 1–800–424–LEAD for information on this subject.

If less than 125 μg/ft² (half of 250 μg/ft²) of lead dust is detected on the composite interior window sill sample, and the composite floor sample shows that less than 25 μg/ft² is present, the screen shows that lead-based paint hazards are not present. In this case, a full risk assessment is not needed. Conversely, if a lead hazard screen shows that dust-lead is present at a level equal to or greater than 125 μg/ft² on interior window sills or equal to or greater than 25 μg/ft² on floors, a lead-based paint hazard may be present and a full risk assessment should be conducted to confirm or reject the results of the screen.

HUD has also modified slightly the lead hazard screen protocol of the HUD Guidelines regarding soil. In the final rule, soil is to be sampled and analyzed, and the analyses evaluated, using the same protocol as for a risk assessment. With analytical costs having dropped since the publication of the HUD Guidelines, the cost of performing soil analyses as part of lead hazard screens for single family housing in good condition undergoing rehabilitation above $5,000 per unit (the cases where the lead hazard screens are likely to be used) has become insignificant; the additional time associated with the samples, for lead professionals already at the site, is also insignificant.

To summarize, the final rule establishes the dust-lead standards in Table 2. The dust-lead standards in this rule are interim standards until EPA promulgates and makes effective dust-lead hazard standards under TSCA section 403. When the TSCA 403 rule is effective, HUD will issue any technical amendments that are needed to make clear what standards are applicable to this rule at that time.

TABLE 2.—INTERIM DUST-LEAD STANDARDS

Evaluation method	Surface		
	Floors (μg/ft²)	Interior Window Sills (μg/ft²)	Window troughs (μg/ft²)
Risk Assessment Screen	25	125	Not Applicable.
Risk Assessment	40	250	Not Applicable.
Reevaluation	40	250	Not Applicable.
Clearance	40	250	800.

Note: ''Floors'' includes carpeted and uncarpeted interior floors.

c. *Summary Notice Formats.* Subparts D, and F through M of the final rule require that occupants be notified of the results of evaluations and hazard reduction activities (including clearance examinations). Also, if lead-based paint or lead-based paint hazards are presumed to exist, notification must be made. The major elements of these notices are described in Subpart B.

Subpart B places responsibility for any required occupant notification on the designated party. HUD recognizes that many designated parties may not have the expertise from staff or consultants to extract the pertinent information from the inspection, risk assessment or clearance reports to prepare the notices. As a result, the Department, in subpart R, makes a strong recommendation that the lead-based paint professional who prepares such a report provide the designated party with the summary notice of the results suitable for posting or distribution to occupants.

Sample (i.e., non-mandatory) notice formats that can be used are provided in Appendix A for a lead-based paint inspection, Appendix B for a risk assessment, Appendix C for presumption of the presence of lead-based paint or lead-based paint hazards, and Appendix D for completion of hazard reduction activities (including clearance). These formats include the information described in Subpart B and are based on: (1) The sample formats developed by HUD and EPA for the disclosure rule (see 61 FR 9074–5, March 6, 1998, in the preamble to the final rules implementing section 1018 of Title X, 24 CFR 35.80–98 and 40 CFR 745.100–119); and (2) formats developed by the California Department of Health Services (Emeryville, CA 94608–1939) for notices of abatement of lead hazards (DHS form 8551) and lead hazard evaluation (DHS form 8552).

Requirements for reports of evaluation or abatement clearance used to develop the corresponding notices to occupants are found in EPA's TSCA section 402/404 rule (40 CFR 745.227) and are cited by subpart R. Requirements for reports on hazard reduction activities other than abatement are in subpart R itself. Guidance on preparing these reports is found in the HUD Guidelines, chapters 5 (risk assessment), 7 (inspection), and 15 (clearance). There are currently no detailed standards for preparing these reports, and HUD-funded research on lead-based paint inspection reports has found considerable variability in them, in both format and measures of completeness and accuracy (HUD 1998). ASTM committee work developing detailed voluntary consensus standard protocols for report preparation is beginning; HUD will evaluate any standards, when issued, for their applicability to, and practicality for, the programs covered by this rule.

d. *Interim Controls.* The section on interim controls in the final rule is similar to that of the proposed rule. As mentioned above in Section III.D.8 of this preamble, the proposed rule required that workers performing interim controls be supervised by a certified abatement supervisor, and this was met with criticism by several commenters. In response to these comments, in the final rule HUD is following the Task Force recommendation that such workers be trained in the basic requirements of safe lead-based paint hazard reduction, and several choices of acceptable training courses are mentioned. All such training is designed to meet OSHA requirements; several choices meet EPA requirements as well.

Another significant modification of the proposed-rule section on interim controls is the addition of explicit factors that must be present for interim controls to be required under this rule for friction, impact and chewable surfaces. HUD developed these factors in response to comments that greater specificity is needed to prevent unnecessary, ineffective and wasteful hazard reduction actions. Friction

surfaces are required to be treated only if: (1) Dust-lead levels on the nearest horizontal surface (i.e., the surface on which the dust settles that is nearest to the friction surface) are greater than the risk assessment dust-lead standards; (2) there is evidence that the surface is subject to abrasion; and (3) lead-based paint is known or presumed to be present on the surface. Impact surfaces are required to be treated only if: (1) Paint on the surface is damaged; (2) the damaged paint is caused by impact from a related building component (such as a door knob that knocks into a wall, or a door that knocks against its door frame); and (3) lead-based paint is known or presumed to be present on the surface. HUD intends that impact as a result of misuse by occupants is not necessarily an acceptable basis for requiring treatment. Chewable surfaces are required to be treated only if: (1) There is evidence that a child of less than 6 years of age has chewed on the surface; and (2) lead-based paint is known or presumed to be present on the surface.

As in the proposed rule, interim control methods, when required, must be selected from among those identified as acceptable in a current risk assessment report. (As noted in subpart B, abatement is also acceptable when interim controls are required.) When interim controls are required and no risk assessment has been done or no risk assessment that has been done is current, a new risk assessment must be conducted (except when only paint stabilization of deteriorated paint is required, because the response has been specified in the rule). Techniques for repairing physical defects in a substrate before performing paint stabilization are discussed in the HUD Guidelines, chapter 11.

The proposed rule required a minimum two-stage cleaning process for the control of dust-lead hazards on hard surfaces: first HEPA vacuuming, then wet cleaning. Also, HEPA vacuuming was required for surfaces covered by carpeting or rugs. One commenter noted that recent research has indicated that a variety of cleaning methods may achieve clearance levels, and that one of the critical variables affecting the difficulty of cleaning is the condition of the surface. To avoid rigidity, HUD has modified the dust-lead hazard control requirements in the interim controls section of subpart R of the final rule in three ways. First, the two-stage process is no longer required; second, if hard surfaces are rough and pitted, they must be made smooth and cleanable; and third, rather than requiring HEPA vacuuming, HUD is requiring the use of a ''HEPA vacuum or other method of equivalent efficacy.'' One of the main reasons for revision of required cleaning methods is that the final rule requires clearance after all hazard reduction activities, whereas the proposed rule omitted the clearance requirement for some housing programs. In the context of this rule, the goal of cleaning should be to achieve clearance, not to comply with prescriptive regulations on how to clean. Making surfaces smooth and cleanable is an important objective, because it makes it possible for occupants to maintain their dwellings safe from dust-lead hazards in the future. Revision of the HEPA filter requirement will facilitate the application of advances in technology resulting from ongoing research on cleaning lead-contaminated surfaces. Information on the status of this field of technology is provided in Section III.E.2.a of this preamble, in the discussion of HEPA vacuums.

A commenter recommended that clearance not be required after ''basic interim controls,'' because many interim controls are like routine maintenance activities that will be performed frequently by in-house staff. In the final rule, the Department has retained the clearance requirement for initial interim controls, because clearance is the only method of determining whether a dwelling unit is free of lead-based paint hazards. HUD, however, is not requiring clearance after ongoing lead-based paint maintenance activities that are conducted after interim controls and that do not disturb painted surfaces of a total area greater than 20 square feet on exterior surfaces, 2 square feet in any one interior room or space, or 10 percent of the total surface area on an interior or exterior component with a small surface area such as window sills, baseboards and other trim.

e. *Standard Treatments.* As explained above in Section III.E.2.c of this preamble, standard treatments, when used, must include: (1) Stabilization of all deteriorated paint, interior and exterior; (2) the provision of smooth and cleanable horizontal hard surfaces; (3) the correction of dust-generating conditions (i.e., conditions causing rubbing, binding, or crushing of surfaces known or presumed to be coated with lead-based paint); and (4) treatment of bare soil to control known or presumed soil-lead hazards. Safe work practices and clearance are required. Individuals performing standard treatments must be trained in how to control lead-based paint hazards. The training requirement is identical to that for interim controls.

f. *Clearance.* Methods and standards for clearance in this rule refer to the EPA requirements for clearance after abatement at 40 CFR 745.227(e) but also specify the dust-lead loading levels to be used for clearance. To pass clearance, dust-lead levels, using wipe sampling, must be less than 40 μg/ft^2 for interior floors, 250 μg/ft^2 for interior window sills, and 800 μg/ft^2 for window troughs. The rule also specifies the content of clearance reports that must be prepared for clearances after hazard reduction activities other than abatement. For clearance of the worksite only, which is required in subpart J after rehabilitation receiving no more than $5,000 per unit and also in some ongoing maintenance activities, dust samples must be taken from the floor and windows (if available) that represent the area within the dust containment area of the worksite. Worksite clearance is not required if the rehabilitation or maintenance does not disturb painted surfaces totaling more than the safe work practices de minimis levels (see Section III.D.4 of this preamble, above). For a discussion of qualification requirements for persons performing clearance, see Section III.D.8 of this preamble, above.

While subpart R allows recleaning immediately after a clearance failure, owners, designated parties and contractors are urged to consider the cause of the failure, and to address the cause, if identified, before recleaning the affected area.

A commenter recommended that property owners (or other designated parties) be allowed to retain a certified inspector or risk assessor to perform the clearance examinations. In the final rule, HUD has allowed this, provided the clearance examiner is independent from any contractor used to perform the hazard reduction work. The property owners (or other designated parties) may, however, use in-house employees for both hazard reduction and clearance examination, provided that the same employee does not do hazard reduction and clearance.

After clearance, a report is to be prepared that documents the hazard reduction or maintenance activity as well as the results of the clearance examination. It is the responsibility of the designated party to ensure that this report is prepared, signed, and kept for at least three years. For an abatement activity, the report is an abatement report as described in EPA regulations at 40 CFR 745.227(e)(10). The abatement report includes the results of the clearance examination as well as a detailed written description of the abatement, and its preparation is the responsibility of the abatement supervisor. For another hazard reduction activity requiring a clearance

report (including interim controls, paint stabilization, standard treatments, lead-based paint maintenance, or rehabilitation), the EPA rule does not apply; so the final rule provides an outline of the required report that parallels the EPA abatement report outline. However, the designated party must make sure: (1) That a report describing the hazard reduction activity is prepared; and (2) that the clearance examiner provides a signed clearance report with the information required by the rule.

Designated parties should also bear in mind that HUD has requirements in subparts D, and F through M for occupant notification following hazard reduction activities. The major elements of this notice are described in Subpart B. A sample (i.e., non-mandatory) format that can be used for notification of the completion of hazard reduction activities, including clearance, is provided in Appendix D (see discussion, above, in Section III.E.15.c of this preamble).

g. *Occupant Protection and Worksite Preparation.* Requirements for occupant protection and worksite preparation in this final rule are similar to those in the proposed rule, which were based largely on the HUD Guidelines.

Many hazard reduction activities can be completed in one work shift. As a result, the Department has streamlined the requirements for occupant relocation for work that will be completed within one period of 8 daytime hours. For work lasting longer, the rule provides for either occupant relocation or, for work lasting up to five days, occupancy of parts of the dwelling unit outside the worksite. The five-day de minimis criterion is used in chapter 8 of the HUD Guidelines; the regulation closely parallels, but streamlines the guidance in tables 8.1, 8.2, and 8.3 of the Guidelines.

At rooms where hazard reduction activities are conducted when occupants are present; or buildings from which occupants have been relocated, a warning sign shall be posted at each entry. For exterior hazard reduction activities, the sign placement is based on the HUD Guidelines, chapter 8, but the rule is somewhat more flexible, in that the position of the sign for exterior work is not specified beyond the performance requirement of its being easily read at 20 feet (6 meters) from the edge of the worksite. The wording of the sign is that of the four-line warning sign in the OSHA lead in construction standard (29 CFR 1926.62(m)), ''WARNING / LEAD WORK AREA / POISON / NO SMOKING OR EATING.'' The OSHA wording is used by HUD for interagency regulatory consistency. Based on the approach used in subpart B for occupant notification, the warning sign is to be provided in the occupants' primary language or in the language of the occupants' lease or contract.

h. *Safe Work Practices.* A section on safe work practices has been added to this final rule to specify the practices to be observed during paint stabilization, ongoing lead-based paint maintenance, and rehabilitation receiving no more than $5,000 per unit in Federal rehabilitation assistance. Safe work practices include occupant protection and worksite preparation, specialized cleanup, and the prohibition of certain methods of paint removal (see Section III.E.2.g of this preamble, above). Safe work practices are not required if the total area of paint surfaces being disturbed is no more than the de minimis exemption levels of 20 square feet on exterior surfaces, or 2 square feet in any one interior room or space, or 10 percent of the total surface area on an interior or exterior component with a small surface area (such as window sills, baseboards, and other trim).

i. *Ongoing Lead-Based Paint Maintenance and Reevaluation.* The proposed monitoring of housing after interim controls was the subject of several comments. Commenters expressed doubts about the efficacy of the proposed monitoring requirements, regarded them as expensive to maintain and enforce, and questioned the ability of designated parties to assure, into the future, that monitoring responsibilities assigned to owners would be carried out. Monitoring, as proposed, consisted of a visual survey by the owner at least annually, repair of any deteriorated paint, and a professional reevaluation by a risk assessor for the presence of lead-based paint on a schedule based on the hazards found and the action taken.

In the final rule, the monitoring requirement has been changed in several ways. The term, ''monitoring,'' is no longer used in the rule; the visual assessment by the owner is now part of the ongoing maintenance requirement, which has been patterned after the ''essential maintenance practices'' recommended by the Task Force; and the reevaluation schedule has been simplified so that all reevaluations are on the same schedule. The new schedule calls for reevaluation at intervals of two years, plus or minus 60 days. If two consecutive reevaluations at two-year intervals find no lead-based paint hazards, no further reevaluation is required. Similarly, if the initial risk assessment found no lead-based paint hazards, no reevaluation is required.

Ongoing lead-based paint maintenance is required in specified situations in subparts F through M. This can involve such activities as visual assessment, stabilizing deteriorated paint, standard treatments, interim controls, repair of failed lead-based paint hazard controls, and notifications of evaluation and hazard reduction activities. (Sample formats and language requirements for notices are discussed above in Sections III.E.15.c and g of this preamble, respectively.)

Reevaluation is required for housing receiving project-based assistance greater than $5,000 per unit per year and for public housing. The strategy for selecting portions of residential properties to reevaluate considers two factors: How many dwelling units and common areas are present, and at how many worksites hazard reduction activities were performed previously. The selection and reevaluation procedures for dwelling units and common areas are the same as for risk assessment, as provided in subpart R, and as detailed in the HUD Guidelines, chapter 5. Similar dwelling units are grouped, and the number to be reevaluated in each such group is determined from tables in the Guidelines.

For a targeted sample of units with the highest likelihood for finding lead-based paint hazards, there is a table in chapter 5; for a random sample of units, chapter 5 refers users to a table in chapter 7. Separately, the number of worksites of previous hazard reduction activities to be reevaluated is determined using the same procedure as for selecting the number of units. Specifically, worksites are grouped on the basis of similarities of their original lead-based paint hazards (e.g., similarities in the type of location, original condition and, as applicable, building component type, of the lead-based paint hazards), and types of hazard reduction activities performed on them. The number of such similar worksites to be reevaluated is determined using the tables in chapters 5 or 7, and worksites are selected. Reevaluations are not to be duplicated in locations selected by both processes (that is, selecting units and common areas, and selecting worksites).

When a risk assessor performing a reevaluation finds deteriorated paint or deteriorated or failed interim controls, encapsulations or enclosures, the designated party shall respond, selecting from among the acceptable options for controlling the hazard identified in the risk assessor's report of the reevaluation. When the risk assessor reports newly-identified lead-based

paint hazards, the designated party shall treat each dust-lead hazard by cleaning or hazard reduction measures, and each soil-lead hazard by hazard reduction measures.

IV. Deletions of Current Regulations

Most of the regulatory changes in parts of title 24 other than part 35 consist, as noted in Section III.A.7 of this preamble, above, of replacing explicit descriptions of lead-based paint requirements with references to part 35. Retaining mention of lead-based paint in each HUD program's part of title 24 maintains the visibility of the lead-based paint requirements, and promotes compliance with requirements under Title X and the Lead-Based Paint Poisoning Prevention Act. Consolidating references in affected program parts will help program managers, property owners and other users recognize that they can apply the same procedures to the same situations, even if they arise under different HUD programs. The consolidation also shortens these other parts of title 24.

To aid users, the relevant program-oriented subpart of part 35 is identified in the other parts of title 24, as is subpart A, the Disclosure Rule. Each program-oriented subpart in part 35 describes and cites applicable requirements elsewhere in that part.

References to Title X are added to the existing references to the Lead-Based Poisoning Prevention Act, as bases for the regulations in part 35. The terminology of Title X regarding evaluation and hazard reduction replaces previous wording regarding inspection and abatement, respectively, which were used in accordance with the earlier LPPPA.

For public housing, the regulations on liability insurance coverage found at § 965.215 fit better in their original location than they would in part 35, and their substantive text remains in place. The section has been modified, as described above for other sections, to reflect Title X terminology and requirements.

V. Additional Public Comment

As noted earlier in this preamble, the rule will not take effect for a period of one year. If in the review of this rule, there are questions, concerns or other comments, HUD welcomes these questions, concerns and comments. It is HUD's intention that the rule achieve the objectives of the statute in the least burdensome manner. If there are any serious inconsistencies or deficiencies in the rule, HUD will make every effort to correct these before the rule takes effect. Comments should be submitted to the Office of Lead Hazard Control, Department of Housing and Urban Development, 451 Seventh Street, SW, Room P–3206, Washington, DC 20410–0500.

VI. Regulatory Assessment

A. Economic Analysis

An Economic Analysis (EA) has been prepared that examines the costs and benefits of this final rule. This document fulfills the requirements of Executive Order 12866, which requires HUD to prepare an EA for all significant rulemakings. A discussion of public comments on the EA of the proposed rule is provided below in Section VI.A.6 of this preamble.

1. *Summary and Methodology of Cost-Benefit Analysis.* HUD estimates the costs associated with this rule to be $253.2 million for the first year, and the benefits to be $1,143.3 million using a three percent discount rate for increased lifetime earnings and $324.2 million using a seven percent discount rate (see discussion of discount rates below). The analysis in the EA reflects costs and benefits associated with the first year of hazard evaluation and reduction activities in housing units affected under the final rule. The estimated annual number of HUD-assisted and HUD-owned units affected reflect an annual flow of units under HUD programs (e.g., insurance and rehabilitation programs), except in the case of project-based assistance and public housing, for which the affected units are divided by the number of years allowed under the final rule for completion of required activities. The costs and benefits for each year's activities include the present value of future costs and benefits associated with first year hazard reduction activities. For example, the costs associated with first year activities include the present value of future reevaluation costs. Similarly, the benefits of first year activities include the present value of lifetime earnings benefits for children living in or visiting the affected unit during the first year, and for children living in or visiting that unit during the second and subsequent years after hazard reduction activities.

After the first year, the number of units for which initial hazard evaluation and reduction must be done will decline significantly because some large housing assistance programs, such as public housing and project-based assistance, have a relatively stable stock and do not experience a large annual inflow of new units. In these programs, owners will need only to engage in ongoing maintenance and reevaluation after initial hazard evaluation and reduction is completed. There is a two-year phase-in of requirements in the public housing program and a four-year phase-in for housing with project-based assistance of more than $5,000 per unit per year. HUD estimates that the total number of dwelling units newly covered by the rule will be approximately 1,289,000 in the first year, 513,000 in the second year, 341,000 in years three and four, and 314,000 per year after the fourth year. The estimated present value of costs associated with the first five years of the rule is $564.2 million. Using a seven percent discount rate for increased lifetime earnings, HUD estimates the present value of total benefits associated with the first five years to be $715.6 million, with net benefits for the same period at $151.4 million. Using a three percent discount rate, total benefits over five years are $2.65 billion, and net benefits are $2.08 billion.

The primary monetized benefit of childhood lead poisoning prevention is increased lifetime earnings associated with the higher cognitive abilities of persons not lead poisoned as children. The present value of lifetime earnings benefits is particularly sensitive to discount rate assumptions in the analysis, because these benefits reflect lifetime earnings many decades into the future. The EA presents estimated benefits using two different discount rates for lifetime earnings—three percent and seven percent. For all other benefit and cost estimates, the EA uses only a seven percent rate. The analysis assumes that preventing a one μg/dL increase in a one-year old child's blood lead level saves $2,367 in lifetime earnings discounted at three percent, and $544 at seven percent.

While the Office of Management and Budget (OMB) specifies seven percent as the appropriate discount rate for most regulatory analyses, a special social rate of time preference is appropriate when conducting intergenerational analysis. HUD believes that an intergenerational discount rate is applicable to the final rule because the costs will be borne by adult taxpayers, and lifetime earnings benefits will be realized by the children and grandchildren of these adult taxpayers. The analysis of this issue by the Environmental Protection Agency, in the 1996 EA for the regulations implementing sections 402(a) and 404 of the Toxic Substances Control Act, concluded that a three percent discount rate best reflects the social rate of time preference for annualized, non-capital costs and benefits.

An intermediate approach, not quantified in the EA, could have used

a real discount rate based on the long-term borrowing costs of the Federal government. The seven percent rate used in most regulatory analyses is intended to reflect OMB's estimate of the opportunity cost of capital, based on the average real rates of return on private investments. This rate is appropriate for most regulatory analyses because most regulations impose costs on the private sector. The final rule, however, imposes costs on federally assisted housing. Most of these costs will be funded directly or indirectly by Federal expenditures. If these expenditures increase the national debt, then the real cost of that debt to future generations will compound at the real long-term Federal rate. The Internal Revenue Service's Applicable Federal Rate (AFR) measures the nominal cost of government borrowing over obligations with different maturities. The long-term AFR adjusted for the implicit price deflator results in real AFRs of approximately four to five percent over recent years. Therefore, benefits could be discounted at this real AFR rate (i.e., 4 to 5 percent).

By presenting results using both three and seven percent, HUD is providing the broadest view of costs and benefits. Additional information on the methodology and results of the cost-benefit analysis is provided below.

The methodology used in this analysis to estimate annual costs and benefits for the final rule is based on the following simple formulas:

Regulatory Costs = (dwelling unit cost) × (unit cost frequency) × (number of affected units); and

Regulatory Benefits = (dwelling unit benefit) × (unit benefit frequency) × (number of affected units).

The unit cost estimates reflect the average costs associated with specific hazard evaluation and reduction activities in a single housing unit.

The unit benefit estimates are the benefits achieved by conducting hazard reduction activities in a single housing unit. Unit cost frequencies reflect the extent of required hazard evaluation activities under the final rule, and the occurrence frequencies of different lead-based paint hazards that trigger hazard reduction requirements. Unit benefit frequencies are also determined by the occurrence frequencies of lead-based paint hazards, because benefits are realized by hazard reduction activities. Frequencies are estimated by three periods of construction: Pre-1940, 1940–1959, and 1960–1977. The affected units, for regulatory costs and benefits, are federally assisted and federally owned units affected by the final rule.

2. *Regulatory Costs.* The cost estimates used in the EA reflect the estimated average cost per unit for LBP hazard evaluation and reduction activities in single and multifamily units affected by the final rule. In the case of rehabilitation programs, the regulatory cost estimates for paint stabilization and LBP hazard abatement activities reflect only the incremental costs of the final rule. For example, the unit cost of stabilizing paint that would not otherwise have been repaired is significantly greater than the incremental cost of safe work practices and cleanup to reduce lead-based paint hazards in the course of scheduled repainting. The full cost of lead-based paint hazard abatement includes a variety of activities that are also associated with housing rehabilitation activities. Therefore, housing rehabilitation programs affected by the final rule incur only incremental costs for paint stabilization and abatement.

Under non-rehabilitation programs, the full costs of paint stabilization are recognized as regulatory costs, but these costs are substantially offset by the market value of housing-related benefits for paint stabilization. The EA assumes that the full market value of paint stabilization is realized whenever paint stabilization is required under the final rule. Therefore, the incremental costs of paint stabilization (e.g., safe work practices) are the only costs of these activities that are not offset by market value benefits.

Although the final rule only requires hazard abatement in rehabilitation units receiving more than $25,000 of Federal assistance, the EA anticipates that some units subject to interim control requirements will find it economical to treat friction impact surfaces in part by replacing old windows with new energy efficient (low-e) windows. In such cases, the EA recognizes the market value of new windows based on the present value of estimated fuel savings (discounted at seven percent). It is possible, however, that the market value estimates for painting and window replacement may overstate the market benefits of the final rule. For example, the market value of paint stabilization required for HUD-owned housing may not be fully recovered when these repainted units are sold by HUD. Therefore, the cost-benefit analysis for non-rehabilitation programs explicitly separates the estimated market value benefits of the final rule from the monetized health benefits of LBP hazard reduction to facilitate recalculations of net benefits under alternative market value assumptions. The EA details the basis for unit cost estimates and associated market values and explains the available data on occurrence frequencies and the number of housing units affected by the final rule.

3. *Monetized Benefits.* Although many benefits of lead-based paint hazard reduction cannot be quantified or monetized, the EA does provide monetized estimates of the benefits of preventing children from developing elevated blood lead levels (EBLs). Such benefits include avoiding the costs of special education and medical treatment for EBL children, as well as increasing lifetime earnings associated with higher IQs for children with lower blood lead levels. The monetized benefit of increased lifetime earnings due to lower blood lead levels accounts for 99 percent of all monetized health benefits of the rule.

The benefits quantified in this analysis reflect the benefits of preventing EBLs in children rather than the benefits of lowering the blood lead levels of children already affected by lead poisoning. As shown in the analysis, the benefits associated with avoiding childhood lead poisoning substantially exceed the benefits of reducing hazards for children already affected by lead poisoning. The EA details the basis for the health benefit estimates.

4. *Monetized Net Benefits.* The analysis of net benefits in the EA reflects costs and benefits associated with the first year of hazard evaluation and reduction activities under the final rule. These costs and benefits, however, include the present value of future costs and benefits associated with first year hazard reduction activities.

Tables 3a and 3b present net benefits or costs by housing program at three percent and seven percent discount rates respectively for increased lifetime earnings. All programs have a net benefit at three percent. The following programs have a net cost at seven percent: HUD-owned single family and multifamily housing, housing with project-based assistance, single family housing receiving rehabilitation assistance of more than $5,000 per unit, and housing receiving assistance for acquisition, leasing, support services or operation. The specificity of statutory requirements limits the Department's ability to devise policies with net benefits for these programs at a seven percent discount rate.

Table 3c presents a summary of the costs, benefits, and net benefits of the first year activities under the final rule, using a three percent and seven percent discount rate for lifetime earnings. The total cost of first year hazard evaluation and reduction activities is $253.2

million. The total benefit of first year activities is $1.14 billion using a three percent discount rate, and $324 million using a seven percent discount rate. Net benefits of first year activities are therefore either $890 million or $71 million, depending on the discount rate used. The EA details the costs and benefits of the final rule by subpart of the rule and by period of construction.

The individual rows of Table 3c detail the components of hazard evaluation and reduction costs and monetized hazard reduction benefits. Although the components of hazard reduction costs and monetized benefits are often identified by the same brief descriptors (e.g., paint stabilization, soil cover, dust cleanup) the cost components are not directly comparable to the benefit components. For example, dust-cleanup costs reflect only the costs of cleanup. Cleanup benefits, however, reflect the assumption that low dust-lead levels have a benefit duration of five years with paint stabilization and ten years with lead-based paint hazard abatement.

The duration of dust removal benefits reflects the anticipated benefits over five or ten years to a new population of young children, associated with births and unit turnover. This estimated duration of benefits could not be realized without the hazard reduction activities of paint stabilization or abatement, friction/impact work, and soil cover, to the extent required by the rule. The monetized benefits in the table for paint stabilization and abatement reflect only the health benefits of avoided paint chip ingestion. The cost of paint stabilization includes the incremental cost for rehabilitation programs, and the full cost for non-rehab programs. Paint stabilization market value benefits reflect the estimated market value for non-rehabilitation programs. Subtracting paint stabilization market value benefits from paint stabilization costs yields the incremental cost of all paint stabilization required under the rule.

TABLE 3a.—NET BENEFIT (COST) BY PROGRAM FOR FIRST YEAR ACTIVITIES

[Three percent discount rate for lifetime earnings]

Subparts	Pre-1940	1940–1959	1960–1977	Total for subpart
Single Family Insured Housing (E)	$0	$0	$0	$0
HUD-Owned Single Family Housing (F)	804,349	(104,790)	(267,451)	432,108
Multifamily Insured Housing (G)	3,712,523	2,981,836	0	6,694,360
Multifamily Housing With Project-Based Assistance > 5K (Hm1)	7,858,982	6,284,595	4,395,518	18,539,094
Multifamily Housing With Project-Based Assistance > 5K (Hm2)	22,150,600	7,055,126	4,798,460	34,004,186
Single Family Housing With Project-Based Assistance (Hs)	5,359,054	1,570,456	848,160	7,777,670
HUD-Owned and Mortgagee-in-Possession Multifamily Housing (I)	221,666	551,460	316,903	1,090,029
Single Family Rehab <5K (J1s)	26,705,720	19,813,315	3,103,588	49,622,624
Single Family Rehab 5K–25K (J2s)	40,365,551	29,115,276	4,186,525	73,667,352
Single Family Rehab 25K (J3s)	3,192,504	8,466,423	421,773	12,080,700
Multifamily Rehab <5K (J1m)	3,103,001	2,488,518	491,894	6,083,413
Multifamily Rehab 5K–25K (J2m)	12,303,357	9,541,269	3,316,929	25,161,554
Multifamily Rehab >25K (J3m)	8,536,151	6,932,896	1,504,944	16,973,991
Single Family Acquisition, Leasing, Operating, and Support (Ks)	318,545	124,334	20,862	463,741
Multifamily Acquisition, Leasing, Operating, and Support (Km)	608,761	146,925	47,221	802,907
Multifamily Public Housing (Lm)	58,623,013	188,764,843	34,665,629	282,053,485
Single Family Public Housing (Ls)	13,930,634	44,625,006	7,001,718	65,557,359
Single Family Tenant-Based Rental Assistance (Ms)	68,354,171	31,214,436	15,578,130	115,146,737
Multifamily Tenant-Based Rental Assistance (Mm)	102,509,490	46,573,257	24,862,934	173,945,681
Total Net Benefit	378,658,072	406,145,182	105,293,738	890,096,991

TABLE 3b.NET BENEFIT (COST) BY PROGRAM FOR FIRST YEAR ACTIVITIES

[Seven percent discount rate for lifetime earnings]

Subparts	Pre-1940	1940–1959	1960–1977	Total for Subpart
Single Family Insured Housing (E)	$0	$0	$0	$0
HUD-Owned Single Family Housing (F)	(1,927,841)	(689,268)	(539,603)	(3,156,712)
Multifamily Insured Housing (G)	246,690	176,627	0	423,317
Multifamily Housing With Project-Based Assistance > 5K (Hm1)	391,267	240,304	(3,053,108)	(2,421,537)
Multifamily Housing With Project-Based Assistance < 5K (Hm2)	(2,093,138)	(2,104,432)	(5,644,938)	(9,842,508)
Single Family Housing With Project-Based Assistance (Hs)	(1,667,495)	(1,102,037)	(3,184,370)	(5,953,901)
HUD-Owned and Mortgagee-in-Possession Multifamily Housing (I)	(15,690)	(40,308)	(368,895)	(424,892)
Single Family Rehab <5K (J1s)	3,659,065	2,291,784	(2,361,222)	3,589,628
Single Family Rehab 5K–25K (J2s)	332,951	(564,095)	(4,419,314)	(4,650,458)
Single Family Rehab >25K (J3s)	(202,701)	(259,968)	(467,775)	(930,445)
Multifamily Rehab <5K (J1m)	506,967	370,441	(153,853)	723,554
Multifamily Rehab 5K–25K (J2m)	1,820,172	1,315,448	(76,463)	3,059,158
Multifamily Rehab >25K (J3m)	1,191,958	963,529	(42,968)	2,112,520
Single Family Acquisition, Leasing, Operating, and Support (Ks)	(99,117)	(87,249)	(78,325)	(264,691)
Multifamily Acquisition, Leasing, Operating, and Support (Km)	(57,525)	(43,825)	(55,551)	(156,902)
Multifamily Public Housing (Lm)	8,942,287	27,902,848	(1,523,858)	35,321,277
Single Family Public Housing (Ls)	1,380,411	4,213,020	(2,151,524)	3,441,908
Single Family Tenant-Based Rental Assistance (Ms)	11,717,061	4,619,772	1,484,946	17,821,779
Multifamily Tenant-Based Rental Assistance (Mm)	19,667,574	7,933,157	4,751,523	32,352,254

TABLE 3b.NET BENEFIT (COST) BY PROGRAM FOR FIRST YEAR ACTIVITIES—Continued

[Seven percent discount rate for lifetime earnings]

Subparts	Pre-1940	1940–1959	1960–1977	Total for Subpart
Total Net Benefit	43,792,895	45,135,748	(17,885,295)	71,043,348

TABLE 3C.—COST-BENEFIT SUMMARY FOR FIRST YEAR ACTIVITIES USING A THREE PERCENT AND A SEVEN PERCENT DISCOUNT RATE FOR LIFETIME EARNINGS

[$ millions]

	Three percent	Seven percent
Hazard Evaluation Costs	$ 99.5	$ 99.5
Hazard Reduction Costs:		
Paint Stabilization	75.7	75.7
Window Replacement	4.6	4.6
Friction/Impact Work	8.5	8.5
Soil Cover	2.3	2.3
Paint Hazard Abatement	2.0	2.0
Dust Cleanup	60.5	60.5
Total First Year Costs	253.2	253.2
Monetized Benefits:		
Paint Stabilization	71.2	20.3
Paint Hazard Abatement	1.1	0.3
Soil Cover	88.0	20.2
Dust Cleanup	908.6	209.0
Paint Stabilization Market Value	70.2	70.2
Window Replacement	4.2	4.2
Total First Year Benefits	1,143.3	324.2
Total First Year Net Benefits	890.1	71.0

5. *Data Sources.* The following data sources are referenced extensively in the EA:

- The HUD national survey of lead-based paint in housing, conducted in 1989 and 1990.
- ''Comprehensive and Workable Plan for the Abatement of Lead-Based Paint in Privately Owned Housing: a Report to Congress,'' prepared by HUD, December 7, 1990.
- ''TSCA Title IV, Sections 402(a) and 404: Target Housing and Child-Occupied Facilities Final Rule Regulatory Impact Analysis,'' prepared by Abt Associates for EPA, August 1996.
- The Evaluation of the HUD Lead-Based Paint Hazard Control Grant program—interim data collected through March 1998.
- National Academy of Sciences, National Research Council Committee on Measuring Lead in Critical Populations, ''Measuring Lead Exposure in Infants, Children, and Other Sensitive Populations,'' October 1993.
- Third National Health and Nutrition Examination Survey, as reported in ''Blood Lead Levels in the U.S. Population'' and ''The Decline in Blood Lead Levels in the United States,'' Journal of the American Medical Association, July 27, 1994; and ''Update Blood Lead Levels—United States, 1991–1994,'' MMWR, February 21, 1997; and additional detail obtained from NHANES III data on CD–ROM.

6. *Public Comments.* An industry group criticized the EA for the proposed rule on several grounds. The group stated that population blood lead levels may have declined further since the NHANES III Phase 1 data were released. For the final rule, HUD has used the most current data available, which is the NHANES III, Phase 2 data covering the years 1992–1994.

The group also suggested that HUD's conclusion that declining dust lead levels will reduce blood lead levels in children is not supportable because it is based on a single study. In fact, there are at least 18 epidemiological studies which have estimated the blood lead/dust lead relationship; HUD has not relied on a single study in developing the final EA, but has conducted an extensive pooled analysis of virtually all available epidemiological data (Lanphear 1998).

The group stated that HUD's EA relied on a 1991 CDC finding that 10 µg/dL represents a threshold level, below which there are no adverse effects, and that therefore the EA should not have calculated benefits below 10 µg/dL. This is an incorrect interpretation of CDC's position. In fact, the 1991 CDC guidance document indicated that there was evidence of adverse health effects below 10 µg/dL. Neither HUD nor CDC have stated that 10 µg/dL is a ''threshold.'' The conclusion that it is reasonable to assume cognitive benefits to reducing childhood blood lead levels, including below 10 µg/dL, has been approved by EPA, the EPA external peer review process, CDC, the HHS internal peer review process and the National Academy of Sciences. It is clear that HUD's analysis is consistent with the consensus of the scientific community.

The group also stated that the EA cited the correlation between blood lead and low IQ, but erred in suggesting that correlation could be used to establish causality and that the available scientific studies failed to control for a variety of confounding variables. HUD agrees that correlation alone cannot establish causality. The idea that lead exposure causes a reduction in IQ is supported by not only correlation, but also by time precedence, biological plausibility, dose-effect relationship, and animal studies. When taken together, HUD believes that all these factors establish conclusively that lead exposure does in fact cause reductions in IQ. Time precedence has been established by those studies that measure blood lead level at birth, showing that the cause exists before the consequence. Biological plausibility has been established by the studies showing anatomical, physiological, and biochemical changes in the brain due to lead exposure. Dose-response has also been clearly established in the literature. Finally, all modern lead studies have in fact controlled for confounding variables, such as socio-economic status, parent's education and race.

The group also suggested that the lead studies upon which the EA relied used imprecise or incomplete methods of measuring IQ. However, if IQ was in fact measured inappropriately, one would expect to see the studies equally distributed between those showing no effect and those that did. In fact, virtually all of the studies on lead show the same IQ effect. While the size of the effect and degree of statistical significance may vary from one study to another, the basic conclusion remains the same: increased lead exposure is related to reduced IQ.

Another industry group suggested that HUD's EA for the proposed rule had overestimated the benefits, because children living in HUD-assisted housing will grow up to earn less than the average income, and thus the calculated loss in lifetime earnings was too great.

First, HUD does not believe it is appropriate to declare that the value of damage to children in one socioeconomic group is less than the value of damage to children in another socioeconomic group. Furthermore, there is evidence that earnings may have in fact been underestimated, because per capita productivity has increased in recent years, which often results in increased wages. HUD used data covering the past 20 years to estimate growth in real wages, which has been low. If in fact the country returns to the growth rate over the past century, HUD's EA would underestimate the size of the lost lifetime earnings. HUD has used an updated estimate of the size of the lost lifetime earnings benefit (Salkever 1995) in the EA for this final rule to respond to this criticism. Salkever updated the analysis of labor force participation and other pathways by which lead can reduce expected future earnings. Finally, HUD's EA assumed that there would be no benefit to reducing lead exposure in adults, even though a number of studies have demonstrated that lead can increase blood pressure and cause a decline in both kidney function and cognition in adults. In short, HUD's EA is likely to underestimate the total benefit involved, not overestimate it.

An industry group suggested that HUD should use the lower confidence bound of the scientific studies, which would reduce the benefits of the proposed rule. HUD agrees that this would reduce the benefits, but notes that if it chose to use the upper bound as a health protective measure, the benefit would increase. On balance, HUD believes that measures of central tendency appear to be best when faced with the need to make public policy in the face of scientific uncertainty, which is always present to some extent. HUD encourages public comment on the EA and the final rule and will make revisions to both documents as new evidence comes to light.

B. Paperwork Reduction Act Statement

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

C. Regulatory Flexibility Act—Final Regulatory Flexibility Analysis

When the proposed rule was published on June 7 1996, HUD certified that the proposed regulatory requirements would not have a significant economic impact on a substantial number of small entities. On October 9, 1998 (63 FR 54422), HUD published a Notice in the **Federal Register** containing additional information about its determination that the proposed rule would not have a significant impact on a substantial number of small entities. HUD has concluded, upon further consideration, that its certification that the rule will not have a significant economic impact on a substantial number of small entities could reasonably be questioned. Although the Department continues to believe that the certification was reasonable and justified, the degree of uncertainty as to what constitutes a ''significant'' impact and a ''substantial'' number of small entities in the housing industry has led to the decision not to make such a certification at this time. HUD is seeking to comply fully with the intent of the Regulatory Flexibility Act and is publishing this Final Regulatory Flexibility Analysis to describe the likely impact. This analysis expands on the analysis published on October 9, 1998 and summarizes and responds to public comments. HUD requests written public comment on this analysis of the impact of the rule on small entities. The final rule does not take effect until one year after publication, so there is time for the Department to arrange for responses to economic impacts that it believes would significantly diminish the effectiveness of its housing assistance programs in providing affordable housing to families of low and moderate income.

Comments on this notice must be received on or before November 1, 1999. Interested persons are invited to submit comments to the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410–0500. Comments should refer to the above docket number and title. A copy of each comment submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address. Facsimile (FAX) comments are *not* acceptable. For further information, contact: Steve Weitz, Office of Lead Hazard Control, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410–0500. Telephone: (202) 755–1785, ext. 106 (this is not a toll-free number). E-Mail: stevenson__p.__weitz@hud.gov. Hearing or speech-impaired persons may access the above telephone number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

1. *Need For and Objectives of the Final Rule.* The Lead-Based Paint Poisoning Prevention Act of 1971, as amended, directs the U.S. Department of Housing and Urban Development (HUD) to establish procedures to eliminate to the extent practicable lead-based paint hazards in federally associated housing. HUD issued implementing regulations in 1976 and made Department-wide revisions in 1986, 1987, and 1988. In 1992, Congress passed the Residential Lead-Based Paint Hazard Reduction Act, which was Title X of the Housing and Community Development Act of 1992 (Title X). Sections 1012 and 1013 of Title X amend the Lead-Based Paint Poisoning Prevention Act to require specific new procedures for lead-based paint notification, evaluation, and hazard reduction activities in housing receiving Federal assistance (section 1012) and federally owned housing at the time of sale (section 1013).

In enacting Title X, the Congress found that low-level lead poisoning is widespread among American children, with minority and low-income communities disproportionately affected. The Congress also found that, at low levels, lead poisoning in children causes IQ deficiencies, reading and learning disabilities, impaired hearing, reduced attention span, hyperactivity, and behavior problems. In addition the Congress found that the health and development of children living in as many as 3.8 million homes is endangered by chipping or peeling lead paint or excessive amounts of lead-contaminated dust in their homes.

Among the stated purposes of Title X are to implement, on a priority basis, a broad program to evaluate and reduce lead-based paint hazards in the Nation's housing stock; to ensure that the existence of lead-based paint hazards is taken into account in the development of Government housing policies and in the sale, rental, and renovation of homes and apartments; and to reduce the threat of childhood lead poisoning in housing owned, assisted, or transferred by the Federal Government.

The final rule sets forth new requirements for lead-based paint hazard notification, evaluation, and reduction for federally owned residential property and housing receiving Federal assistance. The rule takes into consideration the substantial advancement of lead-based paint remediation technologies and the

improved understanding of the causes of childhood lead poisoning by the scientific and medical communities. Perhaps the most important results of research on this subject during the last 10–12 years have been: (1) The finding that lead in house dust is the most common pathway of childhood lead exposure; and (2) the measurement of the statistical relationship between levels of lead in house dust and lead in the blood of young children. The final rule updates the existing HUD regulations to reflect this knowledge, giving importance to procedures that identify and remove dust-lead hazards as well as chipping, peeling or flaking lead-based paint.

The rule also offers a consolidated, uniform approach to addressing lead-based paint hazards. Currently, each individual HUD program has a separate set of lead-based paint requirements incorporated into its program regulations. The final regulation consolidates the HUD lead-based paint regulations and groups requirements by type of housing assistance, rather than by individual program. For example, the rule contains subparts that address multifamily mortgage insurance; project-based assistance; rehabilitation assistance; assistance for acquisition, leasing, support services and operation; public housing; and tenant-based assistance. Moreover, the final rule uses a clear and consistent set of terms to specify notification, evaluation, and hazard reduction requirements. Organizing the requirements by the type of housing assistance and using new terminology will avoid subjecting properties receiving assistance from more than one program to inconsistent or redundant HUD lead-based paint requirements. These changes will also ease the burden on HUD clients in locating and understanding the applicable requirements and help ensure that lead hazards are identified and safely reduced.

2. *Public Comments.* The Notice published in the **Federal Register** on October 9, 1998 outlined the impact of the proposed rule on small entities. Eight comments were received. Following is a summary of the significant issues raised by the comments and a description of the Department's assessment of and response to such issues.

a. *Information Not Adequate.* Two commenters requested additional information. One commenter said they were unable to assess the impact of the proposed regulations with the information provided in the published Notice and requested that the Department extend the comment period on the Notice until supporting materials are available for public review. Another requested that HUD prepare a more detailed analysis and submit it for comment before publishing a final rule.

In response, HUD is providing more detailed information in this analysis and welcomes further comment. However, HUD is not delaying further the publication of this important regulation, which is expected to significantly reduce lead poisoning among children living in Federally owned housing that is sold and in housing that receives Federal assistance.

b. *Capital vs. Operating Costs.* One commenter stated that the analysis was ''confusing,'' because it compared the cost of lead-based paint hazard reduction to current rent revenue. According to this commenter, lead-based paint activities are major capital improvement costs that would be financed from reserves or through a loan.

HUD agrees that some property managers may budget the required work out of reserves, some may have to finance it through a loan, while others will be able to handle it as an operating expense. Regardless of how the work is budgeted and financed, HUD believes that comparison to annual rent revenues is a reasonable method of gaining a general understanding of the significance of the costs. However, Section 3 of this Notice includes additional financial statistics for HUD-insured multifamily housing with project-based rental assistance; these statistics are net annual cash flow per unit before income taxes, total reserves per unit, and backlog of physical needs per unit.

c. *Costs Will Be Higher Than HUD Assumes.* Three commenters thought HUD underestimated the cost of complying with the requirements. All of these commenters were concerned primarily with rehabilitation programs. One commenter stated that the cost would be between $2,000 and $4,000 per unit, while the others claimed that rehabilitation costs are 35–50 percent more when lead-based paint is involved.

While it is possible that the costs in some jurisdictions may exceed those estimated for this analysis, HUD believes it has estimated the national average costs of the requirements in the rule as accurately as possible, given available data. It is important to remember that *average* costs may be much lower than costs one may have heard reported for heavily contaminated housing. Even in older housing, some structures have a great deal of lead-based paint while others have only a small amount, and the condition of the paint varies as well. Also, the anecdotal costs reported in some jurisdictions may not be for the same activities as those required in this rule. Furthermore, the costs used in the analysis for rehabilitation are incremental costs. For example, if it is estimated that rehabilitation will replace windows for other reasons, that cost is not charged to lead-based paint hazard reduction. Finally, HUD believes that the cost of lead-based paint hazard evaluation and reduction will decline as program managers learn how to administer the requirements efficiently and as staff and contractors become experienced in the work.

HUD has estimated unit costs for lead-based paint hazard evaluation and reduction based on interviews with contractors and data from the ongoing Evaluation of HUD's Lead-Based Paint Hazard Control Grant Program (National Center 1998). It has estimated the frequencies of hazard occurrence based on both the Evaluation and the 1990 National Survey of Lead-Based Paint in Housing (EPA 1995). Also, it used American Housing Survey data to estimate the frequency with which rehabilitation involves activities like repainting or window replacement that overlap the requirements of lead-based paint hazard reduction. These estimates are explained in the HUD EA for the final rule (HUD 1999).

d. *There Will Be a Significant Impact.* Many commenters stated or implied that HUD was incorrect in its determination that the rule will not have a significant economic impact on a substantial number of small entities. While the Department has chosen not to make such a determination for this final rule, it continues to think that the cost of compliance, and therefore the impact, will not be as significant as many commenters believe.

As explained below, in section 4 of this Analysis, HUD has written provisions into the rule, consistent with Title X, designed to alleviate the impact of the lead-based paint evaluation and reduction requirements on entities receiving limited Federal assistance. For example, for most housing affected by this regulation, all that is required is stabilization of deteriorated paint, if any is present, followed by cleanup and clearance.

In multifamily housing, HUD estimates that compliance with this requirement costs only about $100 per unit more than routine repainting, and less if only a small amount of deteriorated paint is present. This requirement pertains to housing that receives tenant-based rental assistance and is occupied by children of less than

six years of age, and it applies to housing receiving project-based rental assistance averaging less than $5,000 per unit per year (which includes most housing that is affected by this rule and is receiving project-based assistance). The requirements are greater for multifamily housing receiving project-based assistance of more than $5,000 per unit per year; but that is a relatively small percentage of the assisted stock that was built before 1978, and most of it is professionally managed, in relatively good physical and financial condition, and not expected to have a high prevalence of lead-based paint hazards. For housing receiving Federal rehabilitation assistance of $5,000 per unit or less (which is almost one-half of the housing receiving such assistance), the rule requires only that the rehabilitation be done in a lead-safe manner so that it causes no contamination.

For these reasons and because there currently exist lead-based paint regulations for virtually all HUD programs prescribing notice, evaluation and treatment procedures, HUD continues to believe that the economic impact of the rule will be much less than many of the commenters believe.

e. *Owners Whose Entire Portfolio Is Affected May Be Impacted Especially Hard.* One organization stated that ''small property owners whose portfolio may only contain target properties and will have to bear this additional expense throughout their portfolio, may well be forced out of business by such extreme financial requirements.''

HUD agrees that the impact on an owner may depend to some extent on the percentage of his or her portfolio that is affected by the rule. However, many if not most housing owned by small entities will be only partially affected by the rule. A dwelling unit is not covered if it was built after 1977, or designated exclusively for the elderly or persons with disabilities (unless a child of less than 6 years of age resides or is expected to reside), or is a zero bedroom dwelling (e.g., efficiency, studio, or single-room occupancy unit), or is found to be free of lead-based paint, or all lead-based paint has been removed. Many residential properties, especially those built after 1960, have little or no lead-based paint hazards. If a unit has no deteriorated paint or no lead-based paint hazards (depending on the housing program), no hazard reduction is required. Thus, owners can minimize the cost effect of the rule through good maintenance of paint surfaces and careful cleanup at turnover. In the case of units with tenant-based assistance, the rule applies only to units occupied by families with children of less than six years of age. Many properties with project-based assistance have only part of their units under housing assistance payments contracts. For all of these reasons, the total annual rental revenue for affected small entities may substantially exceed the total annual rental revenue associated with just those units subject to the rule.

3. *Impact on Small Entities.* a. *Number of Small Entities Affected by the Rule.* For this analysis, HUD defines a small entity as one with less than $5 million in total revenues per year. This standard is based on the report, ''Small Business Administration Standard Industrial Code (SIC) Size Standards,'' dated January 1998.

Table 4 provides, for each program group, an estimate of the number of small entities that will be affected by the first effective year of the rule. Although some additional housing units and ownership entities will become subject to the rule after the first effective year, focusing on the first year facilitates analysis of impact on an annual basis. Estimates are given for the same program groups used in the EA for the rule, and the number of housing units for each program is taken from the EA. For all program groups, it is estimated that approximately 203,000 small entities will be affected in the first year of the rule. Of these, about 122,000, or 60 percent, are owners of single-family housing being rehabilitated with HUD rehabilitation assistance.

The vast majority of these owners are expected to be individuals who are rehabilitating their own residences. They are not businesses, organizations or units of local government, which are the entities of concern under the Regulatory Flexibility Act. Nevertheless data are provided for these owners for completeness of analysis. Of the remaining 81,000 small entities, the great majority will be owners of rental housing; and, of those, about 56,000 will be owners of housing with tenant-based rental assistance, 17,000 will be owners of housing with project-based rental assistance, 1,500 will own multifamily housing receiving rehabilitation assistance, and about 1,400 will be local public housing authorities. HUD believes that the great majority of local public housing authorities are not covered by the Regulatory Flexibility Act, because they are not agencies of local governments with populations of less than 50,000. Nevertheless, public housing data are included in this analysis for completeness.

(1) *Housing With Multifamily Mortgage Insurance and/or Project-Based Rental Assistance.* The first and second rows of Table 4 pertain to multifamily housing that has HUD mortgage insurance but not HUD subsidies. For this program group, the rule will apply only to properties built before 1978 that are covered by a new application for mortgage insurance. These properties tend to be relatively large, with an average of 160 units per property. Twenty-one percent of the properties have more than 200 units (Abt Associates 1999). Average annual total revenues for unassisted HUD-insured multifamily properties are assumed for purposes of this analysis to be $8,000 per unit. (This assumption is based on Abt Associates 1999, Exhibit 3–1, which reports a mean average annual total revenue for all unassisted insured properties of $7,978.) To earn $5 million per year in total revenues, a property with per unit annual revenue of $8,000 would have to have 625 housing units. Few projects are of this size. However, it is well known that many of these projects are part of multiproperty portfolios. Of all rental housing in properties with 50 or more units, 25 percent of the properties and 50 percent of the units are owned by limited partnerships, general partnerships, real estate corporations or other corporations, or joint ventures (HUD 1996). Therefore it is assumed for this analysis that 25 percent of the unassisted multifamily properties with HUD mortgage insurance are owned by large entities and 75 percent are owned by small entities. It is also assumed that none of the properties owned by small entities are part of a multiproperty portfolio. This assumption may overstate the number of small entities somewhat. Based on this analysis, it is estimated that each year 70 applicants for unassisted multifamily mortgage insurance will be small entities.

TABLE 4.—NUMBER OF SMALL ENTITIES AFFECTED BY THE FIRST YEAR OF THE HUD LEAD-BASED PAINT REGULATIONS, FINAL RULE

Program group	Number of units	Units per property	Number of properties	Small owner entities as percent of number of properties	Number of small ownership entities
Pre-1960 Housing w/Multifamily (MF) Mortgage Insurance	3,750	160	23	75	17
Post-1959 Housing w/ MF Mortgage Insurance	11,250	160	70	75	53
MF Housing w/ Project-Based Assistance, >$5K/Unit	35,750	115	311	75	233
MF Housing w/ Project-Based Assistance, <$5K/Unit	408,690	115	3,554	85	3,021
Single Family (SF) Housing w/ Project-Based Assistance	134,280	2	67,140	20	13,428
MF Housing w/ Tenant-Based Assistance	207,050	7	29,579	99	29,283
SF Housing w/ Tenant-Based Assistance	134,500	1	134,500	20	26,900
Public Housing	164,000	N/A	1,500	96	1,440
SF Housing w/ Rehab Assistance, <$5K/Unit	66,836	1	66,836	100	66,836
MF Housing w/ Rehab Assistance, <$5K/Unit	7,834	20	392	99	388
SF Housing w/ Rehab Assistance, $5K–$25K	48,998	1	48,998	100	48,998
MF Housing w/ Rehab Assistance, $5K–$25K	15,877	20	794	98	778
SF Housing w/ Rehab Assistance, >$25K	5,817	1	5,817	100	5,817
MF Housing w/ Rehab Assistance, >$25K	7,306	20	365	98	358
SF Housing w/ Acquisition, Leasing, etc. Assistance	5,093	1	5,093	100	5,093
MF Housing w/ Acquisition, Leasing, etc. Assistance	6,103	20	305	99	302
Total	1,263,134	.....	365,277	.....	202,945

The third and fourth rows of Table 4 present estimates for multifamily housing with project-based rental assistance. These are somewhat smaller properties, with an average of 115 units per project; only 13 percent have more than 200 units (Abt Associates 1999). For this analysis it is assumed that average annual total revenues are $10,000 per unit for properties receiving an average of more than $5,000 in rental assistance per unit per year and $6,000 for those with less than $5,000. (The Abt Associates 1999 report estimates that mean annual total revenues were $5,868 in 1995 for all ''older assisted'' multifamily properties and $10,057 for ''newer assisted'' properties. Older assisted properties receive either mortgage interest subsidies (under section 236 or 221(d)(3) Below Market Interest Rate insurance programs) or rental assistance under the Section 8 Loan Management Set Aside, Rent Supplement, Rental Assistance Payment, Section 8 Property Disposition, or Preservation programs. Newer assisted properties receive rental assistance under one of the following Section 8 programs: New Construction, Substantial Rehabilitation, or Moderate Rehabilitation. Older assisted properties had mean assistance payments of $2,576 per unit per year, with a median of $2,310. Newer assisted properties had mean assistance payments of $7,448, with a median of $7,106. Thus HUD assumes for purposes of this Regulatory Flexibility Analysis that virtually all of the housing receiving more than $5,000 per unit per year in project-based assistance are in the newer assisted properties and that virtually all of the housing receiving less than $5,000 are in the older assisted category.) A project with $10,000 in annual revenue per unit would have to have 500 units to earn $5 million in total revenue. A project with $6,000 in annual revenue per unit would need 834 units. It is assumed that 75 per cent of the owners of properties receiving more than $5,000 per unit in assistance will be small entities—the same as for unassisted insured properties. However, recognizing the sharp difference in average revenues between properties receiving more than and less than $5,000 per unit per year, it is assumed that 85 percent of the less-than-$5,000 group will be small entities. Based on this analysis, it is estimated that 3,254 small entities will own multifamily properties with project-based assistance that will be affected by the rule in its first year. All of these should complete initial work in the first year, with only ongoing maintenance and some reevaluation required after that. In each of the second, third and fourth years, it is expected that 233 additional small entities will be affected.

The fifth row in Table 4 presents estimates for all *single family* housing receiving project-based assistance. HUD assumes for the purposes of this analysis of ownership that there is an average of two units per property in this inventory. This assumption derives from American Housing Survey data which indicates that there are a large number of three-and four-unit properties with project-based assistance as well as single unit properties. (The HUD-FHA definition of ''single family property'' is one-to-four units.) It is further assumed that owners of single-family housing with project-based assistance own an average of five properties. This assumption recognizes that it requires a certain additional amount of managerial knowledge to participate in project-based assistance programs compared to owning an unassisted rental unit, and that such owners tend to try to maximize the benefits of such knowledge by owning several homes. HUD also assumes, however, that 100 percent of the owners of such housing are small entities. It is estimated that 13,428 small entities will own single family housing with project-based assistance that is affected by the first year of the rule. After that, only ongoing maintenance is required. No additional entities are expected to be affected in later years.

(2) *Tenant-Based Rental Assistance.* Families assisted by tenant-based rental assistance programs are living in housing that is similar in size and age to the nation's entire non-luxury rental housing stock. Therefore HUD assumes that the average number of units per multifamily property is 20, which is much smaller than the projects with mortgage insurance and project-based assistance. However, in the tenant-based assistance programs, HUD lead-based paint regulations apply only to housing occupied by children of less than 6 years of age. Therefore, based on occupancy data from a subsample of the American Housing Survey, it is assumed that 35 percent of the 20 units (or seven) are occupied by such children. Because

of the small average property size, HUD assumes that only one percent of the owners of multifamily housing assisted under tenant-based programs are large entities.

For single-family housing with tenant-based assistance, it is assumed that an average of one unit per property will house families with children of less than six years of age, that owners will own an average of five properties, and that 100 percent of the properties are owned by small entities.

Counting owners of both multifamily and single family housing, it is estimated that 56,183 small entities will own housing with tenant-based assistance affected by the first year of the rule. In future years, because of housing turnover in these programs, it is expected that about 20,000 small entities will become newly affected each year.

(3) *Public Housing.* HUD estimates that approximately 1,500 public housing agencies will be affected by the rule. Although HUD believes that the Regulatory Flexibility Act does not apply to the vast majority of public housing authorities, data are presented here for completeness. Many public housing agencies own both multifamily and single family units, so no attempt is made in Table 1 to distinguish between agencies owning one or the other. Although rents paid by tenants of public housing are relatively low, HUD estimates that subsidies boosted public housing agency revenues to an average of approximately $7,400 per unit per year in 1995. A public housing agency with average revenues per unit would have to have 676 units to have revenues of $5 million. Only about 2 percent of public housing agencies have that many units. However, many housing agencies have revenues from sources other than the public housing program, including the project-based and tenant-based rental assistance programs. Therefore HUD assumes for this analysis that 4 percent of the public housing agencies are large entities and that 96 percent, or 1,440, are small entities.

(4) *Rehabilitation Assistance.* There are at least three types of entities that will be affected by the lead-based paint requirements for housing receiving rehabilitation assistance. They are: (1) The State and local governmental agencies and tribal agencies that are the grantees and participating jurisdictions that receive funding from HUD; (2) nonprofit organizations that are subrecipients or funded directly by HUD and that operate housing development and rehabilitation programs; and (3) private owners of housing being rehabilitated. Of these three, the greatest concern of those commenting on the proposed rule was with the potential economic impact on private owners. Therefore this analysis focuses on that group.

The number of small-owner entities participating in the rehabilitation programs is estimated to be large, because many local programs concentrate on the rehabilitation of single family, owner-occupied homes. HUD assumes for purposes of this analysis that in any given year all single family units assisted by rehabilitation programs are individually owned, i.e., that the number of owners equals the number of units. While this may produce an overestimate of the actual number of owners, the error is expected to be small. For multifamily units, the same average number of 20 units per property is used as was used in the tenant-based assistance programs; and 98 to 99 percent of the owners are assumed to be small entities. In total, it is estimated that 125,028 small-owner entities will be affected by the rehabilitation assistance programs each year.

(5) *Acquisition, Leasing, Support Services, or Operation.* Assumptions for the Acquisition, Leasing, Support Services or Operation group are the same as for Rehabilitation. The number of small entities affected is estimated to be 5,395.

b. *Economic Impact.* This section examines, for each program group, the financial impact of the rule on small entities.

(1) *Housing With Multifamily Mortgage Insurance, Project-Based Rental Assistance, Tenant-Based Rental Assistance, or Public Housing.* Table 5 provides a comparison of the incremental cost of compliance with total revenues for most of the rental housing programs affected by the rule. Table 6 provides the following additional financial statistics that are available from a study of the insured multifamily inventory: annual net cash flow, total reserves, and backlog of physical needs—all per unit (Abt Associates 1999, exhibits 2–2, 3–3, and 3–7). Annual net cash flow equals revenues less expenses before income taxes. Expenses include deposits to reserve accounts and debt service as well as operating expenses. Total reserves include replacement reserves and, for some properties, residual receipts accounts. The physical needs backlog is the estimated cost of repairs and replacements beyond ordinary maintenance required to restore a property to its original condition. The financial statistics in Table 6 are available only for the multifamily HUD-insured stock that is unassisted or assisted with project-based subsidies; they are not available for housing receiving tenant-based assistance or for public housing.

Two sets of compliance cost estimates are provided for each program group in Table 5. The first column is the mean incremental cost per unit for all properties. Incremental costs are new costs incurred in compliance with this rule over and above the costs of compliance with existing regulations. There is a great deal of variation around this mean that is associated with the age, size and condition of the housing. Many properties will have no cost at all. Therefore, the second column of Table 5 provides the estimated incremental cost per unit for ''high-cost properties.'' This is an approximation of the average cost that may be incurred by properties that have all the hazards for which the rule requires remediation for a given program. The frequency of such high-cost cases is not known but is expected to be between one and eight percent of all properties, depending on the program group. All compliance cost estimates are incremental, i.e., over and above the costs of current HUD lead-based paint regulations. The cost estimates are derived from the EA, which in turn is based on data collected from discussions with lead-based paint inspectors and hazard reduction contractors in 1995 and the evaluation of the HUD Lead-Based Paint Hazard Control Grant Program (data collected 1994–1997). No cost estimates are shown for post-1959 unassisted housing with HUD multifamily mortgage insurance because the rule requires only that sponsors agree to conduct ongoing lead-based paint maintenance.

Estimates of mean annual total revenues per unit are based on a 1995 survey of HUD-insured multifamily rental housing (Abt Associates 1999, exhibit 3–1) and estimates by HUD staff. As with Table 4, all estimates pertain to housing affected by the first year of the rule.

In comparing compliance costs with revenue or with other financial data, it is important to remember that the compliance costs are not continuing annual costs. Rather they are one-time costs of hazard evaluation and control, after which the owner must simply maintain the paint surfaces and conduct maintenance and repair activities in a lead-safe manner. For some program groups, owners will have to conduct at least two reevaluations in two-year intervals after the initial hazard reduction activity to assure that lead-based paint hazards have not reoccurred. Also, many owners have

properties that are not covered by the rule as well as those that are affected. The financial impact on such owners will be less than on those whose portfolios consist solely of pre-1978 HUD-associated housing.

Table 5 indicates that, in the first effective year of the rule, the mean incremental cost of compliance is expected to vary from 1.0 to 6.9 percent of total annual revenues for the insured multifamily stock and housing receiving project-based rental assistance. Public housing and unassisted insured multifamily housing built before 1960 have the highest average costs and the highest percentage of revenue, because of the stringency of the requirements and the age of the stock. High-cost properties have ratios of cost to revenue of 9.0 to 28 percent; but these percentages should be used only as rough indicators, because the universe of the revenue estimate (all properties) does not correspond to that of the high-cost properties.

Table 6 provides additional financial statistics from the Abt Associates report on the multifamily insured stock. Data from the Abt study for unassisted properties are not included in this table, because they are not necessarily representative of properties that will apply for mortgage insurance when the rule becomes effective. For newer assisted properties (defined as properties receiving Section 8 New Construction, Substantial Rehabilitation, or Moderate Rehabilitation), the average (mean) cash flow was a substantial $1,105 per unit. This compares to lead-based paint regulatory compliance costs of $255 (average for all properties) and $1,120 (high-cost properties) for housing with project-based assistance of more than $5,000 per unit. While reserves also appeared respectable for most of these newer assisted properties, the mean backlog of physical needs was $3,214 compared to a median of $1,324, indicating that a few properties had very high backlog needs. Also, 13 percent of the newer assisted properties had negative cash flow, again indicating that some properties are in financial distress.

For the older assisted properties, which correspond to housing with project-based assistance of less than $5,000 per unit, mean annual net cash flow per unit was $283, compared with compliance costs of $60–$82 per unit (average for all properties) and $570-$870 (high-cost properties). The Abt study found that 33 percent of the older assisted properties had a negative cash flow and that another 42 percent had a cash flow of $0-$500 per unit. Further, the study found $3,929 in average (mean) backlog of physical needs per unit, with a median of $2,096, indicating that some properties have very high deferred needs. Thus it appears that a certain percentage of this older stock is in financial distress, even more than with the newer assisted properties.

TABLE 5.—INCREMENTAL COST OF COMPLIANCE AS A PERCENTAGE OF ANNUAL REVENUE, BY PROGRAM GROUP: NONFEDERAL RENTAL HOUSING AFFECTED BY THE FIRST YEAR OF THE RULE

[Not including housing receiving assistance for rehabilitation or acquisition, leasing, support services or operation. Cost and revenue data as of 1995–1996]

Program group	Average incremental compliance cost per unit, all properties	Average incremental compliance cost per unit, high-cost properties	Average annual total revenue per unit, all properties	Average incremental compliance cost as a percent of revenue, all properties	Average incremental compliance cost as a percent of revenue, high-cost properties
Pre-1960 Housing w/Multifamily (MF) Mortgage Insurance	$414	$1,120	$8,000	5.2	14
Post-1959 Housing w/MF Mortgage Ins.	0	0	8,000	0	0
MF Housing w/Project-Based Assistance, >$5K/Unit	255	1,120	10,000	2.6	11
MF Housing w/Project-Based Assistance, <$5K/Unit	60	570	6,000	1.0	9.5
SF Housing w/Project-Based Assistance	82	870	6,500	1.3	13
MF Housing w/Tenant-Based Rental Assistance	59	560	6,200	1.0	9.0
SF Housing w/Tenant-Based Rental Assistance	103	870	6,200	1.7	14
MF Public Housing	311	1,120	7,400	4.2	15
SF Public Housing	511	2,095	7,400	6.9	28

TABLE 6.—FINANCIAL STATISTICS FOR MULTIFAMILY PROPERTIES WITH HUD-INSURED MORTGAGES 1995

[In 1995 dollars per 2-bedroom equivalent unit]

	Newer assisted properties	Older assisted properties
Annual Net Cash Flow Per Unit:		
Mean	$1,105	$283
Median	$742	$162
Percentage of Properties With Negative Cash Flow	13%	33%
Percentage of Properties With Cash Flow of $0–$500	22%	42%
Total Reserves Per Unit:		
Mean	$1,924	$1,766
Median	$1,163	$1,240
Backlog of Physical Needs Per Unit:		
Mean	$3,214	$3,929
Median	$1,324	$2,096

It is apparent from these statistics that some properties will not be able to fund lead-based paint compliance out of current income. HUD estimates that no more than half of the housing with project-based assistance will be able to obtain an adjustment in assistance levels to finance the cost of the lead-based paint requirements. For projects that do not qualify for a rent adjustment and do not have sufficient income to cover the cost of compliance with the rule, HUD will work with owners to find funds from other sources. Depending on the property, this process may include the financial restructuring known as Mark to Market. Mark-to-Market processing will address lead-based paint requirements in the restructuring commitment. Other possible sources of funds include replacement reserves, grants, and Community Development Block Grant funds.

(2) *Housing Receiving Rehabilitation Assistance.* For housing receiving rehabilitation assistance, Table 7 compares the cost of compliance to an assumed average total cost of rehabilitation. Assumed average total rehabilitation costs are $4,000 for projects receiving $5,000 or less in rehabilitation assistance, $15,000 for those receiving between $5,000 and $25,000 in assistance, and $30,000 for those receiving more than $25,000 in assistance. Average compliance costs vary from 1.1 to 4.2 percent of these total project costs. Costs for high-compliance-cost projects vary from 3.3 to 9.3 percent of total rehabilitation cost. Single family properties tend to have a higher cost impact than multifamily, because they are larger units on average and usually require more exterior work.

Virtually all HUD rehabilitation assistance is administered by State, local and tribal agencies, and many, if not most, of these programs are operated as low-interest loans. If property owners are unable to finance loans for the incremental cost of lead hazard control, the administering agencies have the option to finance such costs with a grant out of program funds.

TABLE 7.—INCREMENTAL COST OF COMPLIANCE AS A PERCENTAGE OF AVERAGE REHABILITATION COST, BY PROGRAM GROUP HOUSING RECEIVING FEDERAL REHABILITATION ASSISTANCE

[Cost data as of 1995–1996]

Program group	Average incremental compliance cost per unit, all properties	Average incremental compliance cost per unit, high-cost properties	Average cost of rehabilitation, all properties	Average incremental compliance cost as a percentage of average rehab cost, all properties	Average incremental compliance cost as a percentage of average rehab cost, high-cost properties
Single Family (SF) Housing w/ Rehab Assistance, <$5K/Unit	$153	$170	$4,000	3.8	4.3
Multifamily (MF) Housing w/ Rehab Assistance, <$5K/Unit	113	130	4,000	2.8	3.3
SF Housing w/ Rehab Assistance, $5K–$25K	627	1,275	15,000	4.2	8.5
MF Housing w/ Rehab Assistance, $5K–$25K	265	720	15,000	1.8	4.8
SF Housing w/ Rehab Assistance, >$25K/Unit	891	2,775	30,000	3.0	9.3
MF Housing w/ Rehab Assistance, >$25K/Unit	342	1,140	30,000	1.1	3.8

(3) *Acquisition, Leasing, Support Services, and Operation.* This program group does not appear on Table 5, because HUD has no aggregate financial information for the housing affected by this subpart of the rule. For single family properties, the average cost of compliance is estimated at $251 per unit for all properties; the high cost is $870. For multifamily properties, the average cost per unit is $122 for all properties and $460 for high-cost properties. These costs are similar to those of housing with tenant-based assistance, and the financial impact is likely to be similar also.

4. *Final Rule Requirements.* The final rule establishes the following types of lead-based paint requirements: (1) Distribution of a lead hazard information pamphlet; (2) notice to occupants of evaluation and hazard reduction activities; (3) evaluation of lead-based paint hazards; (4) reduction of lead-based paint hazards; (5) ongoing monitoring and reevaluation; (6) response to a child with an elevated blood lead level; and (7) record keeping.

a. *Lead Hazard Information Pamphlet.* The rule, in accordance with the statute, requires the distribution of the EPA pamphlet entitled, ''Protect Your Family From Lead in Your Home'' to all existing tenants or owner-occupants who have not already received it in compliance with the lead-based paint disclosure rule (24 CFR part 35, subpart H) or the EPA rule implementing TSCA section 406(b) (40 CFR part 745, subpart E). Since the disclosure rule was effective in the Fall of 1996, HUD expects that most tenants will have already received the pamphlet when the rule becomes effective in year 2000 (see discussion of effective date below). Current HUD regulations require provision of information similar to that in the EPA pamphlet, so this is not a totally new requirement.

b. *Resident Notice.* The rule, in accordance with Title X, requires that occupants of rental housing receiving Federal assistance be provided written notice of risk assessments, paint inspections, or hazard reduction activities required by this regulation and undertaken at the property. This is a new requirement in HUD regulations. The required notice following risk assessment or inspection provides information to occupants about the nature, scope, and results of the evaluation and a name and phone number to contact for more information or for access to the actual evaluation reports. Notices to tenants regarding hazard reduction activities must contain information about the treatments performed and the location of any remaining lead-based paint. HUD is providing a sample format for resident notices in the final rule.

c. *Evaluation.* The rule establishes four types of evaluation procedures: (1) A lead-based paint inspection, which is a surface-by-surface investigation to determine the presence of lead-based paint on painted surfaces of a dwelling, typically through the use of a portable X-ray fluorescence (XRF) analyzer; (2) paint testing, which is a limited form of lead-based paint inspection aimed at determining the lead content of deteriorated paint or paint to be

disturbed by rehabilitation; (3) a risk assessment, which is an on-site investigation to determine and report the existence, nature, severity, and location of lead-based paint hazards, which, in accordance with Title X, include dust-lead and soil-lead hazards as well as deteriorated lead-based paint, as well as lead-based paint on friction, impact and chewable surfaces; and (4) clearance, which is an examination conducted after hazard reduction, rehabilitation, or maintenance activities (a) to visually determine that deteriorated surfaces that are known or presumed to be lead-based paint have been controlled or abated and that visible dust, debris, paint chips, or other residue have been cleaned up; and (b) to collect samples of settled dust and test them for lead content to determine that no dust-lead hazards remain. A risk assessment includes limited dust wipe sampling or other environmental sampling techniques, identification of hazard reduction options, and a report explaining the results of the investigation. In some housing programs, the rule calls for a visual assessment instead of a lead-based paint inspection or risk assessment. A visual assessment does not require environmental sampling but requires the visual examination of interior and exterior painted surfaces for signs of deterioration. The rule requires different types of evaluation for different types of housing assistance programs and different ages of housing. The differences in the requirements largely reflect the extent of Federal involvement in the property or the availability of funding.

Existing HUD lead-based paint regulations require a visual inspection for defective paint surfaces and, in some cases, testing of and abatement of any lead-based paint on chewable paint surfaces. These methods are similar in kind to the visual assessment and paint testing requirements under the proposed rule.

d. *Hazard Reduction Activities.* Three types of hazard reduction activities are required in the rule: (1) Abatement, which is a set of measures designed to permanently eliminate lead-based paint or lead-based paint hazards through removal, permanent enclosure or encapsulation, replacement of components, or removal or covering of lead-contaminated soil; (2) interim controls, which are designed to reduce temporarily human exposure to lead-based paint hazards through repairs, maintenance, painting, temporary containment, specialized cleaning, and ongoing monitoring; and (3) paint stabilization, which is the removal of deteriorated paint, repair of any physical defect in the substrate that may be causing paint deterioration, and repainting. Specialized cleanup and clearance are required after all these activities.

As with the requirements for evaluation, the final rule requires different types of hazard reduction activities for different types of housing assistance programs and different periods of construction. In the case of public housing, abatement of lead-based paint and lead-based paint hazards is required during the course of modernization under the current regulation. Under the final rule, the public housing requirements would remain essentially the same, with the additional requirement of interim controls to reduce identified lead-based hazards before scheduled abatement can occur.

e. *Ongoing Lead-Based Paint Maintenance and Reevaluation.* If temporary hazard reduction measures are used and there is a continuing financial relationship between HUD and the residential property, the final rule requires that owners conduct an annual check to identify any new deteriorated paint and to ensure that prior hazard reduction treatments are still intact. If there is new deteriorated paint, it is to be repaired; if old treatments are failing, they are to be fixed. For some housing programs, the rule requires that a certified risk assessor conduct a reevaluation of the property at specified intervals to identify any reaccumulation of lead-contaminated dust and any failure of prior hazard reductions.

f. *Response To a Child With an Elevated Blood Lead Level.* In some HUD programs, existing regulations use the presence of a child under age seven with an elevated blood lead level (EBL) as a trigger to initiate testing for and abatement of lead-based paint on chewable surfaces. The final rule changes the cutoff age from seven to six, to conform to guidance from the Centers for Disease Control and Prevention (CDC). The rule also changes the response requirement to a risk assessment and interim controls of any identified lead-based paint hazards, and changes the definition of an elevated blood lead level for the purposes of this rule from equal to or exceeding 25 micrograms per deciliter (μg/dL) to 20 μg/dL for a single venous test or of 15–19 μg/dL in two tests taken at least 3 months apart. This definitional change was made in consultation with CDC to conform to their existing medical guidelines.

g. *Record Keeping.* Grantees, owners, public housing authorities, and other designated parties are responsible for keeping a copy of each notice, evaluation, clearance or hazard reduction report for at least three years. If ongoing lead-based paint maintenance and/or reevaluation is required, such records must be kept and made available for HUD review until at least three years after such ongoing activities are no longer required.

5. *Description of Alternatives and Minimization of Economic Impact.* The specificity of the statute left HUD with no alternative to issuing an implementing regulation. However, in developing the final rule, HUD considered several alternative policies related to minimizing the burden of the rule on grantees, property owners and other parties responsible for complying with its requirements. Other alternatives were suggested by commenters on the proposed rule. In many cases, the public comments on the proposed rule articulated the issues discussed within the Department and at meetings with interested parties.

a. *Effective Date.* One consideration pertained to the effective date of the rule. On the one hand, an early effective date (such as 30 or 60 days after publication) seemed appropriate because the health of young children was at stake and the rule was delayed relative to the statutory schedule. On the other hand, HUD was aware that property owners, State and local agencies and other responsible parties needed time to prepare for compliance. The Department has concluded that such preparation is essential for safe, effective compliance and therefore is setting the effective date as one year after publication.

Commenters also urged HUD to make it clear that projects for which financing had been committed prior to the effective date should not have to be redesigned or refinanced in midstream. In response, HUD is including in the rule provisions that clarify exactly when projects in the pipeline are affected by the new requirements.

In addition to the phase-in period of one year, the final rule, in accordance with the statute, provides a more extended phase-in period for multifamily housing receiving project-based assistance of more than $5,000 per unit per year and was constructed after 1959. For some housing, this phase-in could last for 4 years after publication of the final rule.

b. *Stringency of Requirements in Relation to Amount of Federal Assistance and Nature of Program.* The Department recognizes that the statute and the legislative history indicates a desire on the part of Congress to make

the stringency of requirements reasonable in relation to the amount of Federal assistance, the type and size of property, and the nature of the program. HUD considered various ways to achieve this goal and concluded with three important policies: (1) Multifamily properties receiving no more than $5,000 per unit per year in project-based assistance and all single family properties receiving project-based assistance have less stringent requirements than multifamily properties receiving more than $5,000 in project-based assistance; (2) housing receiving no more than $5,000 per unit in Federal rehabilitation assistance have much less stringent requirements than those receiving more than $5,000; and (3) the requirements for housing occupied by families with tenant-based rental assistance apply only to units occupied by families with children of less than 6 years of age. By applying the rule narrowly to tenant-based rental assistance programs, HUD has mitigated some of the cost and burden on small businesses, while still realizing significant benefits by targeting units that house families with young children.

c. *De Minimis Area of Deteriorated Paint.* In the proposed rule, in an attempt to make the requirements of the rule as cost-effective as possible, the Department proposed a certain area of deteriorated paint that had to be present before treatment was required under the rule. This ''de minimis'' was drawn from the HUD Guidelines, where it was established as a way to focus resources on the highest priority hazards while maintaining effectiveness in hazard reduction. The de minimis areas were as follows: More than 10 square feet on an exterior wall; more than two square feet on a component with a large surface area other than an exterior wall (such as interior walls, ceilings, floors and doors); or more than 10 percent of the total surface area on an interior or exterior component with a small surface area including, but not limited to window sills, baseboards, and trim. Comments on this proposal were mixed. Some commenters found it difficult to understand and put in practice, indicating that people would spend too much time measuring the exact areas of deteriorated paint instead of focusing on making housing lead safe. Others welcomed the proposal as a reasonable way to target hazard reduction resources. In preparing the final rule, HUD has removed the de minimis provision with regard to deteriorated paint, after concluding that experience in the tenant-based assistance programs (where the de minimis provision was made effective in 1995) indicates that it is a cause of confusion.

d. *Qualifications.* Another subject of concern to HUD and to commenters on the proposed rule was the qualifications of individuals performing the hazard evaluation and reduction activities required by the rule. The proposed rule allowed dust and soil testing by persons employed by local housing agencies that are trained but not certified. Two commenters felt that it would be a mistake to allow uncertified individuals to take dust and soil tests, indicating that this appeared to be an avoidance of the certification law established by EPA regulations. EPA agreed with this point of view. HUD concluded that, because of the importance of dust and soil testing to the effectiveness of the regulation, there must be an established set of qualifications for those doing such testing. At this time, the only such program is that administered by EPA under authority of sections 402 and 404 of the Toxic Substances Control Act. Therefore HUD requires in the final rule that all dust and soil testing, as well as lead-based paint inspections, risk assessments, clearances and abatements, be performed or approved by people certified in accordance with EPA regulations or a State or tribal program authorized by EPA. To increase the availability of persons qualified to perform clearance examinations, HUD allows certified clearance technicians to perform clearances; and HUD also allows uncertified but trained technicians to perform clearances, provided the clearance report is signed by a certified lead-based paint inspector or risk assessor.

The proposed rule also required workers performing interim controls to be supervised by a person who is certified under EPA procedures as an abatement supervisor. Some commenters felt that it was unnecessary to require that interim controls workers be supervised by a certified abatement supervisor, suggesting that such workers could simply be trained in safe work practices. HUD agrees and requires in the final rule that workers performing lead-based paint maintenance and interim controls, including paint stabilization, only be trained in safe work practices. A series of optional acceptable training programs is listed.

e. *Options to Provide Greater Flexibility.* Several commenters on the proposed rule urged that HUD allow greater flexibility in ways to meet the goals of the rule. In particular, it was suggested that options be provided, such as the standard treatments recommended by the Task Force on Lead-Based Hazard Reduction and Financing as an option to conducting a risk assessment and interim controls. Such options would allow owners to select the procedure that is most cost-effective for them to achieve the goal of lead-based paint hazard control. The standard treatments option has been incorporated into today's final rule.

In the proposed rule, HUD included a provision requiring owners of multifamily housing with project-based rental assistance to prepare a lead hazard reduction plan. The hazard reduction plan was a suggestion of the Task Force on Lead-Based Paint Hazard Reduction and Financing. Its purpose was to give owners flexibility in prioritizing hazard reduction work. Several commenters, however, noted that it would be a paperwork ''nightmare,'' not only for the owners but for HUD as well. Therefore the final rule requires simply that the hazard reduction work be completed within 90 days after completion of the risk assessment report in units occupied by children of less than six years of age and within 12 months in all other units. HUD believes this change provides flexibility without unnecessary paperwork.

HUD recognizes that some States, tribes, or local governments may have established procedures for lead-based paint evaluation and hazard reduction that may be somewhat different than but as protective as those in this rule. Therefore the rule provides that HUD may waive or modify certain requirements if the Department determines that such local provisions are as protective as those of the HUD rule.

f. *Avoidance of Duplication.* The final rule was written with careful consideration of existing regulations developed by other Federal agencies, States, Indian tribes and localities. To minimize duplication and avoid confusion, HUD has explicitly stated that this rulemaking does not preclude States, Indian tribes or localities from conducting a more protective procedure than the minimum requirements set out in the proposed rule. Similarly, if more than one requirement covers a condition or activity, the most protective method shall apply. HUD has worked and continues to work closely with the EPA and CDC to ensure that regulations from two or more Federal agencies are consistent and not duplicative. Wherever possible, HUD has referenced relevant requirements established by EPA.

VII. Findings and Certifications

A. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This final rule does not impose any Federal mandates on any State, local, or tribal governments or the private sector within the meaning of Unfunded Mandates Reform Act of 1995.

B. Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4223). The Finding of No Significant Impact is available for public inspection between the hours of 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC.

C. Executive Order 12866, Regulatory Planning and Review

This rule was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866 on Regulatory Planning and Review, issued by the President on September 30, 1993. OMB determined that this rule is an economically significant regulatory action, as defined in section 3(f)(1) of the Order. As described in section VI of this preamble, an Economic Analysis (EA) has been prepared that examines the economic costs and benefits of the final rule. The EA is available for inspection and copying in the office of the Departments' Rules Docket Clerk, Room 10276, 451 Seventh Street, SW, Washington, DC 20410. Any changes made to the final rule subsequent to its submission to OMB are identified in the docket file, which is also available for public inspection in the office of the Rules Docket Clerk.

D. Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this rule will not have federalism implications concerning the division of local, State, and Federal responsibilities. The purpose of this rule is to ensure that housing receiving Federal assistance and federally owned housing that is to be sold does not pose lead-based paint hazards to young children. It implements Title X of the Housing and Community Development Act of 1992. No programmatic or policy change will result from this rule that will affect the relationship between the Federal government and State and local governments.

E. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

This rule will not pose an environmental health risk or safety risk for children.

F. Congressional Review of Major Final Rules

This final rule is a ''major rule'' as defined in the Congressional Review Act (5 U.S.C. Chapter 8).

VIII. References

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List of Subjects

24 CFR Part 35

Grant programs—housing and community development, Lead poisoning, Mortgage insurance, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 91

Aged, Grant programs—housing and community development, Homeless, Individuals with disabilities, Low and moderate income housing, Reporting and recordkeeping requirements.

24 CFR Part 92

Administrative practice and procedure, Grant programs—housing and community development, Grant programs—Indians, Indians, Low and moderate income housing, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Home improvement, Housing standards, Incorporation by reference, Lead poisoning, Loan programs—housing and community development, Minimum property standards, Mortgage insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

24 CFR Part 203

Hawaiian Natives, Home improvement, Indians—lands, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

24 CFR Part 206

Aged, Condominiums, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 280

Community development, Grant programs—housing and community development, Loan programs—housing and community development, Low and moderate income housing, Nonprofit organizations, Reporting and recordkeeping requirements.

24 CFR Part 291

Community facilities, Conflict of interests, Homeless, Lead poisoning, Low and moderate income housing, Mortgages, Reporting and recordkeeping requirements, Surplus government property.

24 CFR Part 511

Administrative practice and procedure, Grant programs—housing and community development, Lead poisoning, Low and moderate income housing, Reporting and recordkeeping requirements, Technical assistance.

24 CFR Part 570

Administrative practice and procedure, American Samoa, Community development block grants, Grant programs—education, Grant programs—housing and community development, Guam, Indians, Lead poisoning, Loan programs—housing and community development, Low and moderate income housing, New communities, Northern Mariana Islands, Pacific Islands Trust Territory, Pockets of poverty, Puerto Rico, Reporting and recordkeeping requirements, Small cities, Student aid, Virgin Islands.

24 CFR Part 572

Condominiums, Cooperatives, Fair housing, Government property, Grant programs—housing and community development, Low and moderate income housing, Nonprofit organizations, Reporting and recordkeeping requirements.

24 CFR Part 573

Condominiums, Fair housing, Government property, Grant programs—housing and community development, Low and moderate income housing, Nonprofit organizations, Reporting and recordkeeping requirements.

24 CFR Part 574

AIDS, Community facilities, Disabled, Emergency shelter, Grant programs—health programs, Grant programs—housing and community development, Grant programs—social programs, Homeless, Housing, Low and moderate income housing, Nonprofit organizations, Rent subsidies, Reporting and recordkeeping requirements, Technical assistance.

24 CFR Part 576

Community facilities, Emergency shelter grants, Grant programs—housing and community development, Grant programs—social programs, Homeless, Reporting and recordkeeping requirements.

24 CFR Part 582

Homeless, Rent subsidies, Reporting and recordkeeping requirements, Supportive housing programs—housing and community development, Supportive services.

24 CFR Part 583

Homeless, Rent subsidies, Reporting and recordkeeping requirements, Supportive housing programs—housing and community development, Supportive services.

24 CFR Part 585

Grant programs—housing and community development, Homeless, Low and very low-income families, Reporting and recordkeeping requirements.

24 CFR Part 761

Drug abuse, Drug traffic control, Grant programs—housing and community development, Grant programs—low- and moderate-income housing, Reporting and recordkeeping requirements.

24 CFR Part 881

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 882

Grant programs—housing and community development, Homeless, Lead poisoning, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 883

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 886

Grant programs—housing and community development, Lead poisoning, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 891

Aged, Capital advance programs, Civil rights, Grant programs—housing and community development, Individuals with disabilities, Loan programs—housing and community development, Low- and moderate-income housing, Mental health programs, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 901

Administrative practice and procedure, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 906

Grant programs—housing and community development, Low and moderate income housing, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 941

Grant programs—housing and community development, Loan programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 965

Energy conservation, Government procurement, Grant programs—housing and community development, Lead poisoning, Loan programs—housing and community development, Public housing, Reporting and recordkeeping requirements, Utilities.

24 CFR Part 968

Grant programs—housing and community development, Indians, Loan programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 970

Grant programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 982

Grant programs—housing and community development, Housing, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 983

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 1000

Aged, Community development block grants, Grant programs—housing and community development, Grant programs—Indians, Indians, Individuals with disabilities, Low and moderate income housing, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 1003

Alaska, Community development block grants, Grant programs—housing and community development, Indians, Reporting and recordkeeping requirements.

24 CFR Part 1005

Indians, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, HUD is amending title 24 of the Code of Federal Regulations as follows:

PART 35—LEAD–BASED PAINT POISONING PREVENTION IN CERTAIN RESIDENTIAL STRUCTURES

1. The authority citation for 24 CFR part 35 is revised to read as follows:

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

2. Remove Subpart A and redesignate subpart H, consisting of §§ 35.80 through 35.98, as subpart A, consisting of §§ 35.1 through 35.19. The table of contents to redesignated subpart A is revised to read as follows:

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

Sec.
35.1 Purpose.
35.3 Scope and applicability.
35.5 Effective dates.
35.7 Definitions.
35.9 Disclosure requirements for sellers and lessors.
35.11 Opportunity to conduct an evaluation.
35.13 Certification and acknowledgement of disclosure.
35.15 Agent responsibilities.
35.17 Enforcement.
35.19 Impact on State and local requirements.

3. Revise subparts B through G and add subparts H through R to read as follows:

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

35.100 Purpose and applicability.
35.105 Effective dates.
35.106 Information collection requirements.
35.110 Definitions.
35.115 Exemptions.
35.120 Options.
35.125 Notice of evaluation and hazard reduction activities.
35.130 Lead hazard information pamphlet.
35.135 Use of paint containing lead.
35.140 Prohibited methods of paint removal.
35.145 Compliance with Federal laws and authorities.
35.150 Compliance with other State, tribal, and local laws.
35.155 Minimum requirements.
35.160 Waivers.
35.165 Prior evaluation or hazard reduction.
35.170 Noncompliance with the requirements of subparts B through R.
35.175 Records

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

35.200 Purpose and applicability.
35.205 Definitions and other general requirements.
35.210 Disposition of residential property constructed before 1960.
35.215 Disposition of residential property constructed after 1959 and before 1978.

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

35.300 Purpose and applicability.
35.305 Definitions and other general requirements.
35.310 Notices and pamphlet.
35.315 Risk assessments.
35.320 Hazard reduction.
35.325 Child with an environmental intervention blood lead level.

Subpart E [Reserved]

Subpart F—HUD-Owned Single Family Property

35.500 Purpose and applicability.
35.505 Definitions and other general requirements.
35.510 Required procedures.

Subpart G—Multifamily Mortgage Insurance

35.600 Purpose and applicability.
35.605 Definitions and other general requirements.
35.610 Exemption.
35.615 Notices and pamphlet.
35.620 Multifamily insured property constructed before 1960.
35.625 Multifamily Insured Property constructed after 1959 and before 1978.
35.630 Conversions and Major Rehabilitations

Subpart H—Project-Based Rental Assistance

35.700 Purpose and applicability.
35.705 Definitions and other general requirements.
35.710 Notices and pamphlet.
35.715 Multifamily properties receiving more than $5,000 per unit.
35.720 Multifamily properties receiving up to $5,000 per unit, and single-family properties.
35.725 Section 8 rent adjustments.
35.730 Child with an environmental intervention blood lead level.

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

35.800 Purpose and applicability.
35.805 Definitions and other general requirements.
35.810 Notices and pamphlet.
35.815 Evaluation.
35.820 Interim controls.
35.825 Ongoing lead-based paint maintenance and reevaluation.
35.830 Child with an environmental intervention blood lead level.

Subpart J—Rehabilitation

35.900 Purpose and applicability.
35.905 Definitions and other general requirements.
35.910 Notices and pamphlet.
35.915 Calculating rehabilitation costs, except for the CILP program.
35.920 Calculating rehabilitation costs for the Flexible-Subsidy—CILP Program.
35.925 Examples of determining applicable requirements.
35.930 Evaluation and hazard reduction requirements.
35.935 Ongoing lead-based paint maintenance activities.
35.940 Special requirements for insular areas.

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

35.1000 Purpose and applicability.
35.1005 Definitions and other general requirements.
35.1010 Notices and pamphlet.
35.1015 Visual assessment, paint stabilization, and maintenance.

35.1020 Funding for evaluation and hazard reduction.

Subpart L—Public Housing Programs

35.1100 Purpose and applicability.
35.1105 Definitions and other general requirements.
35.1110 Notices and pamphlet.
35.1115 Evaluation.
35.1120 Hazard reduction.
35.1125 Evaluation and hazard reduction before acquisition and development.
35.1130 Child with an environmental intervention blood lead level.
35.1135 Eligible costs.
35.1140 Insurance coverage

Subpart M—Tenant-Based Rental Assistance

35.1200 Purpose and applicability.
35.1205 Definitions and other general requirements.
35.1210 Notices and pamphlet.
35.1215 Activities at initial and periodic inspections.
35.1220 Ongoing lead-based paint maintenance activities
35.1225 Child with an environmental intervention blood lead level.

Subparts N–Q [Reserved]

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

35.1300 Purpose and applicability
35.1305 Definitions and other general requirements.
35.1310 References.
35.1315 Collection and laboratory analysis of samples.
35.1320 Lead-based paint inspections and risk assessments.
35.1325 Abatement.
35.1330 Interim controls.
35.1335 Standard treatments.
35.1340 Clearance.
35.1345 Occupant protection and worksite preparation
35.1350 Safe work practices.
35.1355 Ongoing lead-based paint maintenance and reevaluation activities.

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

§ 35.100 Purpose and applicability.

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

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

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

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

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

(iv) *Example.* A multifamily building has 100 dwelling units and was built in 1965. The property is financed with HUD multifamily mortgage insurance. This building is covered by subpart G of this part (see § 35.625—Multifamily mortgage insurance for properties constructed after 1959), which is at protectiveness level 5 in the table set forth in paragraph (c) of this section. In the same building, however, 50 of the 100 dwelling units are receiving project-based assistance, and the average annual assistance per assisted unit is $5,500. Those 50 units, and common areas servicing those units, are covered by the requirements of subpart H of this part (see § 35.715—Project-based assistance for multifamily properties receiving more than $5,000 per unit), which are at protectiveness level 3. Therefore, because level 3 is a higher level of protectiveness than level 5, the units receiving project-based assistance, and common areas servicing those units, must comply at level 3, while the rest of the building can be operated at level 5. The owner may choose to operate the entire building at level 3 for simplicity.

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

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

Level of protection	Subpart, section, and type of assistance	Hazard reduction requirements
5	Subpart G, § 35.625, Multifamily mortgage insurance for properties constructed after 1959	Ongoing lead-based paint maintenance.
6	Subpart J, § 35.930(b), Properties receiving up to and including $5,000 in rehabilitation assistance	Safe work practices during rehabilitation.

§ 35.105 Effective dates.

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

§ 35.106 Information collection requirements.

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

§ 35.110 Definitions.

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

(1) The removal of lead-based paint and dust-lead hazards, the permanent enclosure or encapsulation of lead-based paint, the replacement of components or fixtures painted with lead-based paint, and the removal or permanent covering of soil-lead hazards; and

(2) All preparation, cleanup, disposal, and post abatement clearance testing activities associated with such measures.

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

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

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

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

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

CILP recipient means an owner of a multifamily property which is undergoing rehabilitation funded by the Flexible Subsidy-Capital Improvement Loan Program (CILP).

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

Component means an architectural element of a dwelling unit or common area identified by type and location, such as a bedroom wall, an exterior window sill, a baseboard in a living room, a kitchen floor, an interior window sill in a bathroom, a porch floor, stair treads in a common stairwell, or an exterior wall.

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

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

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

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

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

Dust-lead hazard means surface dust that contains a dust-lead loading (area concentration of lead) at or exceeding the levels promulgated by the EPA pursuant to section 403 of the Toxic Substances Control Act or, if such levels are not in effect, the standards in § 35.1320.

Dwelling unit means a:

(1) Single-family dwelling, including attached structures such as porches and stoops; or

(2) Housing unit in a structure that contains more than 1 separate housing unit, and in which each such unit is used or occupied, or intended to be used or occupied, in whole or in part, as the home or separate living quarters of 1 or more persons.

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

Enclosure means the use of rigid, durable construction materials that are mechanically fastened to the substrate in order to act as a barrier between lead-based paint and the environment. Enclosure may be used as a method of

abatement if it is designed to be permanent (see definition of ''permanent'').

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

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

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

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

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

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

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

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

Grantee means any State or local government, Indian tribe, IHBG recipient, insular area or nonprofit organization that has been designated by HUD to administer Federal housing assistance under a program covered by subparts J and K of this part, except the HOME program or the Flexible Subsidy-Capital Improvement Loan Program (CILP).

Hard costs of rehabilitation means:

(1) Costs to correct substandard conditions or to meet applicable local rehabilitation standards;

(2) Costs to make essential improvements, including energy-related repairs, and those necessary to permit use by persons with disabilities; and costs to repair or replace major housing systems in danger of failure; and

(3) Costs of non-essential improvements, including additions and alterations to an existing structure; but

(4) Hard costs do not include administrative costs (e.g., overhead for administering a rehabilitation program, processing fees, etc.).

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

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

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

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

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

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

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

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

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

Inspection (See Lead-based paint inspection).

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

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

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

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

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

Lead-based paint inspection means a surface-by-surface investigation to determine the presence of lead-based paint and the provision of a report explaining the results of the investigation.

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

Mortgagee means a lender of a mortgage loan.

Mortgagor means a borrower of a mortgage loan.

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

Occupant means a person who inhabits a dwelling unit.

Owner means a person, firm, corporation, nonprofit organization, partnership, government, guardian, conservator, receiver, trustee, executor,

or other judicial officer, or other entity which, alone or with others, owns, holds, or controls the freehold or leasehold title or part of the title to property, with or without actually possessing it. The definition includes a vendee who possesses the title, but does not include a mortgagee or an owner of a reversionary interest under a ground rent lease.

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

Paint testing means the process of determining, by a certified lead-based paint inspector or risk assessor, the presence or the absence of lead-based paint on deteriorated paint surfaces or painted surfaces to be disturbed or replaced.

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

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

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

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

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

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

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

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

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

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

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

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

Risk assessment means:

(1) An on-site investigation to determine the existence, nature, severity, and location of lead-based paint hazards; and

(2) The provision of a report by the individual or firm conducting the risk assessment explaining the results of the investigation and options for reducing lead-based paint hazards.

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

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

Soil-lead hazard means bare soil on residential property that contains lead equal to or exceeding levels promulgated by the U.S. Environmental Protection Agency pursuant to section 403 of the Toxic Substances Control Act or, if such levels are not in effect, the following levels: 400 μg/g in play areas; and 2000 μg/g in other areas with bare soil that total more than 9 square feet (0.8 square meters) per residential property.

Sponsor means mortgagor (borrower).

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

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

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

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

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

Visual assessment means looking for, as applicable:

(1) Deteriorated paint;

(2) Visible surface dust, debris and residue as part of a risk assessment or clearance examination; or

(3) The completion or failure of a hazard reduction measure.

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

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

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

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

§ 35.115 Exemptions.

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

(1) A residential property for which construction was completed on or after January 1, 1978, or, in the case of jurisdictions which banned the sale or residential use of lead-containing paint prior to 1978, an earlier date as HUD may designate (see § 35.160).

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 35.120 Options.

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

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

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

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

§ 35.125 Notice of evaluation and hazard reduction activities.

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

(a) *Notice of evaluation or presumption.* When evaluation is undertaken and lead-based paint or lead-based paint hazards are found to be present, or if a presumption is made that lead-based paint or lead-based paint hazards are present in accordance with the options described in § 35.120, the designated party shall provide a notice to occupants within 15 calendar days of the date when the designated party receives the report or makes the presumption.

(1) The notice of the evaluation shall include:

(i) A summary of the nature, scope and results of the evaluation;

(ii) A contact name, address and telephone number for more information,

and to obtain access to the actual evaluation report; and

(iii) The date of the notice.

(2) The notice of presumption shall include:

(i) The nature and scope of the presumption;

(ii) A contact name, address and telephone number for more information; and

(iii) The date of the notice.

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

(1) Provide a notice to occupants no more than 15 calendar days after the hazard reduction activities have been completed. Notice of hazard reduction shall include, but not be limited to:

(i) A summary of the nature, scope and results (including clearance), of the hazard reduction activities.

(ii) A contact name, address and telephone number for more information; and

(iii) Available information on the location of any remaining lead-based paint in the rooms, spaces or areas where hazard reduction activities were conducted, on a surface-by-surface basis;

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

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

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

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

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

(i) Posting and maintaining it in centrally located common areas and distributing it to any dwelling unit if necessary because the head of household is a person with a known disability; or

(ii) Distributing it to each occupied dwelling unit affected by the evaluation, presumption, or hazard reduction activity or serviced by common areas in which an evaluation, presumption or hazard reduction has taken place.

§ 35.130 Lead hazard information pamphlet.

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

§ 35.135 Use of paint containing lead.

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

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

§ 35.140 Prohibited methods of paint removal.

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

(a) Open flame burning or torching.

(b) Machine sanding or grinding without a high-efficiency particulate air (HEPA) local exhaust control.

(c) Abrasive blasting or sandblasting without HEPA local exhaust control.

(d) Heat guns operating above 1100 degrees Fahrenheit or charring the paint.

(e) Dry sanding or dry scraping, except dry scraping in conjunction with heat guns or within 1.0 ft. (0.30 m.) of electrical outlets, or when treating defective paint spots totaling no more than 2 sq. ft. (0.2 sq. m.) in any one interior room or space, or totaling no more than 20 sq. ft. (2.0 sq. m.) on exterior surfaces.

(f) Paint stripping in a poorly ventilated space using a volatile stripper that is a hazardous substance in accordance with regulations of the Consumer Product Safety Commission at 16 CFR 1500.3, and/or a hazardous chemical in accordance with the Occupational Safety and Health Administration regulations at 29 CFR 1910.1200 or 1926.59, as applicable to the work.

§ 35.145 Compliance with Federal laws and authorities.

All lead-based paint activities, including waste disposal, performed under this part shall be performed in accordance with applicable Federal laws and authorities. For example, such activities are subject to the applicable environmental review requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), the Toxic Substances Control Act, Title IV (15 U.S.C. 2860 *et seq.*), and other environmental laws and authorities (see, e.g., laws and authorities listed in § 50.4 of this title).

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

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

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

§ 35.155 Minimum requirements.

(a) Nothing in subparts B, C, D, F through M, and R of this part is intended to preclude a designated party or occupant from conducting additional evaluation or hazard reduction measures beyond the minimum requirements established for each program in this regulation. For example, if the applicable subpart requires visual

assessment, the designated party may choose to perform a risk assessment in accordance with § 35.1320. Similarly, if the applicable subpart requires interim controls, a designated party or occupant may choose to implement abatement in accordance with § 35.1325.

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

§ 35.160 Waivers.

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

§ 35.165 Prior evaluation or hazard reduction.

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

(a) *Lead-based paint inspection.* (1) A lead-based paint inspection conducted before August 30, 1999, meets the requirements of this rule if:

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

(ii) Notwithstanding paragraph (a)(1)(i) of this section, the inspection was conducted and accepted as valid by a housing agency in fulfillment of the lead-based paint inspection requirement of the public and Indian housing program.

(2) A lead-based paint inspection conducted after August 29, 1999 must have been conducted by a certified lead-based paint inspector.

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

(2) A risk assessment conducted before August 30, 1999 meets the requirements of this part if at the time of the risk assessment the risk assessor was approved by a State or Indian tribe to perform risk assessments. It is not necessary that the State or tribal approval program had EPA authorization at the time of the risk assessment.

(3) A risk assessment conducted after August 29, 1999 must have been conducted by a certified risk assessor.

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

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

(d) *Abatement.* (1) An abatement conducted before August 30, 1999 meets the requirements of this part if:

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

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

(2) An abatement conducted after August 29, 1999 must have been conducted under the supervision of a certified lead-based paint abatement supervisor.

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

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

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

§ 35.175 Records.

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

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

§ 35.200 Purpose and applicability.

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

§ 35.205 Definitions and other general requirements.

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

§ 35.210 Disposition of residential property constructed before 1960.

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

(b) *Abatement of lead-based paint hazards.* The risk assessment used for the identification of hazards to be abated shall have been performed no more than 12 months before the beginning of the abatement. The Federal agency shall abate all identified lead-based paint hazards in accordance with 40 CFR 745.227. Abatement is completed when clearance is achieved in accordance with 40 CFR 745.227. Where abatement of lead-based paint hazards is not completed before the

closing of the sale, the Federal agency shall be responsible for assuring that abatement is carried out by the purchaser before occupancy of the property as target housing and in accordance with 40 CFR 745.227.

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

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

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

§ 35.300 Purpose and applicability.

The purpose of this subpart D is to establish procedures to eliminate as far as practicable lead-based paint hazards in a residential property that receives more than $5,000 annually per project in project-based assistance on or after September 15, 2000, under a program administered by a Federal agency other than HUD.

§ 35.305 Definitions and other general requirements.

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

§ 35.310 Notices and pamphlet.

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

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

§ 35.315 Risk assessment.

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

§ 35.320 Hazard reduction.

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

§ 35.325 Child with an environmental intervention blood lead level.

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

Subpart E [Reserved]

Subpart F—HUD-Owned Single Family Property

§ 35.500 Purpose and applicability.

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

§ 35.505 Definitions and other general requirements.

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

§ 35.510 Required procedures.

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

(1) A visual assessment of all painted surfaces in order to identify deteriorated paint;

(2) Paint stabilization of all deteriorated paint in accordance with § 35.1330(a) and (b); and

(3) Clearance in accordance with § 35.1340.

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

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

Subpart G—Multifamily Mortgage Insurance

§ 35.600 Purpose and applicability.

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

§ 35.605 Definitions and other general requirements.

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

§ 35.610 Exemption.

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

§ 35.615 Notices and pamphlet.

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

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

§ 35.620 Multifamily insured property constructed before 1960.

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

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

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

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

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

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

Except as provided in § 35.630, before the issuance of the firm commitment,

the sponsor shall agree to incorporate ongoing lead-based paint maintenance practices into regular building operations, in accordance with § 35.1355(a).

§ 35.630 Conversions and major rehabilitations.

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

(a) *Lead-based paint inspection.* Before issuance of a firm FHA commitment, the sponsor shall conduct a lead-based paint inspection in accordance with § 35.1320(a).

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

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

Subpart H—Project-Based Rental Assistance

§ 35.700 Purpose and applicability.

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

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

§ 35.705 Definitions and other general requirements.

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

§ 35.710 Notices and pamphlet.

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

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

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

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

(a) *Risk assessment.* Each owner shall complete a risk assessment in accordance with § 35.1320(b). A risk assessment is considered complete when the owner receives the risk assessment report. Until the owner conducts a risk assessment as required by this section, the requirements of paragraph (d) of this section shall apply. After the risk assessment has been conducted the requirements of paragraphs (b) and (c) of this section shall apply. Each risk assessment shall be completed no later than the following schedule or a schedule otherwise determined by HUD:

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

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

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

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

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

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

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

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

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

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

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

Effective September 15, 2000, the requirements of this section shall apply to a multifamily residential property that is receiving an average of up to and including $5,000 per assisted dwelling unit annually in project-based assistance and to a single family residential property that is receiving project-based assistance through the Section 8 Moderate Rehabilitation program, the Project-Based Certificate program, or any other HUD program providing project-based assistance.

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

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

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

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

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

§ 35.725 Section 8 Rent adjustments.

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

§ 35.730 Child with an environmental intervention blood lead level.

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

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

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

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

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

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

§ 35.800 Purpose and applicability.

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

§ 35.805 Definitions and other general requirements.

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

§ 35.810 Notices and pamphlet.

(a) *Notices.* When evaluation or hazard reduction is undertaken, the Department shall provide a notice to occupants in accordance with § 35.125.

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

§ 35.815 Evaluation.

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

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

§ 35.820 Interim controls.

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

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

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

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

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

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

§ 35.825 Ongoing lead-based paint maintenance and reevaluation.

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

§ 35.830 Child with an environmental intervention blood lead level.

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

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

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

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

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

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

Subpart J—Rehabilitation

§ 35.900 Purpose and applicability.

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

(2) The requirements of this subpart shall not apply to HOME funds which are committed to a specific project in accordance with § 92.2 of this title before September 15, 2000. Such

projects shall be subject to the requirements of § 92.355 of this title that were in effect at the time of project commitment or the requirements of this subpart.

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

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

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

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

§ 35.905 Definitions and other general requirements.

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

§ 35.910 Notices and pamphlet.

(a) *Notices.* In cases where evaluation or hazard reduction or both are undertaken as part of federally funded rehabilitation, the grantee, participating jurisdiction, or CILP recipient, shall provide a notice to occupants in accordance with § 35.125.

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

§ 35.915 Calculating rehabilitation costs, except for the CILP Program.

(a) *Applicability.* This section applies to recipients of Federal rehabilitation assistance, except for CILP recipients, for which § 35.920 applies.

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

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

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

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

(2) For purposes of implementing §§ 35.930–35.935, the amount of rehabilitation assistance is the average per unit amount of Federal funds for the hard costs of rehabilitation, excluding lead-based paint hazard evaluation and hazard reduction activities. Costs of site preparation, occupant protection, relocation, interim controls, abatement, clearance and waste handling attributable to lead-based paint hazard reduction are not to be included in the hard costs of rehabilitation.

(c) *Calculating rehabilitation assistance.* For a residential property that includes both federally assisted and non-assisted units, the rehabilitation costs of non-assisted units are not included in the calculation.

(1) The average cost of rehabilitation for the assisted units is calculated as follows:

Per Unit Rehabilitation $ = (a/c) + (b/d)
Where:
a= Federal Rehabilitation Assistance for all assisted units
b= Federal Rehabilitation Assistance for common areas and exterior painted surfaces
c= Number of federally assisted units
d= Total number of units

(2) Eight out of 10 dwelling units in a residential property receive Federal rehabilitation assistance. The total amount of Federal rehabilitation assistance for the dwelling units is $90,000, and the total amount of Federal rehabilitation assistance for the common areas and exterior surfaces is $10,000. Based on the formula above, the average per unit amount of Federal rehabilitation assistance is $12,250. This is illustrated as follows: $12,250 = ($90,000/8) + ($10,000/10).

§ 35.920 Calculating rehabilitation costs for the Flexible Subsidy-CILP program.

All dwelling units and common areas in a residential property are considered to be assisted under the CILP program. The cost of rehabilitation is calculated as follows:

Per Unit Rehab $ = Federal Rehab Assistance / Total Number of Units.

§ 35.925 Examples of determining applicable requirements.

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

(a) If the total amount of Federal assistance for a dwelling is $2,000, and the hard costs of rehabilitation are $10,000, the lead-based paint requirements would be those described in § 35.930(b), because Federal rehabilitation assistance is up to and including $5,000.

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

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

§ 35.930 Evaluation and hazard reduction requirements.

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

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

(1) Conduct paint testing or presume the presence of lead-based paint, in accordance with paragraph (a) of this section. If paint testing indicates that the painted surfaces are not coated with lead-based paint, safe work practices and clearance are not required.

(2) Implement safe work practices during rehabilitation work in accordance with § 35.1350 and repair any paint that is disturbed.

(3) After completion of any rehabilitation disturbing painted surfaces, perform a clearance examination of the worksite(s) in accordance with § 35.1340. Clearance is not required if rehabilitation did not disturb painted surfaces of a total area more than that set forth in § 35.1350(b).

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

(1) Conduct paint testing or presume the presence of lead-based paint, in accordance with paragraph (a) of this section.

(2) Perform a risk assessment in the dwelling units receiving Federal assistance, in common areas servicing those units, and exterior painted surfaces, in accordance with § 35.1320(b), before rehabilitation begins.

(3) Perform interim controls in accordance with § 35.1330 of all lead-based paint hazards identified pursuant to paragraphs (c)(1) and (c)(2) of this section and any lead-based paint hazards created as a result of the rehabilitation work.

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

(1) Conduct paint testing or presume the presence of lead-based paint in accordance with paragraph (a) of this section.

(2) Perform a risk assessment in the dwelling units receiving Federal assistance and in associated common areas and exterior painted surfaces in accordance with § 35.1320(b) before rehabilitation begins.

(3) Abate all lead-based paint hazards identified by the paint testing or risk assessment conducted pursuant to paragraphs (d)(1) and (d)(2) of this section, and any lead-based paint hazards created as a result of the rehabilitation work, in accordance with § 35.1325, except that interim controls are acceptable on exterior surfaces that are not disturbed by rehabilitation.

§ 35.935 Ongoing lead-based paint maintenance activities.

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

§ 35.940 Special requirements for insular areas.

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

(a) *Residential property receiving an average of up to and including $5,000 per unit in Federal rehabilitation assistance.* (1) Implement safe work practices during rehabilitation work in accordance with § 35.1350 and repair any paint that is disturbed by rehabilitation.

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

(b) *Residential property receiving an average of more than $5,000 per unit in Federal rehabilitation assistance.* (1) Before beginning rehabilitation, perform a visual assessment of all painted surfaces in order to identify deteriorated paint.

(2) Perform paint stabilization of each deteriorated paint surface and each painted surface being disturbed by rehabilitation, in accordance with §§ 35.1330(a) and (b).

(3) After completion of all paint stabilization, perform a clearance examination of the affected dwelling units and common areas in accordance with § 35.1340. Clearance shall be achieved before residents are allowed to occupy rooms or spaces in which paint stabilization has been performed.

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

§ 35.1000 Purpose and applicability.

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

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

(c)(1) The requirements of this subpart shall not apply to HOME funds which are committed to a specific project in accordance with § 92.2 of this title before September 15, 2000. Such projects shall be subject to the requirements of § 92.355 of this title that were in effect at the time of project commitment, or the requirements of this subpart.

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

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

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

§ 35.1005 Definitions and other general requirements.

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

§ 35.1010 Notices and pamphlet

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

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

§ 35.1015 Visual assessment, paint stabilization, and maintenance.

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

(a) A visual assessment of all painted surfaces in order to identify deteriorated paint;

(b) Paint stabilization of each deteriorated paint surface, and clearance, in accordance with §§ 35.1330(a) and (b), before occupancy of a vacant dwelling unit or, where a unit is occupied, immediately after receipt of Federal assistance; and

(c) The grantee or participating jurisdiction shall incorporate ongoing lead-based paint maintenance activities into regular building operations, in accordance with § 35.1355(a).

(d) The grantee or participating jurisdiction shall provide a notice to occupants in accordance with §§ 35.125(b)(1) and (c), describing the results of the clearance examination.

§ 35.1020 Funding for evaluation and hazard reduction.

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

Subpart L—Public Housing Programs

§ 35.1100 Purpose and applicability.

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

§ 35.1105 Definitions and other general requirements.

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

§ 35.1110 Notices and pamphlet.

(a) *Notice.* In cases where evaluation or hazard reduction is undertaken, each public housing agency (PHA) shall provide a notice to residents in accordance with § 35.125.

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

§ 35.1115 Evaluation.

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

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

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

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

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

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

§ 35.1120 Hazard reduction.

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

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

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

(2) Interim controls in dwelling units not occupied by families with one or more children of less than 6 years of age, common areas servicing those units, and the remaining portions of the residential property shall be completed no later than 12 months after completion of the evaluation conducted under § 35.1115.

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

§ 35.1125 Evaluation and hazard reduction before acquisition and development.

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

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

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

§ 35.1130 Child with an environmental intervention blood lead level.

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

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

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

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

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

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

§ 35.1135 Eligible costs.

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

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

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

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

(d) *Environmental intervention blood lead level response costs.* The PHA may use its operating reserves and, when necessary, may request reimbursement from the current fiscal year CIAP funds, or request the reprogramming of previously approved CIAP funds to cover the costs of evaluation and hazard reduction.

§ 35.1140 Insurance coverage.

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

Subpart M—Tenant-Based Rental Assistance

§ 35.1200 Purpose and applicability.

(a) *Purpose.* The purpose of this subpart M is to establish procedures to eliminate as far as practicable lead-based paint hazards in housing occupied by families receiving tenant-based rental assistance. Such assistance includes tenant-based rental assistance under the Section 8 certificate program, the Section 8 voucher program, the HOME program, the Shelter Plus Care program, the Housing Opportunities for Persons With AIDS (HOPWA) program,

and the Indian Housing Block Grant program. *Tenant-based rental assistance* means rental assistance that is not attached to the structure.

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

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

(i) The requirements of this subpart are applicable where an initial or periodic inspection occurs on or after September 15, 200; and

(ii) The PHA shall be the designated party.

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

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

(ii) The grantee shall be the designated party.

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

(i) The requirements of this subpart shall apply to grants awarded pursuant to Notices of Funding Availability published on or after October 1, 1999; and

(ii) The grantee shall be the designated party.

(5) For the purposes of the HOME program:

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

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

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

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

(ii) The IHBG recipient shall be the designated party.

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

§ 35.1205 Definitions and other general requirements.

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

§ 35.1210 Notices and pamphlet.

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

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

§ 35.1215 Activities at initial and periodic inspection.

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

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

(b) The owner shall stabilize each deteriorated paint surface in accordance with § 35.1330(a) and (b) before commencement of assisted occupancy. If assisted occupancy has commenced prior to a periodic inspection, such paint stabilization must be completed within 30 days of notification of the owner of the results of the visual assessment. Paint stabilization is considered complete when clearance is achieved in accordance with § 35.1340.

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

§ 35.1220 Ongoing lead-based paint maintenance activities.

The owner shall incorporate ongoing lead-based paint maintenance activities into regular building operations in accordance with § 35.1355(a).

§ 35.1225 Child with an environmental intervention blood lead level.

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

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

(c) *Hazard reduction.* Within 30 days after receiving the risk assessment report from the designated party or the evaluation from the public health department, the owner shall complete the reduction of identified lead-based paint hazards in accordance with § 35.1325 or § 35.1330. Hazard reduction is considered complete when clearance is achieved in accordance with § 35.1340 and the clearance report states that all lead-based paint hazards identified in the risk assessment have been treated with interim controls or

abatement or when the public health department certifies that the lead-based paint hazard reduction is complete. If the owner does not complete the hazard reduction required by this section, the dwelling unit is in violation of Housing Quality Standards (HQS).

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

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

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

Subparts N–Q—[Reserved]

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

§ 35.1300 Purpose and applicability.

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

§ 35.1305 Definitions and other general requirements.

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

§ 35.1310 References.

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

(a) The HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing (Guidelines);

(b) The EPA Guidance on Residential Lead-Based Paint, Lead-Contaminated Dust, and Lead Contaminated Soil;

(c) Guidance, methods or protocols issued by States and Indian tribes that have been authorized by EPA under 40 CFR 745.324 to administer and enforce lead-based paint programs.

§ 35.1315 Collection and laboratory analysis of samples.

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

§ 35.1320 Lead-based paint inspections and risk assessments.

(a) *Lead-based paint inspections.* Lead-based paint inspections shall be performed in accordance with methods and standards established either by a State or Indian tribe under a program authorized by EPA, or by EPA at 40 CFR 745.227(b), except that the definition of lead-based paint shall not include a loading (area concentration) or mass concentration greater than that in the definition at § 35.110 of this part.

(b) *Risk assessments.* (1) Risk assessments shall be performed in accordance with methods and standards established either by a State or Indian tribe under a program authorized by EPA, or by EPA at 40 CFR 745.227(d), and paragraph (b)(2) of this section.

(2) Risk assessors shall use levels defining dust-lead hazards and soil-lead hazards that are no greater than those promulgated by EPA pursuant to section 403 of the Toxic Substances Control Act (15 U.S.C. 2683), or, if such levels are not in effect, the following for dust or soil:

(i) *Dust.* A dust-lead hazard shall be a dust-lead level equal to or greater than the applicable loading (area concentration), based on wipe samples, in the following table:

INTERIM DUST LEAD STANDARDS

Evaluation method	Surface	Interior window sills, µg/ft² (mg/m²)	Window troughs, µg/ft² (mg/m²)
	Floors, µg/ft² (mg/m²)		
Lead Hazard Screen	25 (0.27)	125 (1.4)	Not Applicable.
Risk Assessment	40 (0.43)	250 (2.7)	Not Applicable.
Reevaluation	40 (0.43)	250 (2.7)	Not Applicable.
Clearance	40 (0.43)	250 (2.7)	800 (8.6).

Note: ''Floors'' includes carpeted and uncarpeted interior floors.

(ii) *Soil.* (A) A soil-lead hazard for play areas frequented by children under 6 years of age shall be bare soil with lead equal to or exceeding 400 micrograms per gram.

(B) For other areas, soil-lead hazards shall be bare soil that totals more than 9 square feet (0.8 square meters) per property with lead equal to or exceeding 2,000 micrograms per gram.

(3) Lead hazard screens shall be performed in accordance with the methods and standards established either by a State or Indian tribe under a program authorized by EPA, or by EPA at 40 CFR 745.227(c), and paragraph (b)(2) of this section. If the lead hazard screen indicates the need for a follow-up risk assessment (e.g., if dust-lead measurements exceed the levels established for lead hazard screens in this section), a risk assessment shall be conducted in accordance with paragraphs (b)(1) and (b)(2) of this section. Dust, soil, and paint samples collected for the lead hazard screen may

be used in the risk assessment. If the lead hazard screen does not indicate the need for a follow-up risk assessment, no further risk-assessment is required.

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

§ 35.1325 Abatement.

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

§ 35.1330 Interim controls.

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

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

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

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

(4) A person performing interim controls must be trained in accordance with 29 CFR 1926.59 and either be supervised by an individual certified as a lead-based paint abatement supervisor or have successfully completed one of the following courses:

(i) A lead-based paint abatement supervisor course accredited in accordance with 40 CFR 745.225;

(ii) A lead-based paint abatement worker course accredited in accordance with 40 CFR 745.225;

(iii) The Lead-Based Paint Maintenance Training Program, ''Work Smart, Work Wet, and Work Clean to Work Lead Safe,'' prepared by the National Environmental Training Association for EPA and HUD;

(iv) ''The Remodeler's and Renovator's Lead-Based Paint Training Program,'' prepared by HUD and the National Association of the Remodeling Industry; or

(v) Another course approved by HUD for this purpose after consultation with EPA.

(b) *Paint stabilization.* (1) Interim control treatments used to stabilize deteriorated lead-based paint shall be performed in accordance with the requirements of this section. Interim control treatments of intact, factory applied prime coatings on metal surfaces are not required. Finish coatings on such surfaces shall be treated by interim controls if those coatings contain lead-based paint.

(2) Any physical defect in the substrate of a painted surface or component that is causing deterioration of the surface or component shall be repaired before treating the surface or component. Examples of defective substrate conditions include dry-rot, rust, moisture-related defects, crumbling plaster, and missing siding or other components that are not securely fastened.

(3) Before applying new paint, all loose paint and other loose material shall be removed from the surface to be treated. Acceptable methods for preparing the surface to be treated include wet scraping, wet sanding, and power sanding performed in conjunction with a HEPA filtered local exhaust attachment operated according to the manufacturer's instructions.

(4) Dry sanding or dry scraping is permitted only in accordance with § 35.140(e) (i.e., for electrical safety reasons or for specified minor amounts of work).

(5) Paint stabilization shall include the application of a new protective coating or paint. The surface substrate shall be dry and protected from future moisture damage before applying a new protective coating or paint. All protective coatings and paints shall be applied in accordance with the manufacturer's recommendations.

(6) Paint stabilization shall incorporate the use of safe work practices in accordance with § 35.1350.

(c) *Friction and impact surfaces.* (1) Friction surfaces are required to be treated only if:

(i) Lead dust levels on the nearest horizontal surface underneath the friction surface (e.g., the window sill, window trough, or floor) are equal to or greater than the standards specified in 35.1320(b);

(ii) There is evidence that the paint surface is subject to abrasion; and

(iii) Lead-based paint is known or presumed to be present on the friction surface.

(2) Impact surfaces are required to be treated only if:

(i) Paint on an impact surface is damaged or otherwise deteriorated;

(ii) The damaged paint is caused by impact from a related building component (such as a door knob that knocks into a wall, or a door that knocks against its door frame); and

(iii) Lead-based paint is known or presumed to be present on the impact surface.

(3) Examples of building components that may contain friction or impact surfaces include the following:

(i) Window systems;

(ii) Doors;

(iii) Stair treads and risers;

(iv) Baseboards;

(v) Drawers and cabinets; and

(vi) Porches, decks, interior floors, and any other painted surfaces that are abraded, rubbed, or impacted.

(4) Interim control treatments for friction surfaces shall eliminate friction points or treat the friction surface so that paint is not subject to abrasion. Examples of acceptable treatments include rehanging and/or planing doors so that the door does not rub against the door frame, and installing window channel guides that reduce or eliminate abrasion of painted surfaces. Paint on stair treads and floors shall be protected with a durable cover or coating that will prevent abrasion of the painted surfaces. Examples of acceptable materials include carpeting, tile, and sheet flooring.

(5) Interim control treatments for impact surfaces shall protect the paint from impact. Examples of acceptable treatments include treatments that eliminate impact with the paint surface, such as a door stop to prevent a door from striking a wall or baseboard.

(6) Interim control for impact or friction surfaces does not include covering such a surface with a coating or other treatment, such as painting over the surface, that does not protect lead-based paint from impact or abrasion.

(d) *Chewable surfaces.* (1) Chewable surfaces are required to be treated only if there is evidence that a child of less than 6 years of age has chewed on the painted surface, and lead-based paint is known or presumed to be present on the surface.

(2) Interim control treatments for chewable surfaces shall make the lead-based paint inaccessible for chewing by children of less than 6 years of age. Examples include enclosures or coatings that cannot be penetrated by the teeth of such children.

(e) *Dust-lead hazard control.* (1) Interim control treatments used to control dust-lead hazards shall be performed in accordance with the requirements of this section. Additional information on dust removal is found in the HUD Guidelines, particularly Chapter 11 (see § 35.1310).

(2) Dust control shall involve a thorough cleaning of all horizontal surfaces, such as interior window sills, window troughs, floors, and stairs, but excluding ceilings. All horizontal surfaces, such as floors, stairs, window sills and window troughs, that are rough, pitted, or porous shall be covered with a smooth, cleanable covering or coating, such as metal coil stock, plastic, polyurethane, or linoleum.

(3) Surfaces covered by a rug or carpeting shall be cleaned as follows:

(i) The floor surface under a rug or carpeting shall be cleaned where feasible, including upon removal of the rug or carpeting, with a HEPA vacuum or other method of equivalent efficacy.

(ii) An unattached rug or an attached carpet that is to be removed, and padding associated with such rug or carpet, located in an area of the dwelling unit with dust-lead hazards on the floor, shall be thoroughly vacuumed with a HEPA vacuum or other method of equivalent efficacy. Protective measures shall be used to prevent the spread of dust during removal of a rug, carpet or padding from the dwelling. For example, it shall be misted to reduce dust generation during removal. The item(s) being removed shall be wrapped or otherwise sealed before removal from the worksite.

(iii) An attached carpet located in an area of the dwelling unit with dust-lead hazards on the floor shall be thoroughly vacuumed with a HEPA vacuum or other method of equivalent efficacy if it is not to be removed.

(f) *Soil-lead hazards.* (1) Interim control treatments used to control soil-lead hazards shall be performed in accordance with this section.

(2) Soil with a lead concentration equal to or greater than 5,000 µg/g of lead shall be abated in accordance with 40 CFR 745.227(e).

(3) Acceptable interim control methods for soil lead are impermanent surface coverings and land use controls.

(i) Impermanent surface coverings may be used to treat lead-contaminated soil if applied in accordance with the following requirements. Examples of acceptable impermanent coverings include gravel, bark, sod, and artificial turf.

(A) Impermanent surface coverings selected shall be designed to withstand the reasonably-expected traffic. For example, if the area to be treated is heavily traveled, neither grass or sod shall be used.

(B) When loose impermanent surface coverings such as bark or gravel are used, they shall be applied in a thickness not less than six inches deep.

(C) The impermanent surface covering material shall not contain more than 200 µg/g of lead.

(D) Adequate controls to prevent erosion shall be used in conjunction with impermanent surface coverings.

(ii) Land use controls may be used to reduce exposure to soil-lead hazards only if they effectively control access to areas with soil-lead hazards. Examples of land use controls include: fencing, warning signs, and landscaping.

(A) Land use controls shall be implemented only if residents have reasonable alternatives to using the area to be controlled.

(B) If land use controls are used for a soil area that is subject to erosion, measures shall be taken to contain the soil and control dispersion of lead.

§ 35.1335 Standard treatments.

Standard treatments shall be conducted in accordance with this section.

(a) *Paint stabilization.* All deteriorated paint on exterior and interior surfaces located on the residential property shall be stabilized in accordance with § 35.1330(a)(b), or abated in accordance with § 35.1325.

(b) *Smooth and cleanable horizontal surfaces.* All horizontal surfaces, such as uncarpeted floors, stairs, interior window sills and window troughs, that are rough, pitted, or porous, shall be covered with a smooth, cleanable covering or coating, such as metal coil stock, plastic, polyurethane, or linoleum.

(c) *Correcting dust-generating conditions.* Conditions causing friction or impact of painted surfaces shall be corrected in accordance with § 35.1330(c)(4)–(6).

(d) *Bare residential soil.* Bare soil shall be treated in accordance with the requirements of § 35.1330, unless it is found not to be a soil-lead hazard in accordance with § 35.1320(b).

(e) *Safe work practices.* All standard treatments described in paragraphs (a) through (d) of this section shall incorporate the use of safe work practices in accordance with § 35.1350.

(f) *Clearance.* A clearance examination shall be performed in accordance with § 35.1340 at the conclusion of any lead hazard reduction activities.

(g) *Qualifications.* An individual performing standard treatments must meet the training and/or supervision requirements of § 35.1330(a)(4).

§ 35.1340 Clearance.

Clearance examinations required under subparts B, C, D, F through M, and R, of this part shall be performed in accordance with the provisions of this section.

(a) *Clearance following abatement.* Clearance examinations performed following abatement of lead-based paint or lead-based paint hazards shall be performed in accordance with 40 CFR 745.227(e) and paragraphs (c)–(f) of this section. Such clearances shall be performed by a person certified to perform risk assessments or lead-based paint inspections.

(b) *Clearance following activities other than abatement.* Clearance examinations performed following interim controls, paint stabilization, standard treatments, ongoing lead-based paint maintenance, or rehabilitation shall be performed in accordance with the requirements of this paragraph (b) and paragraphs (c)–(g) of this section.

(1) *Qualified personnel.* Clearance examinations shall be performed by:

(i) A certified risk assessor;

(ii) A certified lead-based paint inspector;

(iii) A person who has successfully completed a training course for clearance technicians (or a discipline of similar purpose and title) that is developed or accepted by EPA or a State or tribal program authorized by EPA pursuant to 40 CFR part 745, subpart Q, and that is given by a training provider accredited by EPA or a State or Indian tribe for training in lead-based paint inspection or risk assessment, *provided* a certified risk assessor or a certified lead-based paint inspector approves the work of the clearance technician and signs the report of the clearance examination; or

(iv) A technician licensed or certified by EPA or a State or Indian tribe to perform clearance examinations without the approval of a certified risk assessor or certified lead-based paint inspector,

provided that a clearance examination by such a licensed or certified technician shall be performed only for a single-family property or individual dwelling units and associated common areas in a multi-unit property, and provided further that a clearance examination by a such a licensed or certified clearance technician shall not be performed using random sampling of dwelling units or common areas in multifamily properties, except that a clearance examination performed by such a licensed or certified clearance technician is acceptable for any residential property if the clearance examination is approved and the report signed by a certified risk assessor or a certified lead-based paint inspector.

(2) *Required activities.* (i) Clearance examinations shall include a visual assessment, dust sampling, submission of samples for analysis for lead, interpretation of sampling results, and preparation of a report. Clearance examinations shall be performed in dwelling units, common areas and exterior areas in accordance with this section and the steps set forth at 40 CFR 745.227(e)(8). If clearance is being performed for more than 10 dwelling units of similar construction and maintenance, as in a multifamily property, random sampling for the purposes of clearance may be conducted in accordance with 40 CFR 745.227(e)(9).

(ii) The visual assessment shall be performed to determine if deteriorated paint surfaces and/or visible amounts of dust, debris, paint chips or other residue are still present. Both exterior and interior painted surfaces shall be examined for the presence of deteriorated paint. If deteriorated paint or visible dust, debris or residue are present in areas subject to dust sampling, they must be eliminated prior to the continuation of the clearance examination, except elimination of deteriorated paint is not required if it has been determined, through paint testing or a lead-based paint inspection, that the deteriorated paint is not lead-based paint. If exterior painted surfaces have been disturbed by the hazard reduction, maintenance or rehabilitation activity, the visual assessment shall include an assessment of the ground and any outdoor living areas close to the affected exterior painted surfaces. Visible dust or debris in living areas shall be cleaned up and visible paint chips on the ground shall be removed.

(iii) Dust samples shall be wipe samples and shall be taken on floors and, where practicable, interior window sills and window troughs. Dust samples shall be collected and analyzed in accordance with § 35.1315 of this part.

(iv) Clearance reports shall be prepared in accordance with paragraph (c) of this section.

(c) *Clearance report.* When clearance is required, the designated party shall ensure that a clearance report is prepared that provides documentation of the hazard reduction or maintenance activity as well as the clearance examination. When abatement is performed, the report shall be an abatement report in accordance with 40 CFR 745.227(e)(10). When another hazard reduction or maintenance activity requiring a clearance report is performed, the report shall include the following information:

(1) The address of the residential property and, if only part of a multifamily property is affected, the specific dwelling units and common areas affected.

(2) The following information on the clearance examination:

(i) The date(s) of the clearance examination;

(ii) The name, address, and signature of each person performing the clearance examination, including certification number;

(iii) The results of the visual assessment for the presence of deteriorated paint and visible dust, debris, residue or paint chips;

(iv) The results of the analysis of dust samples, in µg/sq.ft., by location of sample; and

(v) The name and address of each laboratory that conducted the analysis of the dust samples, including the identification number for each such laboratory recognized by EPA under section 405(b) of the Toxic Substances Control Act (15 U.S.C. 2685(b)).

(3) The following information on the hazard reduction or maintenance activity for which clearance was performed:

(i) The start and completion dates of the hazard reduction or maintenance activity;

(ii) The name and address of each firm or organization conducting the hazard reduction or maintenance activity and the name of each supervisor assigned;

(iii) A detailed written description of the hazard reduction or maintenance activity, including the methods used, locations of exterior surfaces, interior rooms, common areas, and/or components where the hazard reduction activity occurred, and any suggested monitoring of encapsulants or enclosures; and

(iv) If soil hazards were reduced, a detailed description of the location(s) of the hazard reduction activity and the method(s) used.

(d) *Standards.* The clearance standards in § 35.1320(b)(2) shall apply. If test results equal or exceed the standards, the dwelling unit, worksite, or common area represented by the sample fails the clearance examination.

(e) *Clearance failure.* All surfaces represented by a failed clearance sample shall be recleaned or treated by hazard reduction, and retested, until the applicable clearance level in § 35.1320(b)(2) is met.

(f) *Independence.* Clearance examinations shall be performed by persons or entities independent of those performing hazard reduction or maintenance activities, unless the designated party uses qualified in-house employees to conduct clearance. An in-house employee shall not conduct both a hazard reduction or maintenance activity and its clearance examination.

(g) *Worksite clearance.* When clearance is of an interior worksite, not an entire dwelling unit or residential property, dust samples taken for paragraph (b) of this section shall be taken from the floor and window (if available) to represent the area within the dust containment area. Clearance is not required if maintenance or hazard reduction activities in the worksite do not disturb painted surfaces of a total area more than that set forth in § 35.1350(d)

§ 35.1345 Occupant protection and worksite preparation.

This section establishes procedures for protecting dwelling unit occupants and the environment from contamination from lead-contaminated or lead-containing materials during hazard reduction activities.

(a) *Occupant protection.* (1) Occupants shall not be permitted to enter the worksite during hazard reduction activities (unless they are employed in the conduct of these activities at the worksite), until after hazard reduction work has been completed and clearance, if required, has been achieved.

(2) Occupants shall be temporarily relocated before and during hazard reduction activities to a suitable, decent, safe, and similarly accessible dwelling unit that does not have lead-based paint hazards, except if:

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

(ii) Only the exterior of the dwelling unit is treated, and windows, doors, ventilation intakes and other openings in or near the worksite are sealed during hazard control work and cleaned

afterward, and entry free of dust-lead hazards, soil-lead hazards, and debris is provided;

(iii) Treatment of the interior will be completed within one period of 8-daytime hours, the worksite is contained so as to prevent the release of leaded dust and debris into other areas, and treatment does not create other safety, health or environmental hazards (e.g., exposed live electrical wiring, release of toxic fumes, or on-site disposal of hazardous waste); or

(iv) Treatment of the interior will be completed within 5 calendar days, the worksite is contained so as to prevent the release of leaded dust and debris into other areas, treatment does not create other safety, health or environmental hazards; and, at the end of work on each day, the worksite and the area within at least 10 feet (3 meters) of the containment area is cleaned to remove any visible dust or debris, and occupants have safe access to sleeping areas, and bathroom and kitchen facilities.

(3) The dwelling unit and the worksite shall be secured against unauthorized entry, and occupants' belongings protected from contamination by dust-lead hazards and debris during hazard reduction activities. Occupants' belongings in the containment area shall be relocated to a safe and secure area outside the containment area, or covered with an impermeable covering with all seams and edges taped or otherwise sealed.

(b) *Worksite preparation.* (1) The worksite shall be prepared to prevent the release of leaded dust, and contain lead-based paint chips and other debris from hazard reduction activities within the worksite until they can be safely removed. Practices that minimize the spread of leaded dust, paint chips, soil and debris shall be used during worksite preparation.

(2) A warning sign shall be posted at each entry to a room where hazard reduction activities are conducted when occupants are present; or at each main and secondary entryway to a building from which occupants have been relocated; or, for an exterior hazard reduction activity, where it is easily read 20 feet (6 meters) from the edge of the hazard reduction activity worksite. Each warning sign shall be as described in 29 CFR 1926.62(m), except that it shall be posted irrespective of employees' lead exposure and, to the extent practicable, provided in the occupants' primary language.

§ 35.1350 Safe work practices.

(a) *Prohibited methods.* Methods of paint removal listed in § 35.140 shall not be used.

(b) *Occupant protection and worksite preparation.* Occupants and their belongings shall be protected, and the worksite prepared, in accordance with § 35.1345.

(c) *Specialized cleaning.* After hazard reduction activities have been completed, the worksite shall be cleaned using cleaning methods, products, and devices that are successful in cleaning up dust-lead hazards, such as a HEPA vacuum or other method of equivalent efficacy, and lead-specific detergents or equivalent.

(d) *De minimis levels.* Safe work practices are not required when maintenance or hazard reduction activities do not disturb painted surfaces that total more than:

(1) 20 square feet (2 square meters) on exterior surfaces;

(2) 2 square feet (0.2 square meters) in any one interior room or space; or

(3) 10 percent of the total surface area on an interior or exterior type of component with a small surface area. Examples include window sills, baseboards, and trim.

§ 35.1355 Ongoing lead-based paint maintenance and reevaluation activities.

(a) *Maintenance.* Maintenance activities shall be conducted in accordance with paragraphs (a)(2)–(6) of this section, except as provided in paragraph (a)(1) of this section.

(1) Maintenance activities need not be conducted in accordance with this section if both of the following conditions are met, as applicable:

(i) Either a lead-based paint inspection indicates that no lead-based paint is present in the dwelling units, common areas, and on exterior surfaces, or a clearance report prepared in accordance with § 35.1340(a) indicates that all lead-based paint has been removed; and

(ii) If a risk assessment is required by the applicable subpart of this part, a current risk assessment indicates that no soil-lead hazards and no dust-lead hazards are present.

(2) A visual assessment for deteriorated paint, bare soil, and the failure of any hazard reduction measures shall be performed at unit turnover and every twelve months.

(3) (i) *Deteriorated paint.* All deteriorated paint on interior and exterior surfaces located on the residential property shall be stabilized in accordance with § 35.1330(a)(b), except for any paint that an evaluation has found is not lead-based paint.

(ii) *Bare soil.* All bare soil shall be treated with standard treatments in accordance with § 35.1335(d) through (g), or interim controls in accordance with § 35.1330(a) and (f); except for any bare soil that a current evaluation has found is not a soil-lead hazard.

(4) Safe work practices, in accordance with sec. 35.1350, shall be used when performing any maintenance or renovation work that disturbs paint that may be lead-based paint.

(5) Any encapsulation or enclosure of lead-based paint or lead-based paint hazards which has failed to maintain its effectiveness shall be repaired, or abatement or interim controls shall be performed in accordance with §§ 35.1325 or 35.1330, respectively.

(6) Clearance testing of the worksite shall be performed at the conclusion of repair, abatement or interim controls in accordance with § 35.1340.

(7) Each dwelling unit shall be provided with written notice asking occupants to report deteriorated paint and, if applicable, failure of encapsulation or enclosure, along with the name, address and telephone number of the person whom occupants should contact. The language of the notice shall be in accordance with § 35.125(c)(3). The designated party shall respond to such report and stabilize the deteriorated paint or repair the encapsulation or enclosure within 30 days.

(b) *Reevaluation.* Reevaluation shall be conducted in accordance with this paragraph (b), and the designated party shall conduct interim controls of lead-based paint hazards found in the reevaluation.

(1) Reevaluation shall be conducted if hazard reduction has been conducted to reduce lead-based paint hazards found in a risk assessment or if standard treatments have been conducted, except that reevaluation is not required if any of the following cases are met:

(i) An initial risk assessment found no lead-based paint hazards;

(ii) A lead-based paint inspection found no lead-based paint; or

(iii) All lead-based paint was abated in accordance with § 35.1325, provided that no failures of encapsulations or enclosures have been found during visual assessments conducted in accordance with § 35.1355(a)(2) or during other observations by maintenance and repair workers in accordance with § 35.1355(a)(5) since the encapsulations or inclosures were performed.

(2) Reevaluation shall be conducted to identify:

(i) Deteriorated paint surfaces with known or suspected lead-based paint;

(ii) Deteriorated or failed interim controls of lead-based paint hazards or encapsulation or enclosure treatments;

(iii) Dust-lead hazards; and

(iv) Soil that is newly bare with lead levels equal to or above the standards in § 35.1320(b)(2).

(3) Each reevaluation shall be performed by a certified risk assessor.

(4) Each reevaluation shall be conducted in accordance with the following schedule if a risk assessment or other evaluation has found deteriorated lead-based paint in the residential property, a soil-lead hazard, or a dust-lead hazard on a floor or interior window sill. (Window troughs are not sampled during reevaluation). The first reevaluation shall be conducted no later than two years from completion of hazard reduction. Subsequent reevaluation shall be conducted at intervals of two years, plus or minus 60 days. To be exempt from additional reevaluation, at least two consecutive reevaluations conducted at such two-year intervals must be conducted without finding lead-based paint hazards or a failure of an encapsulation or enclosure. If, however, a reevaluation finds lead-based paint hazards or a failure, at least two more consecutive reevaluations conducted at such two year intervals must be conducted without finding lead-based paint hazards or a failure.

(5) Each reevaluation shall be performed as follows:

(i) Dwelling units and common areas shall be selected and reevaluated in accordance with § 35.1320(b).

(ii) The worksites of previous hazard reduction activities that are similar on the basis of their original lead-based paint hazard and type of treatment shall be grouped. Worksites within such groups shall be selected and reevaluated in accordance with § 35.1320(b).

(6) Each reevaluation shall include reviewing available information, conducting selected visual assessment, recommending responses to hazard reduction omissions or failures, performing selected evaluation of paint, soil and dust, and recommending response to newly-found lead-based paint hazards.

(i) *Review of available information.* The risk assessor shall review any available past evaluation, hazard reduction and clearance reports, and any other available information describing hazard reduction measures, ongoing maintenance activities, and relevant building operations.

(ii) *Visual assessment.* The risk assessor shall:

(A) Visually evaluate all lead-based paint hazard reduction treatments, any known or suspected lead-based paint, any deteriorated paint, and each exterior site, and shall identify any new areas of bare soil;

(B) Determine acceptable options for controlling the hazard; and

(C) Await the correction of any hazard reduction omission or failure and the reduction of any lead-based paint hazard before sampling any dust or soil the risk assessor determines may reasonably be associated with such hazard.

(iii) *Reaction to hazard reduction omission or failure.* If any hazard reduction control has not been implemented or is failing (e.g., an encapsulant is peeling away from the wall, a paint-stabilized surface is no longer intact, or gravel covering an area of bare soil has worn away), or deteriorated lead-based paint is present, the risk assessor shall:

(A) Determine acceptable options for controlling the hazard; and

(B) Await the correction of any hazard reduction omission or failure and the reduction of any lead-based paint hazard before sampling any dust or soil the risk assessor determines may reasonably be associated with such hazard.

(iv) *Selected paint, soil and dust evaluation.* (A) The risk assessor shall sample deteriorated paint surfaces identified during the visual assessment and have the samples analyzed, in accordance with 40 CFR 745.227(b)(3)(4), but only if reliable information about lead content is unavailable.

(B) The risk assessor shall evaluate new areas of bare soil identified during the visual assessment. Soil samples shall be collected and analyzed in accordance with 40 CFR 745.227(d)(8)–(11), but only if the soil lead levels have not been previously measured.

(C) The risk assessor shall take selected dust samples and have them analyzed. Dust samples shall be collected and analyzed in accordance with § 35.1320(b). At least two composite samples, one from floors and the other from interior window sills, shall be taken in each dwelling unit and common area selected. Each composite sample shall consist of four individual samples, each collected from a different room or area. If the dwelling unit contains both carpeted and uncarpeted living areas, separate floor samples are required from the carpeted and uncarpeted areas. Equivalent single-surface sampling may be used instead of composite sampling.

(7) The risk assessor shall provide the designated party with a written report documenting the presence or absence of lead-based paint hazards, the current status of any hazard reduction and standard treatment measures used previously and any newly-conducted evaluation and hazard reduction activities. The report shall include the information in 40 CFR 745.227(d)(11), and shall:

(i) Identify any lead-based paint hazards previously detected and discuss the effectiveness of any hazard reduction or standard treatment measures used, and list those for which no measures have been used.

(ii) Describe any new hazards found and present the owner with acceptable control options and their accompanying reevaluation schedules.

(iii) Identify when the next reevaluation, if any, must occur, in accordance with the requirements of paragraph (b)(4) of this section.

(c) *Response to the reevaluation.* (1) *Hazard reduction omission or failure found by a reevaluation.* The designated party shall respond in accordance with paragraph (b)(6)(iii)(A) of this section to a report by the risk assessor of a hazard reduction control that has not been implemented or is failing, or that deteriorated lead-based paint is present.

(2) *Newly-identified lead-based paint hazard found by a reevaluation.* The designated party shall treat each:

(i) Dust-lead hazard or paint lead hazard by cleaning or hazard reduction measures, which are considered completed when clearance is achieved in accordance with § 35.1340.

(ii) Soil-lead hazard by hazard reduction measures, which are considered completed when clearance is achieved in accordance with § 35.1340.

PART 91—CONSOLIDATED SUBMISSIONS FOR COMMUNITY PLANNING AND DEVELOPMENT PROGRAMS

4. The authority citation for part 91 continues to read as follows:

Authority: 42 U.S.C 3535(d), 3601–3619, 5301–5315, 11331–11388, 12701–12711, 12741–12756, 12901–12912.

5. Revise § 91.2(b)(15) to read as follows:

§ 91.2 Applicability.

* * * * *

(b) * * *

(15) The ''Lead-Based Paint Hazard Reduction Program (see 42 U.S.C. 4852(o));''

* * * * *

6. In § 91.5, revise the definition of ''Lead-based paint hazards'' to read as follows:

§ 91.5 Definitions.

* * * * *

Lead-based paint hazards means lead-based paint hazards as defined in part 35, subpart B of this title.

* * * * *

7. Revise § 91.225(b)(7) to read as follows:

§ 91.225 Certifications.

* * * * *

(b) * * *

(7) *Compliance with lead-based paint procedures.* The jurisdiction must submit a certification that its activities concerning lead-based paint will comply with the requirements of part 35, subparts A, B, J, K, and R of this title.

* * * * *

PART 92—HOME INVESTMENT PARTNERSHIPS PROGRAM

8. The authority citation for part 92 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 12701–12839.

9. Revise § 92.206(a)(2)(ii) to read as follows:

§ 92.206 Eligible project costs.

* * * * *

(a) * * *

(2) * * *

(ii) To make essential improvements, including energy-related repairs or improvements, improvements necessary to permit use by persons with disabilities, and lead-based paint activities, as required by part 35 of this title.

* * * * *

10. Revise § 92.355 to read as follows:

§ 92.355 Lead-based paint.

Housing assisted with HOME funds is subject to the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, J, K, M and R of this title.

11. Revise § 92.504(c)(3)(iv) to read as follows:

§ 92.504 Participating jurisdiction responsibilities; written agreements; on-site inspection.

* * * * *

(c) * * *

(3) * * *

(iv) *Property standards.* The agreement must require the housing to meet the property standards in § 92.251 and the lead-based paint requirements in part 35, subparts A, B, J, K, M and R of this title, upon project completion. The agreement must also require owners of rental housing assisted with HOME funds to maintain the housing compliance with § 92.251 for the duration of the affordability period.

* * * * *

12. Revise § 92.508(a)(7)(vi) to read as follows:

§ 92.508 Recordkeeping.

* * * * *

(a) * * *

(7) * * *

(vi) Records demonstrating compliance with the lead-based paint requirements of part 35, subparts A, B, J, K, M and R of this title.

* * * * *

PART 200—INTRODUCTION TO FHA PROGRAMS

13. The authority citation for part 200 continues to read as follows:

Authority: 12 U.S.C. 1701–1715z–18; 42 U.S.C. 3535(d).

14. Revise subpart O to read as follows:

Subpart O—Lead-Based Paint Poisoning Prevention

Sec.
200.800 Lead-based paint.
200.805 Definitions.
200.810 Single family insurance and coinsurance.

Subpart O—Lead-Based Paint Prevention

§ 200.800 Lead-based paint.

The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, F, G, I, and R of this title, apply to activities under these programs, except for single family mortgage insurance and guarantee programs. Sections 200.805 and 200.810 apply to single family mortgage insurance and guarantee programs administered by HUD.

§ 200.805 Definitions.

Applicable surface. All intact and nonintact interior and exterior painted surfaces of a residential structure.

Defective paint surface. Paint on applicable surfaces that is cracking, scaling, chipping, peeling or loose.

Lead-based paint surface. A paint surface, whether or not defective, identified as having a lead content greater than or equal to 1 mg/cm^2.

§ 200.810 Single family insurance and coinsurance.

(a) *General.* (1) The requirements of this section apply to any one-to four-family dwelling which was constructed before 1978 and is the subject of an application for mortgage insurance under section 203(b) or other sections of the National Housing Act relating to the insurance or coinsurance of mortgages on one-to-four-family dwellings. Such other sections include:

(i) Section 244 (coinsurance);

(ii) Section 213 (cooperative housing insurance);

(iii) Section 220 (rehabilitation and neighborhood conservation housing insurance);

(iv) Section 221 (housing for moderate income and displaced families);

(v) Section 222 (mortgagor insurance for servicemen);

(vi) Section 809 (armed services housing for civilian employees);

(vii) Section 810 (armed services housing in impacted areas);

(viii) Section 234 (mortgage insurance for condominiums);

(ix) Section 235 (mortgage assistance payments for home ownership and project rehabilitation);

(x) Section 237 (special mortgage insurance for low and moderate income families); and

(xi) Section 240 (mortgage insurance on loans for purchase of fee simple title from lessors).

(2) This section is also applicable to single family mortgage insurance on Indian reservations (12 U.S.C. 1715z–13) and loan guarantees for Indian housing (25 U.S.C. 4191).

(3) Applications for insurance in connection with a refinancing transaction where an appraisal is not required under the applicable procedures established by the Commissioner are excluded from the coverage of this section. Any housing assisted under the programs set out in this section for which no new activity is applied for or required is not covered by this section.

(b) *Appraisal.* The appraiser shall, when appraising a dwelling constructed prior to 1978, inspect the dwelling for defective paint surfaces.

(c) *Treatment of defective paint surfaces.* For defective paint surfaces, treatment shall be provided to defective areas. Treatment of hazards shall consist of covering or removing defective paint surfaces. Covering may be accomplished by such means as adding a layer of wallboard to the wall surface. Depending on the wall condition, wallcoverings which are permanently attached may be used. Covering or replacing trim surfaces is also permitted. Paint removal may be accomplished by such methods as scraping, heat treatment (infra-red or coil type heat guns) or chemicals. Machine sanding and use of propane or

gasoline torches (open-flame methods) are not permitted. Washing and repainting without thorough removal or covering does not constitute adequate treatment. In the case of defective paint spots, scraping and repainting the defective area is considered adequate treatment. Treatment of a defective paint surface is not required if such a surface is found to not be a lead-based paint surface by a lead-based paint inspector certified pursuant to procedures of the U.S. Environmental Protection Agency at 40 CFR part 745.

(d) *Home equity conversion mortgage insurance.* The requirements of this section, as modified by the following sentence, apply to a dwelling which is the subject of an application for mortgage insurance under section 255 of the National Housing Act (home equity conversion insurance) unless the mortgagor provides the certification described in § 206.45(d) of this title. The defective paint surface may be treated after the mortgage is endorsed for insurance, provided that the defective paint surface is treated as expeditiously as possible in accordance with the repair work provisions contained in § 206.47 of this title

PART 203—SINGLE FAMILY MORTGAGE INSURANCE

15. The authority citation for part 203 continues to read as follows:

Authority: 12 U.S.C. 1709, 1710, 1715b, and 1715u; 42 U.S.C. 3535(d).

16. In § 203.673, revise paragraphs (a) and (c) to read as follows:

§ 203.673 Habitability.

(a) For purposes of § 203.670, a property is habitable if it meets the requirements of this section in its present condition, or will meet these requirements with the expenditure of not more than five percent of the fair market value of the property. The cost of hazard reduction or abatement of lead-based paint hazards in the property, as required by the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), and the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations in part 35 of this title, is excluded from these repair cost limitations.

* * * * *

(c) If repairs, including lead-based paint hazard reduction or abatement, are to be made while the property is occupied, the occupant must hold the Secretary and the Department harmless against any personal injury or property damage that may occur during the process of making repairs. If temporary relocation of the occupant is necessary during repairs, no reimbursement for relocation expenses will be provided to the occupant.

PART 280—NEHEMIAH HOUSING OPPORTUNITY GRANTS PROGRAM

17. The authority citation for part 280 continues to read as follows:

Authority: 12 U.S.C. 1715l note; 42 U.S.C. 3535(d).

18. Revise § 280.25(e) to read as follows:

§ 280.25 Other Federal requirements.

* * * * *

(e) *Lead-based paint.* The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, K, and R, of this title apply to the program.

* * * * *

PART 291—DISPOSITION OF HUD-ACQUIRED SINGLE FAMILY PROPERTY

19. The authority citation for part 291 continues to read as follows:

Authority: 12 U.S.C. 1701 *et seq.*; 42 U.S.C. 1441, 1441a, and 3535(d).

20. Revise § 291.100(g) to read as follows:

§ 291.100 General policy.

* * * * *

(g) *Lead-based paint poisoning prevention.* Properties constructed before 1978 are subject to the requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, F, and R, of this title.

* * * * *

21. Revise § 291.430 to read as follows:

§ 291.430 Elimination of lead-based paint hazards.

The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, F, and R of this title, apply activities covered by this subpart.

PART 511—RENTAL REHABILITATION GRANT PROGRAM

22. The authority citation for 24 CFR part 511 continues to read as follows:

Authority: 42 U.S.C. 1437o and 3535(d).

23. Revise § 511.10(f)(1)(ii) to read as follows:

§ 511.10 General requirements.

* * * * *

(f) * * *

(1) * * *

(ii) Make essential improvements, as reasonably defined by the grantee or State recipient in its rehabilitation standards adopted under § 511.10(e), including energy-related repairs, improvements necessary to permit the use of rehabilitated projects by handicapped persons, and activities of lead based paint hazards, as required by part 35 of this title;

* * * * *

24. Revise § 511.15 to read as follows:

§ 511.15 Lead-based paint.

The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, J, K, and R of this title apply to activities under these programs.

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

25. The authority citation for part 570 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 5300–5320.

26. Revise § 570.202(f) to read as follows:

§ 570.202 Eligible rehabilitation and preservation activities.

* * * * *

(f) *Lead-based paint activities.* Lead-based paint activities as set forth in part 35 of this title.

27. Revise § 570.461 to read as follows:

§ 570.461 Post-preliminary approval requirements; lead-based paint.

The recipient may receive preliminary approval prior to the accomplishment of lead-based paint activities conducted pursuant to part 35, subparts A, B, J, K, and R of this title, but no funds will be released until such actions are complete and evidence of compliance is submitted to HUD.

28. Revise § 570.487(c) to read as follows:

§ 570.487 Other applicable laws and related program requirements.

* * * * *

(c) *Lead-Based Paint Poisoning Prevention Act.* States shall devise, adopt and carry out procedures with

respect to CDBG assistance that fulfill the objectives and requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, J, K, and R of this title.

* * * * *

29. Revise § 570.608 to read as follows:

§ 570.608 Lead-based paint.

The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, J, K, and R of this part apply to activities under this program.

PART 572—HOPE FOR HOMEOWNERSHIP OF SINGLE FAMILY HOMES PROGRAM (HOPE 3)

30. The authority citation for part 572 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 12891.

31. Revise § 572.100(d)(1) to read as follows:

§ 572.100 Acquisition and rehabilitation of eligible properties; rehabilitation standards.

* * * * *

(d) * * *

(1) The recipient is responsible to assure that rehabilitation of eligible property meets local codes applicable to rehabilitation of work in the jurisdiction (but not less than the housing quality standards established under the Section 8 rental voucher program, described in § 982.401 of this title). Rehabilitation must also include work necessary to meet applicable federal requirements, including lead-based paint requirements set forth at part 35, subparts A, B, J, K, and R of this title.

* * * * *

32. Revise § 572.215(e) to read as follows:

§ 572.215 Implementation grants-eligible activities.

* * * * *

(e) *Architectural and engineering work.* Architectural and engineering work, and related professional services required to prepare architectural plans or drawings, write-ups, specifications or inspections, including lead-based paint evaluation.

* * * * *

33. Revise § 572.420(h) to read as follows:

§ 572.420 Miscellaneous requirements.

* * * * *

(h) *Lead-based paint activities.* The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, J, K and R of this title apply to activities under these programs.

PART 573—LOAN GUARANTEE RECOVERY FUND

34. The authority citation for part 573 continues to read as follows:

Authority: Pub. L. 104–155, 110 Stat. 1392, 18 U.S.C. 241 note; 42 U.S.C. 3535(d).

35. Revise § 573.9(c) to read as follows:

§ 573.9 Other requirements.

* * * * *

(c) *Lead-based paint.* Housing assisted under this part is subject to the lead-based paint requirements described in part 35, subparts A, B, E, G, and R of this title.

* * * * *

PART 574—HOUSING OPPORTUNITIES FOR PEOPLE WITH AIDS

36. The authority citation for part 574 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 12901–12912.

37. Revise § 574.635 to read as follows:

§ 574.635 Lead-based paint.

The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, H, J, K, M, and R of this part apply to activities under this program.

PART 576—EMERGENCY SHELTER GRANTS PROGRAM: STEWART B. McKINNEY HOMELESS ASSISTANCE ACT

38. The authority citation for part 576 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 11376.

39. Revise § 576.57(c) to read as follows:

§ 576.57 Other Federal Requirements.

* * * * *

(c) The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, J, K, and R of this title apply to activities under this program.

* * * * *

PART 582—SHELTER PLUS CARE

40. The authority citation for part 582 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 11403–11407b.

41. Revise the first sentence of § 582.305(a) to read as follows:

§ 582.305 Housing quality standards; rent reasonableness.

(a) *Housing quality standards.* Housing assisted under this part must meet the applicable housing quality standards (HQS) under § 982.401 of this title—except that § 982.401(j) of this title does not apply and instead part 35, subparts A, B, K and R of this title apply—and, for SRO under § 882.803(b) of this title. * * *

* * * * *

PART 583—SUPPORTIVE HOUSING PROGRAM

42. The authority citation for part 583 continues to read as follows:

Authority: 42 U.S.C. 11389 and 3535(d).

43. Revise § 583.330(d) to read as follows:

§ 583.330 Applicability of other Federal requirements.

* * * * *

(d) *Lead-based paint.* The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, J, K, and R of this title apply to activities under this program.

* * * * *

PART 585—YOUTHBUILD PROGRAM

44. The authority citation for part 585 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 8011.

45. Revise § 585.305(d) to read as follows:

§ 585.305 Eligible activities.

* * * * *

(d) Rehabilitation of housing and related facilities to be used for the purposes of providing homeownership, residential rental housing, or transitional housing for the homeless and low- and very low-income persons and families, including lead-based paint

activities; in accordance with part 35 of this title;

* * * * *

46. Revise § 585.502(h) to read as follows:

§ 585.502 Certifications.

* * * * *

(h) *Lead-based paint.* A certification that the applicant will comply with the requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, J, K, and R of this title.

* * * * *

PART 761—DRUG ELIMINATION PROGRAMS

47. The authority citation for part 761 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 11901 *et seq.*

48. Revise § 761.40(c) to read as follows:

§ 761.40 Other Federal requirements.

* * * * *

(c) *Lead-based paint.* The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, H, and R of this title.

* * * * *

PART 881—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR SUBSTANTIAL REHABILITATION

49. The authority citation for part 881 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), 12701, and 13611–13619.

50. Revise § 881.207(e) to read as follows:

§ 881.207 Property standards.

* * * * *

(e) The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, H, and R of this title; and

* * * * *

PART 882—SECTION 8 MODERATE REHABILITATION PROGRAMS

51. The authority citation for part 882 continues to read as follows:

Authority: 42 U.S.C. 1437f and 3535(d).

52. Revise § 882.404(d) to read as follows:

§ 882.404 Physical condition standards; physical inspection requirements.

* * * * *

(d) *Lead-based paint.* The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, H, and R of this title apply to the Section 8 moderate rehabilitation program.

53. Revise § 882.507(b)(2)(iv) to read as follows:

§ 882.507 Completion of rehabilitation.

* * * * *

(b) * * *

(2) * * *

(iv) The unit(s) are in compliance with part 35, subparts A, B, H, and R of this title.

* * * * *

54. Revise § 882.514(d)(1)(vi) to read as follows:

§ 882.514 Family participation.

* * * * *

(d) * * *

(1) * * *

(vi) The advisability and availability of blood lead level screening for children under 6 years of age and HUD's lead-based paint requirements in part 35, subparts A, B, H, and R of this title.

* * * * *

55. Revise § 882.803(b)(1) to read as follows:

§ 882.803 Project eligibility and other requirements.

* * * * *

(b)(1) *Physical condition standards.* Section 882.404 applies to this program.

* * * * *

PART 883—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—STATE HOUSING AGENCIES

56. The authority citation for part 883 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611–13619.

57. Revise § 883.310(b)(5) to read as follows:

§ 883.310 Property standards.

* * * * *

(b) * * *

(5) The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, H, and R of this title.

* * * * *

PART 886—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—SPECIAL ALLOCATIONS

58. The authority citation for part 886 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f and 3535(d) and 13611–13619.

59. Revise § 886.113(i) to read as follows:

§ 886.113 Physical condition standard; physical inspection requirements.

* * * * *

(i) Lead based paint. The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, H, and R of this title apply to activities under this program.

* * * * *

60. Revise § 886.307(i) to read as follows:

§ 886.307 Physical condition standards; physical inspection requirement.

* * * * *

(i) *Lead-based paint.* The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, H, and R of this title apply to activities under this program.

* * * * *

61. Revise § 886.333(b)(2)(iv) to read as follows:

§ 886.333 Completion of rehabilitation.

* * * * *

(b) * * *

(2) * * *

(iv) The project was in compliance with applicable HUD lead-based paint regulations at part 35, subparts A, B, H, and R of this title.

* * * * *

PART 891—SECTION 8—SUPPORTIVE HOUSING FOR THE ELDERLY AND PERSONS WITH DISABILITIES

62. The authority citation for part 891 continues to read as follows:

Authority: 12 U.S.C. 1701q; 42 U.S.C. 1437f, 3535(d) and 8013.

63. Revise § 891.155(g) to read as follows:

§ 891.155 Other Federal requirements.

* * * * *

(g) *Lead-based paint.* The requirements of the Lead-Based Paint

Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, H, and R of this title apply to these programs.

64. Revise § 891.325 to read as follows:

§ 891.325 Lead-based paint requirements.

The requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, H, and R of this title apply to the Section 811 program and to projects funded under §§ 891.655 through 891.790.

PART 901—PUBLIC HOUSING MANAGEMENT ASSESSMENT PROGRAM

65. The authority citation for part 901 continues to read as follows:

Authority: 42 U.S.C. 1437d(j); 42 U.S.C. 3535(d).

66. In § 901.5, revise the definition of ''*HQS*'' to read as follows:

§ 901.5 Definitions.

* * * * *

HQS means Housing Quality Standards as set forth at § 982.401 of this title, except that § 982.401(j) of this title does not apply and instead part 35, subparts A, B, L, and R of this title apply.

* * * * *

PART 906—SECTION 5(h) HOMEOWNERSHIP PROGRAM

67. The authority citation for part 906 continues to read as follows:

Authority: 42 U.S.C. 1437c, 1437d and 3535(d).

68. Revise the first sentence of § 906.6(b) to read as follows:

§ 906.6 Property that may be sold.

* * * * *

(b) *Physical condition of property.* The property must meet local code requirements (or, if no local code exists, the housing quality standards established by HUD for the Section 8 Housing Assistance Payments Program for Existing Housing, under part 882 of this title) and the relevant requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations part 35, subparts A, B, L, and R of this title. * * *

PART 941—PUBLIC HOUSING DEVELOPMENT

69. The authority citation for part 941 continues to read as follows:

Authority: 42 U.S.C. 1437b, 1437c, 1437g and 3535(d).

70. Revise § 941.208(b) to read as follows:

§ 941.208 Other Federal requirements.

* * * * *

(b) *Lead-based paint.* The relevant requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, L, and R of this title apply to the program.

71. Revise the second sentence of § 941.606(m) to read as follows:

§ 941.606 Proposal.

* * * * *

(m) *New construction.* * * * This may be accomplished by the PHA's submission of a comparison of the cost of new construction in the neighborhood where the housing is proposed to be constructed and the cost of acquisition of existing housing (with or without rehabilitation) in the same neighborhood (including estimated costs of lead-based paint activities). * * *

* * * * *

PART 965—PHA-OWNED OR LEASED PROJECTS—GENERAL PROVISIONS

72. The authority citation for part 965 continues to read as follows:

Authority: 42 U.S.C. 1437, 1437a, 1437d, 1437g, and 3535(d). Subpart H is also issued under 42 U.S.C. 4821–4846.

73. Amend § 965.215 as follows:

a. Revise paragraph (a);

b. Revise the introductory text of paragraph (b); and

c. Revise paragraphs (b)(1), (c), and (d).

§ 965.215 Lead-based paint liability insurance coverage.

(a) *General.* The purpose of this section is to specify what HUD deems reasonable insurance coverage with respect to the hazards associated with lead-based paint activities that the PHA undertakes, in accordance with the PHA's ACC with HUD. The insurance coverage does not relieve the PHA of its responsibility for assuring that lead-based paint activities are conducted in a responsible manner.

(b) *Insurance coverage requirements.* When the PHA undertakes lead-based paint activities, it must assure that it has reasonable insurance coverage for itself for potential personal injury liability associated with those activities. If the work is being done by PHA employees, the PHA must obtain a liability insurance policy directly to protect the PHA. If the work is being done by a contractor, the PHA must obtain, from the insurer of the contractor performing this type of work in accordance with a contract, a certificate of insurance providing evidence of such insurance and naming the PHA as an additional insured; or obtain such insurance directly. Insurance must remain in effect during the entire period of lead-based paint activity and must comply with the following requirements:

(1) *Named insured.* If purchased by the PHA, the policy shall name the PHA as insured. If purchased by an independent contractor, the policy shall name the contractor as insured and the PHA as an additional insured, in connection with performing work under the PHA's contract pertaining to lead-based paint activities. If the PHA has executed a contract with a Resident Management Corporation (RMC) to manage a building/project on behalf of the PHA, the RMC shall be an additional insured under the policy in connection with the PHA's contract related to lead-based paint activities. (The duties of the RMC are similar to those of a real estate management firm.)

* * * * *

(c) *Exception to requirements.* Insurance already purchased by the PHA or contractor and enforced on the day this section is effective which provides coverage for lead-based paint activities shall be considered as meeting the requirements of this section until the expiration of the policy. This section is not applicable to architects, engineers or consultants who do not physically perform lead-based paint activities.

(d) *Insurance for the existence of lead-based paint hazards.* A PHA may also purchase special liability insurance against the existence of lead-based paint hazards, although it is not a required coverage. A PHA may purchase this coverage if, in the opinion of the PHA, the policy meets the PHA's requirements, the premium is reasonable and the policy is obtained in accordance with applicable procurement standards. (See part 85 of this title and § 965.205 of this title.) If this coverage is purchased, the premium must be paid from funds available under the Performance Funding System or from reserves.

74. Revise subpart H, consisting of § 965.701, to read as follows:

Subpart H—Lead-based Paint Poisoning Prevention

§ 965.701 Lead-based paint poisoning prevention.

The requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, L, and R of this title apply to this program.

PART 968—PUBLIC HOUSING MODERNIZATION

75. The authority citation for part 968 continues to read as follows:

Authority: 42 U.S.C. 1437d, 1437*l*, and 3535(d).

76. Revise the first sentence of § 968.102(c) to read as follows:

§ 968.102 Special requirements for Turnkey III developments.

* * * * *

(c) *Other.* The homebuyer family must be in compliance with its financial obligations under its homebuyer agreement in order to be eligible for non-emergency physical improvements, with the exception of work necessary to meet statutory and regulatory requirements, (e.g., accessibility for persons with disabilities and lead-based paint activities) and the correction of development deficiencies. * * *

77. Revise § 968.110(k) to read as follows:

§ 968.110 Other program requirements.

* * * * *

(k) *Lead-based paint poisoning prevention.* The PHA shall comply with the relevant requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, L, and R of this title.

* * * * *

78. Revise § 968.112(i) to read as follows:

§ 968.112 Eligible costs.

* * * * *

(i) *Lead-based paint costs.* Eligible costs include lead-based paint activities, such as insurance coverage and cleanup and disposal, in accordance with part 35 of this title.

* * * * *

79. In § 968.205, revise the definition of the term ''*Other modernization*'' to read as follows:

§ 968.205 Definitions.

* * * * *

Other Modernization (modernization other than emergency). A type of modernization program for a development that includes one or more physical work items, where HUD determines that the physical improvements are necessary and sufficient to extend substantially the useful life of the development, and/or one or more development specific or PHA-wide management work items (including planning costs), and/or lead-based paint activities.

* * * * *

80. Revise § 968.210(e)(2)(ii) to read as follows:

§ 968.210 Procedures for obtaining approval of a modernization program.

* * * * *

(e) * * *

(2) * * *

(ii) *Lead-based paint inspection compliance.* Where a PHA has not complied with the statutory requirement to complete lead-based paint inspection of all pre-1978 family units, the PHA is eligible for processing only for Emergency Modernization or work needed to complete the lead-based paint inspection.

* * * * *

81. Revise the first sentence of § 968.315(e)(2)(i) to read as follows:

§ 968.315 Comprehensive Plan (including five-year action plan).

* * * * *

(e) * * *

(2) * * *

(i) *Requirements.* The physical needs assessment identifies all of the work that a PHA would need to undertake to bring each of its developments up to the modernization and energy conservation standards, as required by the Act, to comply with the lead-based paint requirements in part 35, subparts A, B, L, and R of this title, and to comply with other program requirements under § 968.110. * * *

* * * * *

82. Revise § 968.435(b) to read as follows:

§ 968.435 Other program requirements.

* * * * *

(b) Certify that activities undertaken within vacant units will bring the affected units into compliance with the Housing Quality Standards, as set forth in § 982.401 of this title, except that § 982.401(j) of this title shall not apply; the applicable lead-based paint requirements in part 35 subparts A, B, L and R, of this title shall apply.

* * * * *

PART 970—PUBLIC HOUSING PROGRAM—DEMOLITION OR DISPOSITION OF PUBLIC HOUSING PROJECTS

83. The authority citation for part 970 continues to read as follows:

Authority: 42 U.S.C. 1437p and 3535(d).

84. Revise § 970.13(d)(1)(i) to read as follows:

§ 970.13 Resident organization opportunity to purchase.

* * * * *

(d) * * *

(1) * * *

(i) An identification of the development, or portion of the development, in the proposed demolition or disposition, including the development number and location, the number of units and bedroom configuration, the amount of space and use for non-dwelling space, the current physical condition (e.g., fire damaged, friable asbestos, lead-based paint evaluation results), and occupancy status (e.g., percent occupancy).

* * * * *

PART 982—SECTION 8 TENANT-BASED ASSISTANCE: HOUSING CHOICE VOUCHER PROGRAM

85. The authority citation for part 982 continues to read as follows:

Authority: 42 U.S.C. 1437f and 3535(d).

86. Revise § 982.158(f)(5) to read as follows:

§ 982.158 Program accounts and records.

* * * * *

(f) * * *

(5) Lead-based paint records as required by part 35, subpart B of this title.

* * * * *

§ 982.301 [Amended]

87. In § 982.301, remove paragraph (b)(10) and redesignate paragraphs (b)(11) through (b)(16) as paragraphs (b)(10) through (b)(15), respectively.

88. Revise § 982.305(b)(3) to read as follows:

§ 982.305 PHA approval of assisted tenancy.

* * * * *

(b) * * *

(3) The lease is approvable and includes the lease addendum and the lead-based paint disclosure information as required in § 35.92(b) of this title.

* * * * *

89. Revise § 982.401(j) to read as follows:

§ 982.401 Housing quality standards (HQS).

* * * * *

(j) *Lead-based paint performance requirement.* The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, M, and R of this title apply to units assisted under this part.

* * * * *

PART 983—SECTION 8 PROJECT-BASED CERTIFICATE PROGRAM

90. The authority citation for part 983 continues to read as follows:

Authority: 42 U.S.C. 1437f and 3535(d).

91. Revise § 983.1(b)(2)(vii) to read as follows:

§ 983.1 Purpose and applicability.

* * * * *

(b) * * *

(2) * * *

(vii) In subpart I of this part, § 982.401(j), § 982.402(a)(3), § 982.402(c) and (d) (effect of family unit size—subsidy and size of unit); and § 982.403 (termination of HAP contract when unit is too big or too small);

* * * * *

92. Revise § 983.5(c) to read as follows:

§ 983.5 Physical condition standards; physical inspection requirements.

* * * * *

(c) The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, H, and R of this title apply to units assisted under this part.

93. Revise § 983.104(b)(2)(iv) to read as follows:

§ 983.104 New construction or rehabilitation completion.

* * * * *

(b) * * *

(2) * * *

(iv) Units are in compliance with the lead-based paint requirements in part 35, subparts A, B, H, and R of this title; and

* * * * *

94. In § 983.203(d), revise the first sentence of the introductory paragraph to read as follows:

§ 983.203 Family participation.

* * * * *

(d) *Briefing of families.* When a family is selected to occupy a project-based unit, the PHA must provide the family with information concerning the tenant rent and any applicable utility allowance and a copy of the lead hazard information pamphlet, as required by part 35, subpart A of this title. * * *

* * * * *

PART 1000—NATIVE AMERICAN HOUSING ACTIVITIES

95. The authority citation for part 1000 continues to read as follows:

Authority: 12 U.S.C. 1715z–13a and 3535(d).

96. Revise § 1000.40 to read as follows:

§ 1000.40 Do lead-based paint poisoning prevention requirements apply to affordable housing activities under NAHASDA?

Yes, lead-based paint requirements apply to housing activities assisted under NAHASDA. The applicable requirements for NAHASDA are HUD's regulations at part 35, subparts A, B, E, G, H, K, M and R of this title, which implement the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4822–4846) and the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856).

PART 1003—COMMUNITY DEVELOPMENT BLOCK GRANTS FOR INDIAN TRIBES AND ALASKAN NATIVE VILLAGES

97. The authority citation for part 1003 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 5301 *et seq.*

98. Revise § 1003.202(b)(7)(iv) to read as follows:

§ 1003.202 Eligible rehabilitation and preservation activities.

* * * * *

(b) * * *

(7) * * *

(iv) Lead-based paint activities in part 35 of this title.

* * * * *

99. Revise § 1003.607 to read as follows:

§ 1003.607 Lead-based paint.

The requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations part 35, subparts A, B, J, K, and R of this title apply to activities conducted under this program.

PART 1005—LOAN GUARANTEES FOR INDIAN HOUSING

100. The authority citation for part 1005 continues to read as follows:

Authority: 12 U.S.C. 1715z–13a and 3535(d).

101. In § 1005.111, redesignate the existing text as paragraph (a) and add paragraph (b) to read as follows:

§ 1005.111 What safety and quality standards apply?

* * * * *

(b) The relevant requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, H, J, K, M, and R of this title apply to this part.

Dated: August 26, 1999.

Andrew Cuomo,

Secretary.

Appendix A—Sample Summary Inspection Notice Format

Note: The following appendix will not appear in the Code of Federal Regulations

Summary Notice of Lead-Based Paint Inspection

Address/location of property or structure(s) this summary notice applies to:

_____

_____

_____

Lead-based paint inspection description:

Date(s) of inspection: _____

Summary of inspection results (check all that apply):

(a) ____ No lead-based paint was found.

(b) ____ Lead-based paint was found.

(c) ____ A brief summary of the findings of the inspection is provided below (required if lead-based paint found).

Summary of where lead-based paint was found. List at least the housing unit numbers and common areas (for multifamily housing), and building components (including type of room or space, and the material underneath the paint):

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

Contact person for more information about the inspection:

Printed name: _____

Organization: _____

Street and city: _____

State:____ ZIP: _____
Phone number: (____) _____

Person who prepared this summary notice:
Printed name: _____
Signature: _____
Date: _____
Organization: _____
Street and city: _____
State:____ ZIP:____ _____
Phone number: (____) _____

Appendix B—Sample Summary Risk Assessment Notice Format

Note: This following appendix will not appear in the Code of Federal Regulations

Summary Notice of Lead-Based Paint Risk Assessment

Address/location of property or structure(s) this summary notice applies to:

_____
_____
_____

Lead-based paint risk assessment description:
Date(s) of risk assessment: _____

Summary of risk assessment results (check all that apply):
(a) ____ No lead-based paint hazards were found.
(b) ____ Lead-based paint hazards were found.
(c) ____ A brief summary of the findings of the risk assessment is provided below (required if any lead-based paint hazards were found).

Summary of types and locations of lead-based paint hazards. List at least the housing unit numbers and common areas (for multifamily housing), bare soil locations, dust-lead locations, and/or building components (including type of room or space, and the material underneath the paint), and types of lead-based paint hazards found:

_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

Contact person for more information about the risk assessment:
Printed name: _____
_____
Organization: _____
_____
Street and city: _____
_____
State: ____ ZIP: ____ Phone number: (____)
_____

Person who prepared this summary notice:
Printed name: _____
_____
Signature: _____
Date: _____
_____
Organization: _____
_____
Street and city: _____
_____
State: ____ ZIP: ____ Phone number: (____)
_____

Appendix C—Sample Summary Presumption Notice Format

Note: The following appendix will not appear in the Code of Federal Regulations

Notice That Lead-Based Paint or Lead-Based Paint Hazards Are Presumed to be Present

Address/location of property or structure(s) this notice of presumption applies to:

_____
_____
_____

Type of presumption (check all that apply):
(a) ____ Lead-based paint is presumed to be present.
(b) ____ Lead-based paint hazard(s) is(are) presumed to be present.

Summary of presumption. List at least the housing unit numbers and common areas (for multifamily housing), bare soil locations, dust-lead locations, and/or building components (including type of room or space, and the material underneath the paint), and types of lead-based paint hazards presumed to be present:

_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

Contact person for more information about the presumption:
Printed name: _____
_____
Organization: _____
_____
Street and city: _____
_____
State: ____ ZIP: ____ Phone number: (____)
_____

Person who prepared this notice of presumption:
Printed name: _____
_____
Signature: _____
Date: _____
_____
Organization: _____
_____
Street and city: _____
_____
State: ____ ZIP: ____ Phone number: (____)
_____

Appendix D—Sample Hazard Reduction Completion Notice Format

Note: The following appendix will not appear in the Code of Federal Regulations.

Summary Notice of Completion of Lead-Based Paint Hazard Reduction Activity

Address/location of property or structure(s) this summary notice applies to:

_____
_____
_____

Summary of the hazard reduction activity:
Start and completion date(s): _____

Activity locations and types. List at least the housing unit numbers and common areas (for multifamily housing), bare soil locations, dust-lead locations, and/or building components (including type of room or space, and the material underneath the paint), and types of hazard reduction activities performed at the locations listed:

_____
_____
_____
_____
_____
_____

Date(s) of clearance testing and/or soil analyses: ____

Locations of building components with lead-based paint remaining in the rooms, spaces or areas where activities were conducted:

_____
_____
_____
_____

Summary of results of clearance testing and soil analyses:
(a) ____ No clearance testing was performed.
(b) ____ Clearance testing showed clearance was achieved.
(c) ____ Clearance testing showed clearance was not achieved.

Contact person for more information about the hazard reduction:
Printed name: _____
Organization: _____
Street and city: _____
State: ____ ZIP: _____
Phone number: (____) _____

Person who prepared this summary notice:
Printed name: _____
Signature: _____
Date: _____
Organization: _____
Street and city: _____
State: ____ ZIP: _____
Phone number: (____) _____

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