

## 11. LEAD BASED PAINT

This Chapter applies to projects and structures that were originally placed in service prior to January 1, 1978.

### 11.1 Federal Requirements

The Residential Lead-Based Paint Hazard Reduction Act of 1992 mandated a range of protections from lead-based paint hazards for persons occupying housing built prior to 1978.

- Real Estate Notification and Disclosure Rule - In 1996, HUD and EPA jointly issued regulations requiring disclosure regarding known lead-based paint and hazards in all rental and sale transactions.
- HUD Lead Safe Housing Rule – In 1998, HUD issued rules (24 CFR Part 35) to ensure that exposure to lead hazards is reduced in any residential property to be assisted with federal funds, whether rehabilitated, purchased or assisted.
- EPA Renovation, Repair and Painting Rule – in 2010, EPA issued rules (40 CFR Part 745) requiring the use of lead-safe practices and other actions by contractors performing renovation, repair and painting projects that disturb lead-based paint in homes built before 1978, regardless of the source of funding.

All units in a project assisted with HOME funds must comply with the implementing regulations at 24 CFR Part 35. This regulation has been in effect since September 15, 2000.

The lead-based paint regulation at 24 CFR Part 35 consolidates all lead-based paint requirements for HUD-assisted housing. The regulation is divided into subparts. Subparts that apply to the HOME program include:

- Subpart A: Disclosure.
- Subpart B: General Requirements and Definitions.
- Subpart J: Rehabilitation.
- Subpart K: Acquisition, Leasing, Support Services, and Operations.
- Subpart M: Tenant-Based Rental Assistance.
- Subpart R: Methods and Standards for Lead-Based Paint Hazard Evaluation and Reduction.

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

Awardees must comply with other regulations – Federal, State, tribal, and local – that apply to lead-based paint hazard evaluation and reduction. All lead-based paint activities must be

performed in accordance with other applicable Federal laws and authorities. For example, the National Environmental Policy Act of 1969 (42 U. S. C. 4321 et seq.), OSHA worker safety regulations (29 CFR 1910.1200 and 29 CFR 1926.62), and other environmental laws and authorities cover activities related to lead-based paint evaluation and hazard reduction.

### **11.1.1 EPA Renovation Repair & Painting Rule**

While the HUD rule must be followed for HOME rehabilitation, the EPA Renovation, Repair and Painting Rule (40 CFR Part 745) requires contractors performing renovation, repair, and painting projects that disturb lead-based paint in homes built before 1978 to be licensed, use certified renovators and follow lead-safe work practices, regardless of the source of funding. Consequently, the PJ should ensure that entities performing rehabilitation are licensed renovation firms consistent with the EPA rule, and that Renovators are on site to oversee hazard controls. However, all other standards pertaining to lead hazard evaluation, control, and clearance must follow the Part 35 requirements.

## **11.2 Universal Disclosure Requirements**

All residential buildings originally placed in service prior to January 1, 1978 are subject to the standard federal disclosure requirements, which requires every tenant and prospective tenant to be given the following:

- The HUD & EPA-approved information pamphlet Protect Your Family from Lead in Your Home, on identifying and controlling lead-based paint hazards.  
<https://www.epa.gov/lead/protect-your-family-lead-your-home-real-estate-disclosure> (multiple languages.)
- Disclosure of any known information concerning lead-based paint or lead-based paint hazards pertaining to the building, including common areas and other units when such information was obtained as a result of a building-wide evaluation, inserted in or attached to the lease and acknowledged by the tenant or prospective tenant.  
<https://www.epa.gov/lead/lessors-disclosure-information-lead-based-paint-and-lead-based-paint-hazards> (Spanish: <https://www.epa.gov/lead/declaracion-de-informacion-sobre-pintura-base-de-plomo-vo-peligros-de-la-pintura-base-de-plomo>.)

This disclosure is required of the owner of a pre-1978 property:

- When a prospective purchaser is purchasing the property;
- When a prospective tenant is applying for rental of target housing, before the execution of the lease; and,
- When the lease terms change (e.g., rent increase, lease renewal) and the owner or owner's agent has gained any new knowledge about lead-based paint or lead-based paint hazards since the previous disclosure (if there previously was not a problem and nothing was disclosed). If the first notice identified an issue (that has not been corrected) the notice with the renewal lease (or rent increase) should signify as such.

The Owner must complete and sign the notice and provide it to the purchaser or tenant before they become obligated under the sales agreement or lease. The purchaser/tenant must read and sign the notice and return it.

If renovation occurs, additional disclosure requirements apply. See Section 11.5.3.

### **11.3 Part 35 Exemptions**

While the HUD Rule applies to housing built and placed in service prior to January 1, 1978, when lead paint was banned for residential use, some housing is considered exempt from the Part 35 requirements (see 24 CFR 35.115), including:

- Housing exclusively for the elderly or people with disabilities, unless a child under age 6 is expected to reside there;
- Zero-bedroom dwellings, including efficiency apartments, single-room occupancy housing, dormitories, or military barracks;
- Property that has been found to be free of lead-based paint by a certified lead-based paint inspector;
- Property where all lead-based paint has been removed;
- Unoccupied housing that will remain vacant until it is demolished;
- Non-residential property; or
- Any rehabilitation or housing improvement that does not disturb a painted surface.

A rule applicability worksheet is provided as Attachment 11-1.

### **11.4 Acquisition Requirements**

The lead-based paint requirements for acquisition are found in 24 CFR Part 35, Subpart K. These regulations are intended to provide assurances that the LBP paint in homes or rental properties not intending to be rehabilitation are “lead safe” when it is occupied by the assisted household.

The following steps are required to identify deteriorated paint in homes:

- Visual Assessment: An inspection of all interior painted surfaces, including common areas such as hallways, laundry rooms or garages, and exterior surfaces of the building in which the dwelling unit is located must be conducted to identify deteriorated paint. Notification is only required if LBP hazards are identified.
- Paint Stabilization: All deteriorated paint surfaces must be stabilized before the home is purchased and occupied. If paint testing of a deteriorated surface reveals no LBP, then paint stabilization is not required on that surface.

- Safe Work Practices: The owner/contractor must use safe work practices when conducting paint stabilization. Safe work practices include safe work methods, occupant protection, worksite preparation, and cleanup.
- Clearance: After the completion of work, the home must pass clearance. Clearance must happen before occupancy if the home is vacant or immediately after receipt of Federal assistance for a home currently occupied.

If the property is going to be purchased and rehabilitated, the requirements in the next section apply instead of these.

## 11.5 LBP Rehabilitation Requirements

HOME rehabilitation must comply with lead-based paint requirements. [24 CFR 92.251\(b\)\(1\)\(iii\)](#) requires the participating jurisdiction's (PJ's) standards to meet the lead-based paint requirements at [24 CFR part 35](#), generally known as the HUD Lead Safe Housing Rule. In particular, HOME rehabilitation must adhere to the requirements of 35.900-.930.

While the PJ must ensure that all applicable Part 35 requirements are met, including Notices, the key requirements pertaining to rehabilitation standards are:

- Evaluation,
- Notices,
- Occupant protections,
- Lead hazard control protocols, and
- Clearance.

Fillable forms for lead-based paint inspections, risk assessments and clearance examinations in Word and Pdf formats can be found on HUD's website:

[https://www.hud.gov/program\\_offices/healthy\\_homes/lbp/hudguidelines](https://www.hud.gov/program_offices/healthy_homes/lbp/hudguidelines), along with full edition of the guidelines for the evaluation and control of Lead-based paints hazards in housing.

### 11.5.1 Federal Rehabilitation Assistance (FRA)

The type of evaluation and the method of hazard control are both determined by the Federal Rehabilitation Assistance (FRA) amount. Calculation of the FRA requires two calculations, with the lower of the two calculations determining FRA. The two calculations are:

- The Total Federal Assistance per assisted unit; and
- The Rehabilitation Cost per assisted unit.
- **Federal Assistance** – This consists of HUD and RD funds that are considered housing assistance, including:
  - o HUD grant programs, including CDBG, HOME, and HOPE.
  - o HUD Special Needs programs such as HOPWA, ESG, Supportive Housing, Shelter Plus Care and other McKinney programs.
  - o HUD Section 8 and other HUD rental assistance programs.
  - o Dept. of Agriculture's Rural Development (RD) funds.

The following are examples that are not considered Federal assistance for the purpose of this calculation:

- Proceeds from the sale of Low-Income Housing Tax Credits.
- Proceeds from FHA mortgage insurance, including rehab funds such as 203(k).
- Dept of Energy's Weatherization Program (separate guidance has been issued).
- Fannie Mae and Freddie Mac programs.
- Federal Home Loan Bank programs.

Contact the Department to clarify the applicability of other Federal funds before proceeding with rehabilitation plans.

- **Rehabilitation Cost** – Rehabilitation hard costs are actual costs, regardless of source of funds, associated with physical renovation of a unit, not including lead hazard evaluation and reduction costs.

The following are not considered rehabilitation hard costs for purpose of this calculation:

- Soft costs, including financing fees, credit reports, title binders and insurance, recordation fees, transaction taxes, impact fees, legal and accounting, appraisals, architectural and engineering fees.
- Administrative costs.
- Relocation costs.
- Environmental review costs.
- Acquisition costs.
- Lead hazard evaluation and reduction costs, such as:
  - Evaluation costs (risk assessments, visual assessments or inspections).
  - Worksite preparation.
  - Occupant protection, including relocation, storage or protection of belongings.
  - Interim controls, standard treatments, or abatement activities that are being done only for purposes of lead hazard control and would not be done in the normal course of the rehabilitation except for the LBP requirements.
  - Waste handling attributable to lead-based paint hazard reduction.
  - Specialized cleaning designed to remove LBP dust.
  - Clearance activities, including visual assessments, dust wipes, and reports.

The **lower of these two calculations becomes the FRA**, which is used to determine the type of evaluation and the method of hazard control.

The LBP hazard reduction costs may be excluded from this calculation of rehabilitation hard costs (the second of the two required calculations) but are not excluded from the calculation of Federal assistance (the first of the two calculations) if they are paid with Federal funds.

### 11.5.2 Evaluation

The first step is to determine whether LBP or LBP hazards are present. There are a variety of “evaluation” methods that are used. It depends on the type and classification of the activity.

- For rehab activities where the Federal Rehabilitation Assistance amount is **less than or equal to \$5,000 per unit**, the requirement is to **either test for or presume LBP on any surface to be disturbed** by the rehabilitation. If testing, the painted surface must be inspected by either an XRF analyzer or lab-tested paint chips. If a PJ wants to presume the presence of lead on all painted surfaces to be disturbed, OCR approval must be obtained.
- For rehab activities where the Federal Rehabilitation Assistance amount (defined later) is **more than \$5,000 per unit**, a **risk assessment** must be conducted by an EPA-certified risk assessor. Risk assessments including testing of certain surfaces for lead, dust wipes (sent to the lab) to identify the presence of lead dust, and soil samples in key areas of the lot.

The amount of Federal Rehabilitation Assistance is the lesser of two calculations:

1. The average Federal housing assistance per assisted dwelling unit; and
2. The average hard costs of rehabilitation per unit, excluding the costs associated with lead-based paint hazard evaluation and hazard reduction activities.

Detailed instructions and a worksheet for calculating the Federal Rehabilitation Assistance are provided in this toolkit.

### 11.5.3 Notices & Disclosure

24 CFR 35, Subpart A requires disclosure of the presence of LBP and hazards. An awardee that is undertaking housing rehabilitation activities is required to ensure that additional lead hazard information pamphlets and notices are provided to the owners and occupants, including:

- EPA Renovate Right pamphlet – provided by the Renovator, available at: <http://www2.epa.gov/lead/lead-safe-certified-guide-renovate-right>
- Notice of evaluation or presumption – disclosure of the results of evaluations (e.g., testing or risk assessment) of the presence of LBP or hazards (see 35.125(a)); and
- Notice of hazard reduction activities – disclosure of the work and clearance results (see 35.125(b))

Rehabilitation standards should specify the required disclosures.

### 11.5.4 Occupant Protections

Part 35 (35.1345(a)) requires that federally funded rehabilitation must use safe work practices so that occupants and workers can be protected from lead hazards. Occupant protections should be part of the rehabilitation standards.

When work is being conducted under this rule, the occupant and the environment must be protected from lead-contaminated or lead-containing materials during hazard reduction activities. Occupants must be protected by ensuring that occupants are not permitted to enter the worksite during hazard reduction until the hazard reduction work is cleared; occupants' belongings are relocated or sealed; and occupants are temporarily relocated (unless 35.1340(a) is met).

At no time should the occupant(s) be present in work areas or designated adjacent areas while lead hazard control activities are taking place in any dwelling unit interior, common area, or exterior. As such, occupants may need to be relocated during the time that lead-based paint hazard control work is occurring and may not reoccupy a work area or adjacent area until post-lead hazard reduction clearance standards have been achieved and verified with laboratory results.

35.1345(a) allows for exceptions to relocation if:

- The work will not disturb lead-based paint, or create dust-lead or soil-lead hazard; or
- The work is on exterior only and openings are sealed to prevent dust from entering the home, the work area is cleaned after the work is completed, and the residents have an alternative lead-free entry; or
- The interior work will be completed in one period of less than 8-daytime hours.

HUD guidance also acknowledges that relocation of elderly occupant(s) is not required if complete disclosure of the nature of the work is provided and informed consent is obtained prior to rehabilitation.

### **11.5.5 Hazard Controls**

For rehabilitation, the work required depends upon the level of Federal Rehabilitation Assistance:

- FRA up to \$5,000 per unit: Work which disturbs painted surfaces known or presumed to contain lead-based paint is done using standard treatments under lead safe work practices (unless it is a very small “de minimis” scale project) to ensure that no lead dust hazards remain in the work area).
- FRA greater than \$5,000 and up to \$25,000 per unit: Address all identified hazards using interim controls following the standards of 35.1330.
- FRA greater than \$25,000 per unit: Abate all the interior hazards per 35.1325 (exterior hazards may still be addressed using interim control methods.)

The worksite for lead hazard reduction activities must be prepared to prevent the release of leaded dust and debris. Workers use containment and practices to minimize the spread of leaded dust and debris. Warning signs are required at each worksite. See 35.1345(b).

Safe work practices as defined in 35.1350 are required and prohibited methods on surfaces known or suspected to contain LBP may not be used. The worksite must be cleaned by proper

methods. Safe work practices are not required if painted areas affected fall within the HUD de minimis levels – see 35.1350(d).

### **11.5.6 Clearance**

Clearance examinations are required upon completion of any hazard control work and prior to re-occupancy. Clearances must be done by certified professionals and adhere to the standards of 35.1340.

#### **Summary of Lead Based Paint Evaluation and Hazard Reduction Requirements**

For all residential properties receiving \$5,000 or less in Federal housing rehabilitation assistance, Recipients must complete the following activities:

Perform lead-based paint testing of any surface to be disturbed by rehabilitation or presume the surface to contain LBP.

If lead testing indicates the presence of lead based paint hazards it is presumed, implement safe work practices during rehabilitation work in accordance with 24 CFR 35.1350 and EPA Renovator, Repair and Painting rules at 40 CFR Part 745 and repair any paint that is disturbed and all lead based paint hazards.

Clean and clear the work site – that is, the area in which the hazard was identified – following HUD protocols at 24 CFR 35.1340.

For all residential properties receiving Federal housing rehabilitation assistance of more than \$5,000 up to and including \$25,000, Recipients must complete the following activities:

1. Perform a lead-based paint risk assessment in the dwelling units receiving Federal assistance and in associated common areas and exterior painted surfaces in accordance with 24CFR35.1320(b) and EPA Renovator, Repair and Painting rules at 40 CFR Part 745 before rehabilitation begins.
2. Risk assessors must use standards for determining dust-lead hazards and soil-lead hazards that are at least as protective as those promulgated by the EPA at 40 CFR 745.227(h).
3. If lead testing indicates the presence of lead based paint hazards, implement safe work practices during rehabilitation work in accordance with 24 CFR 35.1350 and EPA Renovator, Repair and Painting rules at 40 CFR Part 745 and repair any paint that is disturbed and all lead based paint hazards using interim controls.
4. After completion of any rehabilitation disturbing painted surfaces, perform a clearance examination of the housing unit(s) in accordance with 24 CFR 35.1340.



For residential property receiving more than \$25,000 per unit in Federal rehabilitation assistance, Recipients must complete the following:

1. Conduct lead-based paint testing on the entire dwelling unit including surfaces to be disturbed, deteriorated surfaces and friction and impact surfaces and all surfaces expected to be disturbed or replaced during rehabilitation activities.
2. Perform a lead-based paint risk assessment in the dwelling units receiving Federal assistance and in associated common areas and exterior painted surfaces in accordance with 24 CFR 35.1320(b) and EPA Renovator, Repair and Painting rules at 40 CFR Part 745 before rehabilitation begins.
3. Risk assessors must use standards for determining dust-lead hazards and soil-lead hazards that are at least as protective as those promulgated by the EPA at 40 CFR 745.227(h).
4. If lead testing indicates the presence of lead based paint hazards, implement safe work practices during rehabilitation work in accordance with 24 CFR 35.1350 and EPA Renovator, Repair and Painting rules at 40 CFR Part 745 and abate any paint that is disturbed and all lead based paint hazards.
5. After completion of any rehabilitation disturbing or abating painted surfaces, perform a clearance examination of the housing unit(s) in accordance with 24CFR35.1340.

## 11.6 Ongoing Maintenance in Rental Properties

Ongoing maintenance of assisted rental units is required during the period of affordability under 35.1355, unless the property has been documented to lead paint inspection to be lead-based paint free or lead-based paint removed.

Required procedures include:

- Visual assessment. A visual assessment for deteriorated paint, bare soil, and the failure of any hazard reduction measures must be performed:
  - o Whenever the owner receives a resident complaint;
  - o Whenever the dwelling turns over or becomes vacant;
  - o Whenever significant damage occurs (i.e., flooding, vandalism, fire, etc.); and
  - o At least once every year as part of regular unit inspections.

The visual assessment must be conducted by staff or a contractor that has completed the visual assessment training course at:

<https://apps.hud.gov/offices/lead/training/visualassessment/h00101.htm> Certifications of completion must be kept on file for each staff member conducting visual assessments. These certifications must be available for review.

Continue of Required procedures include:

- Deteriorated paint. All deteriorated paint on interior and exterior surfaces located on the residential property shall be stabilized in accordance with Sec. 35.1330(a)(b), except for any paint that an evaluation has found is not lead-based paint.
- 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.
- Clearance testing of the worksite shall be performed at the conclusion of repair, abatement or interim controls in accordance with Sec. 35.1340.
- 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.

Complete guidance for evaluation and control of lead-based hazards in housing, appendices and templates for forms can be found here: [The HUD Guidelines for the Evaluation and Control of Lead-based Paint in Housing | HUD.gov / U.S. Department of Housing and Urban Development \(HUD\)](#).