

CHAPTER 17: LEAD-BASED PAINT

CHAPTER PURPOSE & CONTENTS

Whenever Federal funds, such as CDBG, are used to assist housing built before 1978, steps must be taken to address lead hazards. These rules must be met for the grantee to be in compliance.

The purpose of this chapter is to provide grantees with a general understanding of HUD's Lead Safe Housing Rule (24 CFR Part 35). The Rule applies to all housing units assisted with CDBG funds, including single and multi-family units, whether publicly or privately owned. The requirements differ, however, depending on the activity – rehabilitation or acquisition.

SECTION	TOPIC
17.1	Lead Safe Housing Rule Overview

17.1 Lead Safe Housing Rule Overview

Key Topics in This Section: Rule overview

Regulatory/Statutory Citations: 570.608, 24 CFR Part 35

Other Reference Materials on This Topic Making It Work: Implementing the Lead Safe Housing Rule; Interpretive Guidance on HUD's Lead Safe Housing Rule June 21, 2004
CPD Assistant Secretary Memo of 8/19/03; CPD Notice 01-01

All housing units in a project assisted with CDBG funds must comply with the regulations found at 24 CFR Part 35.

The lead-based paint regulations consolidate all lead-based paint requirements for HUD-assisted housing. The purpose of the regulation is to identify and address lead-based paint hazards before children are exposed to lead. The regulation is divided into subparts, of which the following apply to the CDBG program:

Subpart A: Disclosure;

Subpart B: General Requirements and Definitions;

Subpart J: Rehabilitation;

Subpart K: Acquisition, Leasing, Support Services, and Operations; and

Subpart R: Methods and Standards for Lead-Based Paint Hazard Evaluation and Reduction

17.1.1 Types of Requirements

For CDBG projects, the lead-based paint requirements established by the regulation fall into the three major categories listed below:

Notification: Recipients must meet four notification requirements:

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Lead Hazard Information Pamphlet - Occupants, owners, and purchasers must receive the EPA/HUD/Consumer Product Safety Commission (CPSC) lead hazard information pamphlet, or an EPA-approved equivalent.

Pamphlets should be provided to all households at time of application.

It is recommended that grantees develop an acknowledgement form and have all households sign to document they received and understood the pamphlet.

A copy of this acknowledgment form should then be placed in the file.

Disclosure - Check that property owners have provided purchasers and lessees with available information or knowledge regarding the presence of lead-based paint and lead-based paint hazards prior to selling or leasing a residence.

A disclosure notice must be provided to purchasers before closing so that they are aware that there may be lead in the home they are purchasing. A copy of the disclosure notice must be placed in the file.

Tenants must receive a disclosure notice before moving into the unit. Ideally, they should receive a disclosure notice at time of application so they can make an informed decision when choosing housing for their household. A copy of the disclosure notice should be kept by the landlord in the tenant's file.

Notice of Lead Hazard Evaluation or Presumption - Occupants, owners, and purchasers must be notified of the results of any lead hazard evaluation work or the presumption of lead-based paint or lead hazards.

A copy of this notice must be provided to owners and tenants within 15 days of the evaluation.

A copy of this notice should be kept in the project file.

Notice of Lead Hazard Reduction Activity - Occupants, owners, and purchasers must be notified of the results of any lead hazard reduction work.

A copy of this notice must be provided to owners and tenants within 15 days of the project achieving clearance.

A copy of this notice should be kept in the project file.

Lead Hazard Assessment/Evaluation: Assessment/evaluation methods include visual assessments, paint testing, and risk assessments. Each method has specific requirements (defined in Subpart R of the regulation) and must be done by qualified professionals. The specific method required depends on the activity undertaken.

Lead Hazard Reduction: Lead hazard reduction may include paint stabilization, interim controls, standard treatments, or abatement. Each method has specific requirements (defined in Subpart R of the regulation) and must be done by qualified professionals. The specific method required depends on the activity undertaken.

17.1.2 Exemptions

Some CDBG projects may be exempt from the Lead Safe Housing Rule if they meet the criteria listed below:

Housing units constructed after 1978.

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Emergency repairs to the property are being performed to safeguard against imminent danger to human life, health or safety, or to protect the property from further structural damage due to natural disaster, fire or structural collapse. The exemption applies only to repairs necessary to respond to the emergency.

The property will not be used for human residential habitation. This does not apply to common areas such as hallways and stairways of residential and mixed-use properties.

Housing “exclusively” for the elderly or persons with disabilities, with the provision that children less than six years of age will not reside in the dwelling unit.

An inspection performed according to HUD standards found the property contained no lead-based paint.

According to documented methodologies, lead-based paint has been identified and removed, and the property has achieved clearance.

The rehabilitation will not disturb any painted surface.

The property has no bedrooms.

The property is currently vacant and will remain vacant until demolition.

Grantees administering emergency repair programs should pay particular attention to the exemption “The rehabilitation will not disturb any painted surfaces.” Many emergency repair programs replace only water heaters or roofs where no painted surfaces are disturbed and thus may be exempt from the Rule.

All exemptions must be documented in the project file. HUD has developed a Lead Safe Housing Rule Applicability form that can be found in the August 19, 2003, memo from Roy A. Bernardi, Assistant Secretary for Community Planning and Development, with the subject Lead-Safe Housing Rule Checklist and Associated Guidance for Implementing and Documenting Compliance.

17.1.3 Requirements for Rehabilitation Projects

CDBG funds may be used rehabilitation of existing units. When such an activity is undertaken using Federal funds on a unit built before 1978, the Lead Safe Housing Rule applies. This section briefly describes the relevant requirements.

Calculating the Level of Assistance

The lead hazard evaluation and reduction activities required for rehabilitation projects depends on the level of rehabilitation assistance received by the project. This level of assistance is determined by taking the lower of:

Per unit rehabilitation hard costs (regardless of source of funds); or

Per unit Federal assistance (regardless of the use of the funds).

To make this determination, it helps to understand several terms:

Rehabilitation Hard Costs. The rehabilitation costs are calculated using only hard costs. They do not include soft costs or the costs of lead hazard evaluation and reduction, as described below.

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Lead Hazard Evaluation and Reduction Costs. Lead hazard evaluation and reduction costs include costs associated with site preparation, occupant protection, relocation, interim controls, abatement, clearance, and waste handling attributable to lead-based paint hazard reduction.

Federal Assistance. Federal assistance includes all Federal funds provided to the rehabilitation project, regardless of whether the funds are used for acquisition, construction, soft costs or other purposes. This also includes funds from program income, but excludes low-income housing tax credit funds (LIHTC), Department of Energy Weatherization Program funds, or non-Federal HOME Program match funds.

Requirements for Projects Receiving Rehabilitation Assistance Up to and Including \$5,000 per Unit

Projects where the level of rehabilitation assistance is less than or equal to \$5,000 per unit must meet the following requirements:

The goal is to “do no harm.” Therefore all work must be conducted using lead safe work practices. Workers must be trained in lead safe work practices (see the attached exhibits).

Lead Hazard Evaluation. Paint testing must be conducted to identify lead-based paint on painted surfaces that will be disturbed or replaced. Alternatively, grantees may presume that these surfaces contain lead-based paint.

Lead Hazard Reduction. Grantees must repair all paint that will be disturbed during rehabilitation, unless such paint is found not to be lead-based paint.

If lead-based paint is detected or presumed, safe work practices must be used during rehabilitation.

Clearance is required by a certified clearance examiner.

Notices must be provided to owners and tenants:

The Lead Hazard Information pamphlet;

The Notice of Evaluation (if paint testing is performed) or Notice of Presumption (if paint testing is not performed); and

The Notice of Lead Hazard Reduction.

In short, for rehabilitation projects where the level of assistance is less than or equal to \$5,000 per unit, workers must be trained in safe work practices, notices must be provided to owners and tenants, and clearance must be achieved.

Requirements for Projects Receiving Rehabilitation Assistance Between \$5,000-\$25,000 per Unit

Projects where the level of rehabilitation assistance is between \$5,000 and \$25,000 per unit must meet the following requirements.

The goal is to “identify and address lead hazards.” A risk assessment is required to identify lead hazards and identified hazards must be addressed by interim controls.

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Lead Hazard Evaluation. A risk assessment must be conducted by a qualified professional prior to rehabilitation to find lead-based paint hazards in assisted units, in common areas that service those units, and on exterior surfaces. The risk assessment must include paint testing of any surfaces to be disturbed by the rehabilitation.

Lead Hazard Reduction. If the risk assessment identifies lead-based paint hazards interim controls must be implemented to address lead-based paint hazards.

Interim controls must be performed by qualified professionals using safe work practices.

Clearance, conducted by a qualified clearance examiner, is required when lead hazard reduction activities are complete.

Options. There are two options, as follows:

The grantee is permitted to presume that lead-based paint is present and that lead-based paint hazards exist. In such cases, evaluation is not required. The grantee must perform standard treatments in lieu of interim controls on all applicable painted surfaces and presumed lead-based paint hazards.

The grantee is also permitted to conduct a lead hazard screen instead of a risk assessment. The lead hazard screen has more stringent requirements and is only recommended in units in good condition. If the lead hazard screen indicates that there is no lead contamination, no lead hazard reduction is required. If the lead hazard screen indicates the presence of lead hazards, the grantee/subrecipient must then conduct a risk assessment. (Note: Passing a lead hazard screen, or a risk assessment, does not eliminate the requirement to perform interim controls on lead-based paint hazards created as a result of the rehabilitation work.)

Notices must be provided to owners and tenants:

The Lead Hazard Information pamphlet;

The Notice of Evaluation (if a risk assessment is performed) or Notice of Presumption (if a risk assessment is not performed); and

The Notice of Lead Hazard Reduction.

In short, compliance with the Lead Safe Housing Rule for such rehabilitation projects will affect the project planning, timeline, scope of work, contracting and budget.

Requirements Projects Receiving Rehabilitation Assistance over \$25,000 per Unit

Projects where the level of rehabilitation assistance is over \$25,000 per unit must meet the following requirements.

The goal is to “identify and eliminate lead hazards.” A risk assessment is required to identify hazards and any identified hazards must be abated by a certified abatement professional.

Lead Hazard Evaluation. A risk assessment must be conducted prior to rehabilitation to find lead-based paint hazards in assisted units, in common areas that service those units, and on exterior surfaces. The risk assessment must include paint testing of any

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surfaces to be disturbed by the rehabilitation or grantees may assume that lead-based paint hazards exist.

Lead Hazard Reduction. To address hazards identified:

Abatement must be conducted to reduce all identified lead-based paint hazards except those described below. Abatement must be conducted by a certified abatement contractor.

If lead-based paint hazards are detected during the risk assessment on the exterior surfaces that are not to be disturbed by rehabilitation, interim controls may be completed instead of abatement to reduce these hazards.

Clearance is required when lead hazard reduction activities are complete.

Options. There are two options, as follows:

The grantee is permitted to presume that lead-based paint hazards exist. In such cases, a risk assessment is not required. The grantee must abate all applicable painted surfaces that will be disturbed during rehabilitation and all presumed lead hazards.

The grantee is permitted to conduct a lead hazard screen instead of a risk assessment. The lead hazard screen has more stringent requirements and is only recommended in units in good condition. If the lead hazard screen indicates that there is no lead contamination, no lead hazard reduction is required. If the lead hazard screen indicates the presence of lead hazards, the grantee/subrecipient must then conduct a risk assessment. (Note: Passing a lead hazard screen, or a risk assessment, does not eliminate the requirement to perform abatement on lead-based paint hazards created as a result of the rehabilitation work.)

Notices must be provided to owners and tenants:

The Lead Hazard Information pamphlet;

The Notice of Evaluation (if a risk assessment is conducted) or Notice of Presumption (if a risk assessment is not conducted); and

The Notice of Lead Hazard Reduction.

In short, compliance with the Lead Safe Housing Rule for such rehabilitation projects will affect the project planning, timeline, scope of work, contracting, and budget. In particular, it involves the engagement of a certified abatement contractor.

17.1.4 Requirements for Acquisition, Leasing or Supportive Services Projects

CDBG funds may be used for acquisition, leasing and supportive services. When such an activity is undertaken using Federal funds on a unit built before 1978, the Lead Safe Housing Rule applies. This section briefly describes the requirements needed to follow to be in compliance.

Lead Hazard Assessment. A visual assessment must be conducted during initial and periodic inspections by a person who is trained to detect deteriorated paint. Lead

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hazard evaluation activities must be completed prior to occupancy, or if the unit is already occupied, immediately after receipt of Federal assistance.

Lead Hazard Reduction. Deteriorated paint must be corrected using paint stabilization methods. Paint stabilization must be completed prior to occupancy, or if the unit is already occupied, immediately after receipt of Federal assistance.

Safe Work Practices. Safe work practices are required so workers must be appropriately trained or supervised.

Clearance. Clearance, by a qualified clearance examiner, is required when paint stabilization is complete.

Notification

Lead Hazard Information Pamphlet. The lead hazard information pamphlet must be provided prior to selling or providing leasing, support services, or operations activities to a house or unit that was built prior to 1978. Grantees do not have to provide the pamphlet if they can document that it has already been received.

Notice of Lead Hazard Reduction Activity. The notice must be provided within 15 calendar days of the date when the paint stabilization is completed.

17.1.5 Compliance

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

Not complying may expose households and contractors with potentially dangerous levels of lead dust and debris that can cause life threatening illnesses and developmental delays.

EXHIBIT 17-1
QUALIFICATIONS FOR HAZARD EVALUATION PROFESSIONALS

Paint inspectors and risk assessors must be certified to conduct evaluations. Rehabilitation specialists and other program staff may have the experience and educational qualifications needed to pursue lead-based paint inspector or risk assessor training and certification. The following specific certification requirements apply to these evaluators (from *40 CFR 745.226*):

Certified paint inspectors must:

- Successfully complete an EPA or state-accredited training program;
- Pass the exam required by the certifying authority; and
- Apply for and be certified by the state or EPA.

Risk assessors must:

- Successfully complete an EPA or state-accredited training program;
- Pass the exam required by the certifying authority; and
- Apply for and be certified by the state or EPA;

OR

Be certified as an industrial hygienist, engineer, architect, or related field;

OR

Have a high school diploma and at least three years experience with lead, asbestos, environmental remediation work, or construction.

Clearance must be performed by the following:

- Certified risk assessor;
 - Certified lead-based paint inspector; or
 - Certified lead sampling technician (called a clearance technician in the HUD regulation).
- Sampling technicians are currently not authorized by EPA to perform clearance examinations after abatement, but HUD regulations permit them to perform clearance after interim controls or maintenance or renovation activities

EXHIBIT 17-2

Who is qualified to perform LEAD hazard reduction work?

Qualifications for Abatement Contractors

Abatement contractors consist of:

Trained and state-certified abatement supervisor(s); and

Workers who have successfully completed accredited lead abatement worker training.

Qualification to Perform Interim Controls or Standard Treatments

To perform interim controls or standard treatments, a worker must be supervised by a certified abatement supervisor or have successfully completed one of the following courses:

An accredited lead-based paint abatement supervisor course;

An accredited lead-based paint worker course;

The lead-based paint course: "Work Smart, Work Wet, and Work Clean," prepared by the National Environmental Training Association for the EPA and HUD;

The Remodeler's and Renovator's Lead-Based Paint Training Program prepared by HUD and the National Association of the Remodeling Industry (NARI); or

A similar course recognized by HUD and EPA. (See HUD's website, www.hud.gov/offices/lead, for list of approved courses.)

Qualifications for Safe Work Practices

There are no specific qualifications for safe work practices, however, the following courses are useful general courses for all workers who want to work safely with lead.

Remodeler's and Renovator's Lead-Based Paint Training Program developed by HUD and the National Association for the Remodeling Industry (NARI); and

Lead-Based Paint Maintenance Training Program developed by HUD/EPA and the National Educational Training Association (NETA).

The booklet, "Lead Paint Safety: A Field Guide for Painting, Home Maintenance, and Renovation Work," is an excellent illustrated guide. Available on www.hud.gov/offices/lead or from the National Lead Information Center at 1-800-424-LEAD or www.epa.gov/lead/pubs/nlic.htm.

Four Approaches to Implementing Lead Hazard Evaluation and Reduction

APPROACH 1. DO NO HARM		
Lead Hazard Evaluation	Lead Hazard Reduction	Options
Paint testing performed on surfaces to be disturbed.	Repair surfaces disturbed during work. Safe work practices used when working on areas identified as lead-based paint. Clearance performed.	Presume lead-based paint is present and use safe work practices on all surfaces being disturbed.
APPROACH 2. IDENTIFY AND STABILIZE DETERIORATED PAINT		
Lead Hazard Evaluation	Lead Hazard Reduction	Options
Visual assessment performed to identify deteriorated paint.	Paint stabilization of identified deteriorated paint. Safe work practices used. Clearance performed.	Perform paint testing on deteriorated paint. Safe work practice requirements only apply to lead-based paint.
APPROACH 3. IDENTIFY AND CONTROL LEAD HAZARDS		
Lead Hazard Evaluation	Lead Hazard Reduction	Options
Paint testing performed on surfaces to be disturbed. Risk assessment performed on entire dwelling.	Interim controls performed on identified hazards. Safe work practices used. Clearance performed.	Presume lead based paint and/or lead based paint hazards are present and perform standard treatments.
APPROACH 4. IDENTIFY AND ABATE LEAD HAZARDS		
Lead Hazard Evaluation	Lead Hazard Reduction	Options
Paint testing performed on surfaces to be disturbed. Risk assessment performed on entire dwelling.	Abatement performed on identified hazards. Interim controls performed on identified hazards on the exterior that are not disturbed by rehabilitation. Safe work practices used. Clearance performed.	Presume lead-based paint and/or lead-based paint hazards are present and perform abatement on all applicable surfaces – deteriorated, impact, friction, chewable surfaces, and surfaces to be disturbed.

Summary of Required Activities to Address Lead-Based Paint	
Category	Required Activities
Notification	<p>All of the following notices must be provided as appropriate:</p> <ul style="list-style-type: none"> Pamphlet; Disclosure; Notice of Lead Hazard Evaluation or Presumption; and Notice of Lead Hazard Reduction Activity.
Lead Hazard Evaluation	<p>One or more of the following may apply:</p> <ul style="list-style-type: none"> Visual Assessment; Paint Testing; and Risk Assessment (or Lead Hazard Screen).
Lead Hazard Reduction	<p>One or more of the following may apply:</p> <ul style="list-style-type: none"> Paint Stabilization; Interim Controls (or Standard Treatments); and Abatement. <p>The following always apply:</p> <ul style="list-style-type: none"> Safe Work Practices; and Clearance.
Ongoing Maintenance	<p>This requirement may apply.</p> <ul style="list-style-type: none"> Inspect and maintain lead hazard reduction work.