DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 35, 36 and 37

[Docket No. FR–3482–P–01]

RIN 2501–AB57

Office of Lead-Based Paint Abatement and Poisoning Prevention; 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-Based Paint Abatement and Poisoning Prevention, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule implements sections 1012 and 1013 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, Title X of the Housing and Community Development Act of 1992. These sections set forth significant new requirements concerning lead-based paint hazard notification, evaluation, and reduction for federally owned residential property and housing receiving Federal assistance. This proposed rule constitutes a major revision of the Department's lead-based paint regulations. For the first time, HUD's lead-based paint requirements for all Federal programs will be consolidated in the Code of Federal Regulations. One part or subpart will set out programmatic requirements concerning lead-based paint hazard notification, evaluation and reduction for all covered HUD programs, as well as programs of other Federal agencies. One part or subpart will distill information concerning how to perform lead-based paint hazard evaluation and reduction activities, such as risk assessment and interim controls, based on the *HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing.* Another part or subpart will set out requirements concerning lead-based paint notification for all pre-1978 residential property sold or leased, including non-federally related privately owned residential property. (This last part or subpart was published jointly by HUD and the Environmental Protection Agency as a proposed rule, on November 2, 1994; a final rule is expected soon.)

DATES: Comments on this proposed rule must be received on or before September 5, 1996.

The deadline for comments on the information collection requirements is August 6, 1996, although commenters are advised that a comment is best assured of having its full effect if it is received by the Office of Management and Budget (OMB) within 30 days of publication.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule 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. Communications should refer to the above docket number and title. Facsimile (FAX) comments are *not* acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

Comments on the proposed information collection requirements must refer to FR–3482, Requirements for Notification, Evaluation and Reduction of Lead-Based Paint Hazards in Federally Owned Residential Property and Housing Receiving Federal Assistance, and must be sent to:

Joseph F. Lackey, Jr., HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503

and

Reports Liaison Officer, Office of Lead-Based Paint Abatement and Poisoning Prevention, Department of Housing & Urban Development, 451 7th Street SW., Room 4244, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: For further information on part 36 in the proposed rule, contact Joan Catherine Tetrault, and for further information on part 37 of the proposed rule contact Conrad Arnolts. The address for both of these persons is: Office of Lead-Based Paint Abatement and Poisoning Prevention, Department of Housing and Urban Development, 451 7th Street, SW, Room B–133, Washington, DC 20410–0500, Telephone: (202) 755–1805, E-mail: Joan__C.__Tetrault@hud.gov, or Conrad__C.__Arnolts@hud.gov. For legal questions, contact Kenneth A. Markison or John B. Shumway, Office of General Counsel, Room 9262, Department of Housing and Urban Development, Telephone: (202) 708–9988, E-mail: John__B.__Shumway@hud.gov. For hearing- and speech-impaired persons, these numbers may be accessed via TTY (text telephone) by calling the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act Statement

The information collection requirements contained in sections 36.63, 36.64, 36.70, 36.84, 36.144, 36.162, 36.164, 36.168, 36.170, 36.188, 36.208, 36.230, 36.232, 36.256, 36.274, 36.276, 36.284, 36.294, and 36.302 of this proposed rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). 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.

Information on the estimated public reporting burden and where to send comments is provided under the preamble heading, *Other Matters.* OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the Federal Register. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the proposed rule.

II. Background

A. Lead Poisoning

Childhood lead poisoning is ''the most common environmental disease of young children,'' (''Strategic Plan for the Elimination of Lead Poisoning'', Centers for Disease Control (''CDC''), U.S. Department of Health and Human Services, Atlanta, Georgia, 1991) eclipsing all other environmental health hazards found in the residential environment (''The Nature and Extent of Lead Poisoning in Children in the United States: A Report to Congress'', Agency for Toxic Substances and Disease Registry, U.S. Department of Health and Human Services, Atlanta, Georgia, 1988) (hereafter ''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 six. 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 (Davis, J.M., R. Elias and L. Grant ''Current Issues in Human Lead Exposure and Regulation

of Lead'', *Neurotoxicologist,* 14(2–3):1528, 1993). These effects have been identified in many carefully controlled research studies (''Measuring Lead Exposure in Infants, Children and Other Sensitive Populations'', Committee on Measuring Lead in Critical Populations, Board on Environmental Studies and Toxicology, Commission on Life Sciences, National Academy of Sciences, 1993). However, the vast majority of childhood lead-poisoning cases go undiagnosed and untreated, since most poisoned children have no obvious symptoms.

Although significant declines have been observed in the overall mean blood lead levels of children, which can be attributed to Federal Government actions resulting in the removal of lead from gasoline and soldered cans, approximately 1.7 million children are estimated to have blood lead levels high enough to be of a health concern. Lead poisoning affects children across all socioeconomic strata and in all regions of the country. However, because lead-based paint hazards are most severe in older housing in disrepair, the poor in inner cities are disproportionately affected. In some inner city communities, over half of all young children have lead levels exceeding the CDC threshold of concern (10 micrograms per deciliter). Nationwide, African-American children of low and middle income families are twice as likely to be lead poisoned as white children of similar income families (Phase I of the Third National Health and Nutrition Examination Survey, NHANES III, 1988–1992, as reported in the *Journal of American Medical Association,* July 27, 1994).

Today, children in the United States are lead poisoned primarily through ingestion by normal hand-to-mouth activity and, to a lesser extent, inhalation. Because lead is ubiquitous in industrial societies, there are many sources and pathways of lead exposure. The foremost source of childhood lead exposure in the United States today is lead-based paint and the accompanying lead-contaminated dust and soil found in and around older houses (''Preventing Lead Poisoning in Young Children'', CDC, U.S. Department of Health and Human Services, Atlanta, Georgia, 1991; Rabinowitz, M., J. Leviton, H. Needleman, D. Bellinger and C. Waternaux, ''Environmental Correlates of Infant Blood Lead Levels in Boston'', *Environmental Research* 38:96–107, 1985). As early as 1897, lead-based paint was identified as a cause of childhood lead poisoning (Turner, 1897). Many countries prohibited the use of lead in residential paints as far back as 1922 (Rabin, R., ''Warnings Unheeded: A History of Lead Poisoning'', *American Journal of Public Health* 79:1668–1674, 1989). Lead was a major ingredient in most interior and exterior house oil-based paints prior to 1950, with some paints containing as much as 50 percent lead by dry weight. In the early 1950s, other ingredients became more popular, but some lead pigments, corrosion inhibitors, and drying agents were still used.

In the 1950's and 1960's, several large cities in the United States banned the use of lead-based paint (using varying definitions) on interior surfaces in residential structures. In 1955, the paint industry adopted a voluntary standard limiting the use of lead in interior paints to no more than 1 percent by weight of nonvolatile solids. In 1972, HUD prohibited the use of lead-based paint (at the 1 percent standard) in HUD-associated housing. In 1972, the Consumer Product Safety Commission (''CPSC'') reduced the acceptable lead content in residential paint to 0.5 percent, and in 1978 subsequently banned the sale of residential paint containing greater than 0.06 percent lead. CPSC also prohibited the use of such paint in residences and other areas where consumers have direct contact with painted surfaces.

HUD estimates that three-quarters of pre-1980 dwelling units contain some lead-based paint. The likelihood, extent, and concentration of lead-based paint all increase with the age of the building. Fully 90 percent of privately owned dwelling units constructed before 1940 contain some lead-based paint, 80 percent of dwelling units constructed between 1940 and 1959, and 62 percent of dwelling units constructed between 1960 and 1979 (''Comprehensive and Workable Plan for the Abatement of Lead-Based Paint in Privately-Owned Housing: A Report to Congress'', U.S. Department of Housing and Urban Development, Washington, D.C., December 7, 1990). Because the greatest risk is in residential property constructed before 1960, older property generally commands a higher priority for lead hazard controls. However, there is evidence that significant amounts of lead-based paint were sold as late as 1971, when New York City's Health Department tested 78 ''new'' residential paints and found eight of them to have lead ranging from 2.6 percent to 10.8 percent (Bird, D., ''High Lead Paints Listed by City'', NY Times, August 4, 1971:18).

For many years, the conventional belief was that in order to be poisoned children *must* eat lead paint chips. More recent medical research has determined that the most common cause of childhood lead exposure is the ingestion, through hand-to-mouth transmission, of lead-contaminated surface dust (Clark, C.S., R. Bornschein, P. Succop, S. Roda and B. Peace, ''Urban Lead Exposures of Children in Cincinnati, Ohio'', Journal of Chemical Speciation and Bioavailability, 3(¾): 163–171, 1991; Bellinger, D., J. Sloman, A. Leviton, M. Rabinowitz, H. Needleman and C. Waternaux, ''Low Level Lead Exposure and Children's Cognitive Function in the Preschool years'', *Pediatrics*, (87):219–227, 1991). Lead-contaminated dust may be so fine that it cannot be seen by the naked eye. In addition, lead-contaminated dust is difficult to clean up. Leaded dust is generated when lead-based paint is damaged by moisture, abraded on friction and impact surfaces, or is disturbed in the course of repainting, renovation, repair, or abatement. Lead can also be tracked into homes from exterior dust and soil.

Children can also be exposed to lead found in bare soil. High levels of lead in soil around the foundation of a house may come from the scraping and repainting of exterior lead-based paint or simply the deterioration of such paint (Ter Harr, G. and R. Arnow, ''New Information on Lead in Dirt and Dust as Related to the Childhood Lead Problem'', *Environmental Health Prospectives,* May, 1974:83–89; Linton, R.W., D.F.S. Natush, R.L. Solomon and C.A. Evans, ''Physicochemical Characterization of Lead in Urban Dusts: A Microanalytical Technique to Lead Tracing'', *Environmental Science Technology,* 14:159–164, 1980). Soil is also contaminated with lead by the fallout of lead emissions from the combustion of leaded automobile gasoline and from industrial sources (ATSDR, 1988, *supra*). In some areas, high leaded soil levels result from factory and smelter emissions or deteriorating lead-based paint on steel structures, such as bridges. Bare soil that is contaminated with lead poses a hazard to children who play in it.

Based on the belief that children had to eat lead-based paint chips to be poisoned, the typical response to lead poisoning during the 1970s and early 1980s consisted of removing deteriorated and/or accessible lead-based paint by scraping, uncontrolled sanding, or open flame burning, all of which generated large amounts of lead dust. Approaches differed slightly from city to city. Some cities required removal of all lead-based paint to a certain height, such as 5 feet; others required only that deteriorating paint be removed. However, these traditional

abatements had one common characteristic: little attention was paid to controlling, containing and cleaning up leaded dust. In many cases, these paint removal methods actually aggravated the problem, increasing lead exposures and poisoning workers and children in the process. Several studies found that uncontrolled abatement and inadequate cleanup caused increased blood lead levels (Farfel, M. and J.J. Chisolm, Jr, ''Health and Environmental Outcomes of Traditional and Modified Practices for Abatement of Residential Lead-Based Paint'', *American Journal of Public Health,* 80:10,1240–1245, 1990;; Rabinowitz, M., A. Leviton and D. Bellinger, ''Home Refinishing, Lead Paint and Infant Blood Lead Levels'', *American Journal of Public Health*, 75(4):403–404, 1985; Amitai, Y., J.W. Graef, M.J. Brown, R.S. Gerstle, N. Kahn and P.E. Cochrane, ''Hazards of Deleading Homes of Children with Poisoning'', *American Journal of Diseases of Children,* 141:758–760, 1987). The Department's *Lead-Based Paint: Guidelines for Hazard Identification and Abatement in Public and Indian Housing,* (1990) (''Interim Guidelines'') properly emphasized the danger of lead-contaminated dust and the need for worker protection and thorough cleanup.

Title X 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 per square centimeter (mg/cm2) of lead, 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 accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects.'' Thus, under this definition, intact lead-based paint on most walls and ceilings is not considered a ''hazard,'' although the condition of the paint should be monitored and maintained to ensure that it does not become deteriorated. While most efforts to address lead hazards in residential property will now be aimed at reducing lead-based paint hazards as defined by Title X, Federal law makes one notable exception: in public and Indian housing all lead-based paint and lead-based paint hazards must be abated during modernization.

Title X defines two methods of identifying or ''evaluating'' lead-based paint hazards or lead-based paint. One method, ''risk assessment'', includes wipe sampling and other environmental sampling to identify lead-based paint hazards. The other, ''inspection'' (or ''paint inspection''), determines the presence only of lead-based paint. Lead-based paint hazard 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 control: 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 lead-based paint hazard evaluation and reduction is carried out safely and effectively, Title X imposes 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, were written pursuant to the passage of the Lead-Based Paint Act, as amended prior to 1992. 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 the Department 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 was promulgated setting forth general procedures for the inspection and treatment of defective paint surfaces in all HUD-associated housing. Subsection 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.

On May 12, 1994, at 59 FR 24850, the Department published a proposed rule for comment that was intended to be the first phase of a process to revise HUD's lead-based paint regulations. In this first phase, HUD intended to remedy inaccuracies in existing regulations and respond to advancements in the state of knowledge in the field of lead-based paint testing and hazard reduction. The proposed rule did not reflect changes in the Title X amendment to the Lead-Based Paint Act. However, many of the public comments the Department received on this proposed rule reflected a misimpression that the proposed rule was intended to implement Title X. Other comments were impatient with HUD and felt strongly that the Department should devote its resources to implementing the new legislation, rather then making minor adjustments to the existing regulations. The Department agreed and consequently the May 12, 1994 proposed rule was withdrawn. The proposed changes to the regulations, where consistent with Title X, have been incorporated into this rulemaking.

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 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, in many cases, interim control and monitoring of lead-based paint hazards, although abatement of lead-based paint hazards is not precluded. This proposed 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.

III. HUD Reinvention

In 1993 the Department launched a major restructuring, or reinvention, to meet the changing housing and development needs of communities across the country. HUD's reinvention efforts took place in the context of a broader, government-wide reinvention process, the National Performance Review, initiated by President Clinton and Vice-President Gore. The Department's proposed reinvention process will consolidate HUD programs by replacing numerous individual programs, each imposing its own prescriptive rules and requirements, with far fewer streamlined funds, which would stress performance-based objectives. These new funds will give State and local decision makers maximum flexibility to tailor Federal resources in response to local circumstances, needs and priorities. The Department also proposes to phase out direct public housing subsidies to housing agencies, converting the funds to tenant-based rental assistance that will allow residents an expanded choice of housing. Finally, the Department's reinvention will transform the Federal Housing Administration (FHA) into a business-like, government-owned corporation, enabling it to work more effectively and improve its efficiency.

In order to keep pace with the changes HUD is undertaking, the Department's program regulations must also change. Although the proposed 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 lead-based paint technology and in HUD service delivery.

The proposed rule consolidates numerous lead-based paint regulations found throughout HUD's program regulations into two parts (parts 36 and 37) of title 24 of the Code of Federal Regulations. At the final rule stage, the Department will consider combining all of its lead-based paint regulations into one part of the Code of Federal Regulations.

The Department is seeking to eliminate redundant lead-based paint regulations and to achieve a measure of consistency among the lead-based paint requirements for different HUD programs, recognizing that HUD clients often receive funding from several HUD programs and must juggle separate and sometimes inconsistent sets of program regulations. Furthermore, the Department is engaged in a larger effort to streamline and eliminate unnecessary regulations, as part of the reinvention of HUD, and the extent to which this larger effort may impact our objective to eliminate unnecessary lead-based paint regulations is not yet clear. As a result, the Department has not included as part of this proposed rule the specific deletions of lengthy lead-based paint program regulations and new references and cross citations to parts 36 and 37. These deletions, as well as new references and cross citations also will be added during final rulemaking.

The proposed rule groups HUD programs by the type of assistance provided. This was done to ease the burden on HUD clients in locating the lead-based paint requirements that correspond to the type of assistance they receive. For instance, a client receiving HUD funds for rehabilitation will find only one rehabilitation subpart, rather than a rehabilitation subpart for multifamily property and a separate subpart on rehabilitation using HOME or CDBG funds. In addition, grouping HUD programs by type of assistance allows the Department greater flexibility as it consolidates many individual programs into the three performance-based funds. For example, the proposed rule has a subpart for public housing as it now exists and a subpart for tenant-based rental assistance. If a conversion of public housing subsidies to tenant-based rental assistance occurs, the appropriate lead-based paint requirements will already be in place.

Finally, the proposed 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 from lead-based paint poisoning. Where possible, the proposed rule provides opportunities for HUD clients to implement hazard reduction measures that will best meet the needs of their communities. For example, in subpart B of part 36, States, Indian tribes and insular areas that meet certain eligibility criteria have the opportunity to develop their own lead-based paint procedures and localities located in such a State have the option of adopting these State procedures (*See* Section VII A.3 of the Preamble below).

IV. Public Input on Rulemaking

Consistent with Executive Order 12866, HUD has increased public participation in the regulatory development process. Because of the magnitude of the changes required in HUD's lead-based paint proposed rule 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, and three major meetings of HUD clients to seek input on the implementation of Title X.

A. 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 hazard evaluation and reduction methods described in Part 37 of the proposed rule, and are intended to help property owners, government agencies and private contractors sharply reduce children's exposure to lead-based paint, without adding unnecessarily to the cost of housing.

B. Title X Task Force

The creation of the Title X Task Force on Lead-Based Paint Hazard Reduction and Financing was also mandated by Section 1015 of Title X. The Task Force submitted its recommendations, *Putting the Pieces Together: Controlling Lead Hazards in the Nation's Housing,* to 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 hazard evaluation and control, financing hazard control activities, and liability and insurance for rental property

owners and hazard control contractors. The Department used the Task Force recommendations to guide the development of the lead-based paint requirements for Section 8 tenant-based rental assistance programs set forth in Part 36, subpart O, of the proposed rule.

C. Meetings with HUD Clients

Finally, 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 hazard evaluation and reduction activities, and children with elevated blood-lead levels. Additional written comments were accepted from participants after the meetings. Participants' written comments, as well as meeting transcripts, are available for public review between 7:30 a.m. and 5:30 p.m. weekdays, in the Office of the Rules Docket Clerk, Office of General Council, U.S. Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410–0500.

V. Scope and Applicability.

A. Sections 1012 and 1013 of Title X

This proposed rule implements the requirements of the Lead-Based Paint Act, as amended by Section 1012 and Section 1013 of Title X. Section 1012(a) of Title X amends the first sentence of the Lead-Based Paint 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.

Section 1012 sets out minimum procedures for all ''target housing'' that falls within the three categories discussed above—mortgage insurance, housing assistance payments or more than $5,000 in project-based assistance. Target housing 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) or any 0-bedroom dwelling unit. HUD has interpreted the exceptions for elderly and disabled housing (*See* § 36.2) to apply only to residential property which is designated exclusively for elderly or disabled use. After considerable discussion, HUD has determined that it would be unworkable and contrary to the intent of the statute to expand these exceptions to each particular dwelling unit occupied by an elderly or disabled person, regardless of its designation.

In the past, the Department has taken the position that the requirements of the Lead-Based Paint Act applied only to new applications for mortgage insurance or other types of housing assistance, under any program administered by the Secretary. The Department interprets the new phrase added by Section 1012(a), ''more than $5,000 in project-based assistance under a Federal housing program'', to cover any Federal housing program administered by any Federal agency which provides project-based assistance. Consequently, subpart I of Part 36 applies to both new and existing inventory receiving project-based assistance under a HUD program, and subpart D applies these requirements to other Federal agencies. Finally, although Title X only requires the Secretary to establish lead-based paint procedures for residential property receiving more than $5,000 in project-based assistance, Subpart I includes additional minimal lead-based paint procedures (i.e. the procedures for tenant-based rental assistance) for multifamily property receiving less than $5,000 in project-based assistance from HUD. The Department also applies these minimal lead-based paint procedures to single family properties receiving Section 8 Moderate Rehabilitation or Project-Based Certificate assistance from HUD. The Department wants to extend some limited lead-based paint protections to properties receiving minimal project-based assistance and also wants to relieve single family owners with limited financial resources from being required to comply with the extensive lead-based paint requirements for project-based assistance. These additional minimal procedures were not included in Subpart D for project-based assistance provided by a Federal agency other than HUD.

Under Title X, Congress is silent with respect to whether the new minimum procedures for lead-based paint hazard notification, evaluation and reduction apply to tenant-based rental assistance and HUD's examination of legislative intent is inconclusive. Congress did not amend the first sentence of the Lead-Based Paint 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 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. *See* Senate Committee on Banking, Housing, and Urban Affairs, Senate Report 102–332, July 23, 1992 (hereafter, ''Senate Report 102–332'').

In HUD's view, Congress clearly did not intend for HUD to apply the new minimum procedures for lead-based paint hazard notification, evaluation and reduction set out in Title X to tenant-based rental assistance. However, HUD does not believe that Congress intended to abolish HUD's current procedures, which serve to protect, in a minimal way, the recipients of this type of housing assistance. Rather, Congress may have intended for the Department to effectively retain its present lead-based paint requirements for tenant-based rental assistance. In its current regulations, HUD requires tenant-based rental property occupied by families with children under six to meet the minimal standard for lead-based paint found in its Housing Quality Standards (HQS). In this proposed rule, then, HUD continues to require tenant-based rental property to meet HQS. The Department, however, modifies the lead-based paint requirements in HQS somewhat, in accordance with the general approach of Title X, to require visual evaluation, dust testing in some situations, paint repair, cleanup, a response to an elevated blood level (EBL) child and related activities in accordance with part 37.

Section 1013 amends 42 U.S.C. 4822(a)(3) to modify existing requirements for the disposition (*i.e.* sale) of all residential property constructed before 1978 and owned by a Federal agency. Consequently, the Department includes here new subpart C of Part 36 which sets out these requirements concerning the disposition of all federally owned residential

property. Elsewhere in Part 36, the Department sets out specific requirements for the disposition of HUD-Owned Single Family and Multifamily property.

Section 1013 adds 42 U.S.C. 4822(a)(3)(C), which states the following: In the absence of appropriations sufficient to cover the costs of 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), these requirements shall not apply to the affected agency or agencies.

The Department interprets this language to state that HUD (and other Federal agencies that own residential property covered herein) need not comply with the requirements set out in Section 1013 if sufficient funds are not provided to the agency for this purpose. In the Department's view, it is consistent with the intent of Congress to nevertheless make some effort to evaluate and treat deteriorated paint in HUD-owned properties (similar to existing procedures), even if funding is not made available to the Department to carry out more extensive lead-based paint hazard evaluation and reduction. Since these properties are owned by the Department, HUD feels that it has the authority to adopt an alternative response to potential lead-based paint hazards in the absence of sufficient appropriations. Therefore, subparts F and G of part 36, for HUD-Owned Single Family Housing, and subparts J and K of part 36, for HUD-Owned and Mortgagee-in-Possession Multifamily Property, set forth alternative requirements when appropriated money is available and when appropriated money is not available. When appropriated money is available, the regulatory requirements track the language of Section 1013. When appropriated money is not available, alternative regulatory requirements are set forth. Other agencies may also wish to develop alternative requirements to those set out in part 36, subpart C, when appropriated monies are not available.

B. Format

Throughout this proposed rule, lead-based paint hazard notification, evaluation, and reduction requirements represent the minimum activities that are required under this proposed rule; of course, parties may wish to voluntarily undertake more extensive lead-based paint activities. It should also be noted that throughout part 36, paint repair or interim controls of deteriorated paint surfaces are required for various programs and cross references to the relevant subparts of part 37 concerning treatment are included. These subparts of part 37 each include a section describing a de minimis level of paint deterioration, consistent with the HUD Guidelines, below which no action is required. This de minimis level is defined as not more than 10 square feet of deteriorated paint on an exterior wall, not more than 2 square feet on a component with a large surface area other than an exterior wall 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.

To avoid requiring evaluation efforts that may have already been undertaken by property owners and to minimize costs, HUD has included exemptions for required evaluation activities if equivalent or more stringent evaluation activities have already been conducted and have indicated the absence of lead-based paint or lead-based paint hazards. The proposed rule also provides opportunities to forego evaluation activities if certain lead-based paint hazard *reduction* measures consistent with the requirements of parts 36 and 37 have been conducted. In addition, where paint inspection or risk assessment are required, the proposed rule provides the option to assume the presence of lead-based paint or lead-based paint hazards or both and to perform hazard reduction activities. Finally, the requirements of visual evaluation, paint repair and cleanup do not apply if a suitable paint inspection has already been completed indicating the absence of lead-based paint (i.e. lead-free).

An owner or recipient of Federal assistance hoping to meet a lead-free exemption may question whether correcting for possible false (or outdated) positive findings during lead-based paint inspections is permissible. The owner or recipient always retains the option of having additional tests performed by certified paint inspectors. Nothing in either the law or the proposed regulation is intended to revoke or restrict that right. An additional test can sometimes clarify whether or not lead-based paint is present. For example, if an owner or recipient believed that a previous inspection had rendered a false positive result (all measurement techniques involve some small degree of sampling and analytical error), the owner or recipient could choose to have a certified paint inspector retest the area in question. If the additional testing by a certified paint inspector indicated that the initial positive results were false (i.e., that there was in fact no lead-based paint present), then the owner or recipient would qualify for a lead-based paint free exemption. Similarly, suppose an owner or recipient first had a test done in 1982 using an X-ray fluorescence (XRF) device that indicated the presence of lead-based paint. Because testing procedures were less reliable at that time (standard practice often failed to consider the effect of the substrate underneath the paint, or the accuracy of the measurement and instrument calibration checks were often deficient), the owner or recipient might choose to conduct a new test using the improved methodology available today. If this second test indicated that lead-based paint was not present, then the owner or recipient would qualify for a lead-based paint free exemption. As a third example, an owner or recipient who had all lead-based paint removed from a property following an earlier inspection could choose to have a new inspection or clearance examination conducted on the abated property. If the new information indicated that lead-based paint was no longer present, then the owner or recipient would qualify for a lead-based paint free exemption. In all three cases, if the second test confirmed the original findings, or if the test was not conducted by a certified paint inspector, an exemption would not be available.

As stated above, the proposed rule sets forth new parts 36 and 37 that, together with part 35, subpart H, comprise all of HUD's regulatory requirements for lead-based paint in a single place. The numerous lead-based paint requirements set out in various program regulations will be deleted. Part 36 describes the lead-based paint requirements for each program covered under the Lead-Based Paint Act, grouped according to the manner in which program responsibility is divided in the Department and according to the relevant requirements. The requirements for single family and multifamily property appear separately. There are two single family property disposition subparts and two multifamily property disposition subparts—one if appropriations are sufficient and one if appropriations are not sufficient. There are also separate subparts for single family insured property and multifamily insured property, and for project- and tenant-based rental assistance programs. There is one rehabilitation subpart and one subpart for CPD non-rehabilitation programs. The requirements for public and Indian housing are located in a

single subpart. There is also a subpart that provides alternative procedures for States receiving Federal housing assistance, or operating a Federal housing assistance program. Finally, the requirements for properties owned by, or receiving project-based assistance from, a Federal agency other than HUD are set out in two subparts.

The program requirements set out in part 36 specifically reference the procedural information for conducting lead-based paint hazard evaluation and reduction activities included in part 37. Part 37 distills the extensive information found in the HUD Guidelines, in subparts on paint inspection, risk assessment, interim controls, abatement, occupant protection, worksite preparation, cleanup, clearance and monitoring. As stated in the discussion of HUD's Reinvention efforts, the Department is considering a more performance-based approach to its lead-based paint hazard evaluation and reduction requirements, and may consolidate parts 36 and 37 in the final rule. The Department requests comments on the format of the proposed rule, as well as the content.

C. Effective Date and Qualifications for Conducting Lead-Based Paint Hazard Evaluation and Reduction Activities

The proposed effective date of these regulations is one year after the date of publication of the final rule in the Federal Register. HUD anticipates that a final lead-based paint rule will be published by September 1996. In determining an appropriate effective date, the Department considered two options: the date of publication of the final rule and 12 months after publication of the final rule.

The argument in favor of an immediate effective date is that Title X (Sections 1012 and 1013) requires the evaluation and reduction of lead-based paint hazards in housing receiving Federal assistance and residential property owned by the Federal government to take effect on January 1, 1995; any further delay in implementing these requirements would pose a risk to the health of children. The argument against an immediate effective date is that program administrators at all levels of government, as well as property owners and contractors performing lead-based paint activities, would not have adequate education and training time to implement the new technical standards, requirements and procedures required under the proposed regulation. The Department is concerned that such a scenario would likely result in a delay in implementing the new lead-based paint requirements, difficulty in locating trained and certified workers, unreliable hazard evaluation results, and unsafe and ineffective hazard control activities.

Further, the Department recognizes that HUD clients conducting ongoing program activities will need time to incorporate, where feasible, the new lead-based paint requirements into their programs. HUD requests program-specific comments on the ''event'' to which the effective date of the rule should be linked with regard to ongoing program activities. Specifically, should HUD programs use (1) the date of the funding agreement between the client and HUD; (2) the date of the expenditure of HUD funds; (3) the date that the contract between the project owner and the funding agency is signed; or is there another more appropriate date?

An effective date of 12 months after publication of the final rule was chosen by the Department as a way to allow all parties—lead-based paint professionals, housing agencies, State and local government agencies, and private property owners—time to prepare for proper implementation of the new lead-based paint requirements. The effective date will also coincide approximately with the conclusion of the two-year period associated with EPA's training and certification requirements, as discussed below. The Department shares the concern of the public health community that further delays in implementing the requirements will place more children at risk of lead-based paint poisoning. However, it seemed impractical for HUD to establish an immediate effective date for the proposed rule, knowing that the infrastructure necessary to carry it out would not be fully in place.

The effective date issue is directly related to the qualifications necessary for persons carrying out lead-based paint hazard evaluation and reduction activities. The proposed rule requires that virtually all lead-based paint hazard evaluation and abatement activities required in part 36 be conducted by individuals and firms that are certified in accordance with the new EPA requirements for lead-based paint activities, developed pursuant to Section 1021 of Title X (adding Sections 402 and 404 of the Toxic Substances Control Act (TSCA). The EPA training and certification regulations were published as a proposed rule on September 2, 1994, and are expected as of this writing to be published as a final rule in 1996. States must have EPA approved training and certification programs in place within two years of publication of the final EPA rule. The EPA regulation will greatly affect the availability of individuals and firms that are trained and certified to conduct lead-based paint activities in each State. If the certification programs of the States and EPA have not developed sufficiently by the time HUD's new lead-based paint rule takes effect, the Department will need to consider temporary qualifications for persons conducting lead-based paint hazard evaluation and reduction activities. The Department requests comments on the certification requirement as well as the effective date.

It should be noted that in part 36, subpart N, public and Indian housing agencies (''HAs'') conducting dust and soil testing for public and Indian housing are not required to be certified in accordance with the new EPA requirements for lead-based paint activities. The Department recognizes that this is inconsistent with the general approach of the proposed rule. However, HAs were required to complete paint inspections by December 6, 1994 and many HAs have already taken the initiative to conduct risk assessments in housing projects. Therefore, in the Department's view, it is illogical to impose new certification requirements for evaluation activities conducted in public and Indian housing. Furthermore, the legislative history for Title X indicates that Congress did not intend for the new procedures set out under Title X to disrupt already ongoing public and Indian housing lead-based paint activities. Since the Department has not applied certification requirements to evaluation activities conducted by HAs, additional descriptive material concerning soil and dust testing has been added to subpart B of part 37. Further, HUD did not extend the certification requirement to dust testing conducted by HAs for the Section 8 tenant-based rental assistance program. However, a risk assessment, conducted in response to an identified EBL child, must be conducted by a certified risk assessor in accordance with 24 CFR part 37. HUD requests public comment on the issue of whether certification requirements for evaluation activities should be applied to HAs.

VI. Definitions

In order to implement Section 1012 and Section 1013 of Title X, certain terms need to be defined. To avoid redundancy, definitions used throughout both parts 36 and 37 are included in subpart A of part 36. Terms that are only used in a particular subpart are defined in that subpart.

Where possible, HUD has drawn definitions directly from Section 1004 of Title X. In cases where the statute either failed to define terms or where the definition was inadequate, the Department has drawn definitions from the HUD Guidelines, existing HUD or EPA regulations (as well as EPA proposed regulations promulgated pursuant to Title X), the National Institute of Building Sciences (''NIBS'') Lead-Based Paint Operations and Maintenance Work Practices Manual, and from definitions compiled and set forth by the American Society for Testing and Materials (ASTM) in a document entitled ''Standard Terminology Relating to Abatement of Hazards from Lead-Based Paint in Buildings and Related Structures''. HUD will accept comments on all definitions not taken directly from the statute.

VII. General Requirements

A. Part 36

1. Cross Cutting Issues

The requirements described below apply, in varying degrees, to HUD programs, as well as to some programs of other Federal agencies, covered under Part 36.

(a) Pamphlet. Section 1012 of Title X amends the Lead-Based Paint Act to add new subparagraph 42 U.S.C. 4822(a)(1)(A), which requires the provision of a lead-based paint hazard information pamphlet (''lead hazard information pamphlet'') to all purchasers and tenants of housing receiving Federal assistance. The lead hazard information pamphlet must be the one developed by EPA pursuant to Section 406 of TSCA (added pursuant to Section 1021 of Title X).

The lead hazard information pamphlet mandated by Section 406 of TSCA contains certain information, such as the health risks associated with exposure to lead, the presence of lead in residential property, approved and recommended methods of evaluation and reduction of lead-based paint hazards, how to obtain a list of certified evaluation and reduction contractors, and an informational statement that State and local governments may impose additional lead-based paint requirements.

Section 1018 of Title X also contains a lead hazard information pamphlet requirement. Under Section 1018, all sellers and landlords of virtually all pre–1978 target housing are required to provide purchasers and tenants with the same lead hazard information pamphlet prior to sale or lease. Since Section 1018 of Title X separately requires *all new purchasers and new tenants of target housing*, including federally owned residential property and housing receiving Federal assistance, to receive the lead hazard information pamphlet, the Department reads ''purchasers and tenants'' in new subparagraph 42 U.S.C. 4822(a)(1)(A) to cover ''*all existing owner-occupants and tenants that were residing in a residential dwelling unit covered by this proposed rule prior to the effective date of the regulation implementing Section 1018 of Title X*,'' since these owner-occupants and tenants would not have received the pamphlet upon initial occupancy. The proposed rule avoids duplicating the requirements set out in Section 1018 by not addressing situations in which the Department, another Federal agency, or a recipient or subrecipient of Federal housing assistance already has a duty as a seller or lessor to provide the pamphlet to new purchasers or tenants. That requirement will be set forth in 24 CFR Part 35, Subpart H.

(b) Notice. New subparagraph 42 U.S.C. 4822(a)(1)(F) of the Lead-Based Paint Act requires the provision of notice to occupants describing the nature and scope of any risk assessment, paint inspection, or reduction activities undertaken. The Department has interpreted this new provision to require the following: (1) Within 15 calendar days of receiving a risk assessment or paint inspection report or both, a written notice must be provided to tenants 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 tenants of the actual hazard reduction activities conducted that contains a summary of the nature, scope and results of the hazard reduction activities, a contact for more information, and information on any 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 a centrally located easily accessible common area or distributed to each occupied dwelling unit, must be of a size and type that are easily read, must be made available in an accessible format for persons with disabilities, to the extent practicable, and if possible must be provided in the tenant's primary language.

The language of 42 U.S.C. 4822(a)(1)(F) does not specifically require that separate notices be provided to tenants, initially after an evaluation has been conducted, and again after hazard reduction activities have been undertaken. However, in the Department's view, withholding information on the results of an evaluation until after hazard reduction activities have been performed and the lead-based paint hazard resolved, poses a serious risk to tenants. The sooner tenants are provided with this information, the better they can protect their children and themselves.

The notification requirements of 42 U.S.C. 4822(a)(1)(F) also do not specify the manner in which the notices must be distributed. The proposed rule provides the option of ''posting the notices in a centrally located, easily accessible common area, or distributing it to each occupied dwelling unit.'' In general, the Department believes that matters of notice format and distribution are best determined by the property owner or other recipient of Federal housing assistance. The Department requests comment on the content, format and distribution of the notices.

(c) Paint Repair. HUD's current lead-based paint regulations often require visual inspection and ''treatment of defective paint surfaces.'' That treatment usually consists of scraping deteriorated paint and in some cases repainting. Paint repair under this proposed rule involves similar visual evaluation and treatment for deteriorated paint surfaces (when the deteriorated paint surface exceeds a de minimis size), but additional safeguards are added. Unless a paint inspection or risk assessment has indicated the absence of lead-based paint, a deteriorated paint surface must be assumed to contain lead. Therefore, when paint repair is conducted, the proposed regulation requires various protections to ensure that the paint is repaired in a manner that does not cause exposure to lead-based paint. The requirements include: (1) The use of protective coverings on the floor or ground; (2) occupant protections that entail restricted access to a worksite until after all paint repair and cleanup have been completed; (3) use of wet methods and other work practices to control leaded dust; (4) surface preparation and cleaning before repainting; and (5) cleanup of the worksite. These additional provisions will help to ensure that lead-based paint hazards are reduced without unintended negative human health or environmental consequences.

The paint repair requirements in this proposed rule often apply where residential properties receive a minimum amount of housing assistance from HUD, and the relationship between

HUD and the recipient of HUD assistance is not continuous. The subparts of part 36 concerning HUD's single family and multifamily insured programs require only paint repair, as well as the subpart concerning HUD-owned properties without sufficient appropriations to carry out the requirements of Section 1013 of Title X. Paint repair is also required by CPD non-rehabilitation programs and the Department's tenant-based rental assistance programs, though these programs have an additional requirement of dust testing for residential properties built before 1950. In addition, HUD has extended the paint repair requirements to residential properties that receive less than $5,000 in HUD funds for rehabilitation, because these rehabilitation activities are limited and the paint disturbance is minimal. Rather than requiring interim controls or abatement activities for this category of rehabilitation, the Department has chosen a ''do no harm'' policy that requires paint repair and cleanup of the surfaces to be disturbed by rehabilitation.

(d) EBLs. The use of children with elevated blood lead levels (EBLs) as a trigger to initiate evaluation or reduction of lead-based paint hazards does not exist in any of the new requirements under Title X. Rather, Congress makes clear that the Department is to focus on preventing the poisoning of children, rather than reacting to children with EBLs (*See* Section 566(a)(1), Housing and Community Development Act of 1987 (''HCD Act of 1987'') (Pub. L. 100–242, enacted February 5, 1988); p. 243, Conference Report for the HCD Act of 1987 (Report 100–426, November 6, 1987); and Title X, Senate Report 102–332). While the Department's primary focus in this rule is on prevention, HUD feels a special duty to children who have already been poisoned by lead-based paint. HUD cannot ignore the possible connection between a child's EBL and the condition of the dwelling unit where the child lives.

Therefore, in each subpart of Part 36 in which HUD maintains a continuing relationship with the recipients of Federal housing assistance, or where an EBL child resides in residential property owned by the Federal government, *additional* requirements are included to evaluate and reduce lead-based paint hazards when an EBL child is identified. Often, the EBL requirements for a particular program are an acceleration of the lead-based paint hazard evaluation and reduction requirements for that program. In some instances, such as in the case of tenant-based rental assistance, the EBL response may be more stringent than the proposed requirements for that program.

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, dated May 13, 1994), HUD has also added language to the proposed rule requiring an HA or other individual or organization (e.g. grantee or participating jurisdiction) administering a Section 8 or CPD-funded tenant-based rental assistance program, to the extent practicable, to attempt to obtain the names and addresses of EBL children from local public health agencies on an annual basis. They would then match this information with the names and addresses of families receiving tenant-based rental assistance. The intent of this requirement is not for case-management of an EBL child, but to ensure that families with young children that receive Section 8 tenant-based rental assistance are obtaining housing free of lead-based paint hazards. At the same time, the Centers for Disease Control and Prevention (''CDC'') is urging local public health agencies to provide EBL-related information to HAs. While the Department understands the value of sharing EBL information, we would like to receive public comment concerning two issues: (1) Does this requirement impose an undue administrative burden on the individual or organization administering the tenant-based rental assistance program? (2) Does this requirement adversely impact the privacy rights of families receiving tenant-based rental assistance?

(e) Other Required Practices. Depending on the type of activity conducted and the degree of Federal involvement, the parties that are required to perform lead-based paint hazard evaluation and reduction activities must also perform certain protective activities such as occupant protection, worksite preparation, cleanup, clearance, monitoring, and control of new hazards. With respect to paint repair, specific protective activities are included in subpart D of Part 37. Further, the parties that are required to perform lead-based paint hazard evaluation and reduction activities may be subject to Department of Labor worker protection requirements set out at 29 CFR 1926.62, and EPA waste disposal requirements set out at 40 CFR 260–270. These requirements are not described in Part 37.

2. Subpart A—General Requirements

Subpart A sets out general requirements for all federally owned residential property and housing receiving Federal assistance. This subpart includes a provision concerning the scope of part 36, as well as general exemptions from coverage under part 36. These exemptions include (1) residential property constructed on or after January 1, 1978; (2) single room occupancy (SRO) dwelling units; (3) residential property designated exclusively for the elderly or persons with disabilities, unless a child who is less than six resides or is expected to reside (the Department interprets the phrase, ''a child who is less than six * * * is expected to reside,'' to include any pregnant woman residing in a dwelling unit constructed before 1978 that is covered under this subpart); (4) residential property undergoing emergency repairs in response to a natural disaster; and, (5) residential property required to undergo visual evaluation, paint repair and cleanup for which documentation is provided that a paint inspection has been completed in accordance with part 37 and indicates the absence of lead-based paint on all surfaces. The subpart sets out a general provision for parties required to undertake paint inspection or risk assessment, whereby they may choose to assume the presence of lead-based paint or lead-based paint hazards or both and to conduct hazard reduction activities. There is also a provision allowing for a reasonable delay for evaluation, paint repair, hazard reduction or abatement activities on exterior painted surfaces due to unsuitable weather conditions.

Subpart A also includes provisions concerning the following: a prohibition against the use of paint containing more than 0.06 percent by weight of lead in federally owned residential property and housing receiving Federal assistance; prohibited methods of paint removal; compliance with Federal laws and authorities; compliance with State and local laws, ordinances, codes or regulations governing lead-based paint; a statement that Part 36 is intended to set out the Department's minimum requirements for notification, evaluation and reduction of lead-based paint hazards and that these requirements do not preclude the recipient of Federal assistance from conducting more rigorous activities; Secretarial waivers; and the consequences of noncompliance with the requirements of parts 36 and 37. Terms which are used throughout parts 36 and 37 are defined in this subpart.

3. Subpart B—State Procedures

This subpart allows States, Indian tribes and insular areas that are recipients of Federal housing assistance or that are administering a Federal housing assistance program established by the Secretary, to develop their own alternative lead-based paint procedures to implement Federal requirements for evaluating and reducing lead-based paint and lead-based paint hazards in the following programs: (1) Rehabilitation and (2) Community Planning and Development (CPD) non-rehabilitation. HUD requirements for these programs are set out in subparts L and M of part 36 and in the relevant subparts of part 37. Specifically, subpart B identifies the minimum HUD requirements for each of these programs, but permits States, Indian tribes and insular areas to determine how best to meet these requirements. For instance, Title X requires abatement of lead-based paint hazards in the course of rehabilitation projects receiving more than $25,000 per unit in Federal funds. Under subpart B, an eligible State, Indian tribe or insular area is permitted to establish its own abatement procedures, as long as the clearance standards set out in subpart B are met. This subpart is intended to provide States, Indian tribes and insular areas with latitude in developing lead-based paint hazard reduction measures that are as protective as Federal requirements, but which may be better suited to the specific economic and technological needs of that unit of government.

In order to qualify under this subpart, a State shall have in place a certification program for individuals and firms engaged in lead-based paint activities which has been approved by EPA pursuant to Sections 402 and 404 of TSCA. A State shall also have in place alternative evaluation and hazard reduction procedures that have been approved by the Secretary prior to implementation of the procedures. Further HUD approval is required if the State procedures are substantially modified at any time after implementation. A unit of general local government located in a State that has HUD-approved alternative lead-based paint procedures may also adopt these procedures or choose to follow the applicable provisions of parts 36 and 37.

In developing its own lead-based paint procedures, a State shall adhere to general requirements set out in subpart B concerning the lead-based paint hazard information pamphlet, notice of risk assessment, paint inspection, paint repair and hazard reduction activities, prohibited practices and occupant protection. Specific minimum requirements for each program covered under subpart B and clearance standards for dust and soil tests established by HUD are also set out. These requirements and clearance standards must be incorporated into a State's alternative procedures. In preparing this subpart, the Department received input concerning the possibility of alternative evaluation and reduction procedures for States during meetings with HUD clients (discussed in Paragraph IV C above). HUD requests additional comments concerning this subpart, from State officials in particular, and from the general public.

4. 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, 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. At a minimum, for residential property constructed prior to 1960, the Federal agency shall conduct a paint inspection, risk assessment and abatement of all lead-based paint hazards. Section 1013 does not specifically address when the abatement of hazards must take place and, in HUD's view, abatement may be made a condition of sale with sufficient funds escrowed when a sale is to a non-occupant purchaser.

For residential property constructed after 1959 and before 1978, the Federal agency shall conduct a paint inspection and risk assessment, and the results shall be provided to purchasers as specified under Section 1018 of Title X. Title X gives the Secretary authority to waive the requirements for residential property constructed after 1959 and before 1978 in which a federally or *privately* funded risk assessment performed by a certified risk assessor shows an absence of lead-based paint hazards, or that a paint inspection, performed by a certified paint inspector, shows an absence of lead-based paint. (Although the strict language of Section 1013 states ''federally-funded'' risk assessment or paint inspection, the Department has extended the waiver to privately funded risk assessments or paint inspections, so long as they are performed by a certified risk assessor or paint inspector.) In addition, the Secretary may waive the requirements for residential property constructed after 1959 and before 1978 if a clearance test conducted by a certified risk assessor shows an absence of lead-based paint hazards. If abatement of lead-based paint hazards is performed, additional protective measures must be taken under the general heading of ''other required practices.'' Those practices were discussed in Section VII.A.1(d) of the Preamble above, and are further described in Section VII.B. of the Preamble below.

In the absence of appropriations sufficient to cover the costs of these lead-based paint requirements, the requirements shall not apply. As discussed in Section V.A. of the Preamble, the Department expects a Federal agency to determine whether to establish alternative lead-based paint requirements for its agency if sufficient funds are not appropriated to carry out the requirements of this subpart.

5. 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 (per project) of project-based assistance. For the reasons described in Section VII.A.4. above, the subpart basically restates the requirements set out in Section 1012.

Each tenant residing in a dwelling unit prior to the effective date of the regulation implementing Section 1018 of Title X shall receive a lead hazard information pamphlet. Each owner shall provide notices to the tenants of risk assessment and hazard reduction activities conducted in the dwelling unit. Each owner shall also complete a risk assessment in accordance with a schedule determined by the Federal agency, and shall conduct hazard reduction to reduce lead-based paint hazards identified in the risk assessment. In the case of an EBL child residing in a dwelling unit, the owner shall immediately conduct risk assessment and hazard reduction in that unit. The owner shall also comply with the other required practices set forth in this subpart.

It should be noted that the Department is concerned that if interim controls were required under this subpart in accordance with the minimum procedure specified in Title X, owners would not have had the option of conducting abatement

activities if they were recommended in the risk assessment report and receiving a rent adjustment if needed. As a consequence, under this subpart both interim controls and abatement are acceptable responses to lead-based paint hazards.

6. Subpart E—Single Family Insured Property

This subpart sets out the requirements for the Department's single family insured property programs. Manufactured homes and property improvement loan programs under Title I of the National Housing Act are not covered under this regulation, as neither program is the subject of ''an application for mortgage insurance.'' 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. For those mortgage insurance programs that are covered, the extent of Federal involvement is limited and, consequently, the requirements under Title X are also limited.

For a covered refinancing transaction, each occupant residing in a dwelling unit prior to the effective date of the regulation implementing Section 1018 of Title X, shall receive the lead hazard information pamphlet. If an initial application for mortgage insurance is made, the purchaser would receive the lead hazard information pamphlet under the requirements for sale transactions in Section 1018 of Title X.

For single family property that receives HUD mortgage insurance, before the mortgage is endorsed for insurance, the appraiser shall conduct a visual evaluation of painted surfaces to identify deteriorated paint. The appraiser need not be a certified paint inspector or risk assessor because the purpose of the visual evaluation is only to determine the presence of deteriorated paint and visual evaluation does not identify the content of lead in paint. Deteriorated paint surfaces must be repaired and cleanup conducted. With limited exceptions, the commitment or other approval document must contain the requirement that all deteriorated paint surfaces are to be repaired and cleanup conducted before the mortgage is endorsed for insurance. An escrow fund may be established to conduct paint repair and cleanup after endorsement of the mortgage under specific conditions. As stated above, due to the limited relationship between the purchaser and the Federal government, HUD deemed it impracticable to include requirements for an EBL child.

If documentation is provided to the appraiser that a limited paint inspection of specific deteriorated paint surfaces has been completed in accordance with part 37 and indicated the absence of lead-based paint on the particular surfaces, the requirements of this subpart would not apply with respect to those surfaces. Many of the requirements in subpart E are similar to the current lead-based paint requirements for single family insurance programs, except that proper paint repair and cleanup procedures for deteriorated paint are now specified in part 37.

7. Subparts F and G—Disposition of HUD-Owned Single Family Property (With and Without Sufficient Appropriations)

These subparts set out requirements for the disposition (*i.e.* sale) of HUD-owned single family property. The requirements of subpart F would apply in the event the Secretary determines that there are sufficient appropriations to cover the costs of evaluation and reduction of lead-based paint hazards as set out in Section 1013 of Title X. The requirements of subpart G would apply in the event the Secretary determines that there are not sufficient appropriations to cover the costs of evaluation and reduction of lead-based paint hazards as set out in Section 1013 of Title X. *See* the discussion in Section V A. of the Preamble above.

Under subpart F, for single family property constructed prior to 1960, HUD shall conduct a paint inspection and risk assessment, and abate identified lead-based paint hazards before the closing of the sale of the property. Abatement may be made a condition of sale to a non-owner occupant purchaser, with sufficient funds escrowed. A residential property is exempt from the requirements of this subpart if extensive damage requires major rehabilitation or demolition.

For residential property constructed after 1959 and before 1978, HUD shall conduct a paint inspection and risk assessment before the closing of the sale of the property. Results of the paint inspection and risk assessment would be provided to purchasers in accordance with the disclosure requirements of Section 1018. Title X gives the Secretary authority to waive the paint inspection and risk assessment requirements if a federally or *privately* funded risk assessment, performed by a certified risk assessor, shows an absence of lead-based paint hazards; or that a federally or *privately* funded paint inspection, performed by a certified paint inspector, shows an absence of lead-based paint. In addition, the Secretary may waive the requirements for residential property constructed after 1959 and before 1978 if a clearance test conducted by a certified risk assessor shows an absence of lead-based paint hazards. The Department shall also comply with the other required practices set forth in subpart F.

Under subpart G, before the closing of the sale of a residential property, HUD shall conduct a visual evaluation of all paint surfaces to identify deteriorated paint. The Department shall repair deteriorated paint surfaces and perform cleanup of the work area in accordance with Part 37, before the closing of the sale of the property. If the Department retains ownership of a residential property for more than one year, monitoring must be conducted in accordance with subpart J of Part 37 and paint repair and cleanup conducted if necessary, unless a residential property is leased during this period (in which case HUD may make monitoring a condition of the lease). In the case of a sale to a non-occupant purchaser, paint repair and cleanup may be made a condition of sale, with sufficient funds escrowed. HUD may be exempt from the requirements of this subpart for a specific deteriorated paint surface if a limited paint inspection has been completed and shows an absence of lead-based paint on the specific surface. A residential property is also exempt from the requirements of this subpart if extensive damage requires major rehabilitation or demolition. In addition, the Department may be exempt from the repainting requirements described in this subpart if weather conditions make repainting infeasible or if the property is scheduled for major rehabilitation or demolition.

Risk assessments are not specifically required for federally owned residential properties under Section 1013. In fact, Section 1013 contains language requiring inspections for lead-based paint and lead-based paint hazards. However, Title X itself defines ''inspection'' as an investigation for lead-based paint on a surface-by-surface basis, and defines a ''risk assessment'' as an investigation for lead-based paint hazards, which include lead in dust, paint and soil. Since Section 1013 requires actions to be taken to treat lead-based paint hazards, the Department interprets Section 1013 to also require risk assessments of federally owned residential properties in subpart F.

Neither subpart F nor G requires specific action regarding an EBL child. Less than 1 percent of the single family property is 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 of acquisition. Because of the limited occupancy and relatively high turnover of HUD-owned single family property, the Department thought it impracticable to impose EBL requirements. Existing EBL requirements for single family property owned by the Department have proven to be impractical and difficult to implement.

8. Subpart H—Multifamily Insured Property

This subpart sets out the requirements for the Department's multifamily insured property programs. As with the single family insured property programs, 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. Again, because the extent of Federal involvement is limited in multifamily insured property programs, the requirements under Title X are also limited.

For a covered refinancing transaction, each tenant that was residing in a dwelling unit prior to the effective date of the regulation implementing Section 1018 of Title X shall receive the lead hazard information pamphlet. As with the single family insured property program, a new purchaser applying for mortgage insurance would receive the lead hazard information pamphlet under the requirements of Section 1018. Before the issuance of the firm commitment, the Department's or the sponsor's architect shall conduct a visual evaluation of painted surfaces to identify deteriorated paint. The architect need not be a certified paint inspector or risk assessor because the purpose of the visual evaluation is only to determine the presence of deteriorated paint and the visual evaluation does not identify the content of lead in paint. Deteriorated paint surfaces must be repaired and cleanup of the work area conducted. As stated above, due to the limited relationship between the purchaser and the Federal government, HUD deemed it impracticable to include requirements for an EBL child. In cases where multifamily mortgage insurance is combined with another HUD program (*i.e.* project-based assistance), the EBL requirements for that program would apply.

If documentation is provided that a limited paint inspection of specific deteriorated paint surfaces has been completed in accordance with part 37 and indicates the absence of lead-based paint on a specific surface, the requirements of this subpart would not apply with respect to that surface. Many of the requirements in subpart H are similar to the current lead-based paint requirements for multifamily insurance programs, except that proper paint repair and cleanup procedures for deteriorated paint are now specified in part 37.

9. Subpart I—Project-Based Assistance

This subpart sets out the requirements for the Department's project-based rental assistance programs. In this program area, the Department's involvement is ongoing and tied to the residential structure itself; consequently, the lead-based paint hazard evaluation and reduction requirements in Section 1012 are more expansive. Although Title X only requires the Secretary to establish lead-based paint procedures for residential property receiving more than $5,000 in project-based assistance, Subpart I includes additional minimal lead-based paint procedures (i.e. the procedures for tenant-based rental assistance) for multifamily property receiving less than $5,000 in project-based assistance from HUD. The Department also applies these minimum lead-based paint procedures to single family properties receiving Section 8 Moderate Rehabilitation or Project-Based Certificate assistance from HUD. As stated above, the Department wanted to extend some limited lead-based paint protections to properties receiving minimal project-based assistance and also wanted to relieve single family owners with limited financial resources from being required to comply with the extensive lead-based paint requirements for project-based assistance.

Section 1012 of Title X amends the Lead-Based Paint Act to add subparagraph 42 U.S.C. 4822(a)(1)(B), which requires, at a minimum, risk assessments and interim controls in accordance with a schedule determined by the Secretary. Senate Report 102–332, page 117, states that under Title X, ''Risk assessments would be performed in all housing receiving project-based Federal assistance in order to determine the level of risk and notify the residents of existing hazards.'' The Department has decided that the term ''project-based'' should be given its traditional meaning—housing assistance payment programs where the funding is tied to the residential property and not to the tenant (''tenant-based'' housing assistance payments). 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.

The statute, 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.* pre-1960 dwelling units prior to 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 does not anticipate issuing a final lead-based paint rule in time to meet the January 1, 1996 deadline. Therefore, the Department has delayed the risk assessment schedule, but maintained the same performance intervals (based on the construction date of the residential property) as set out in the statute: residential property constructed before 1960—(proposed to be 2 years after the effective date of this rule); residential property constructed after 1959 and before 1965—by (proposed to be 4 years after the effective date of this rule); residential property constructed after 1964 and before 1971—by (proposed to be 6 years after the effective date of this rule); and residential property constructed after 1970 and before 1978—by (proposed to be 8 years after the effective date of this rule). As stated above, the Department has revised the risk assessment schedule to provide adequate time for education and training in order to implement the new technical standards, requirements and procedures set forth in this proposed rule (*See* Effective Date and Qualifications for Conducting Lead-Based Paint Hazard Evaluation and Reduction Activities). The proposed rule also allows the Secretary to develop an alternative schedule, if necessary. This provision was included to provide the Department with flexibility in working with HUD clients whose housing assistance payment (HAP) contracts are due to expire close to the required date for completing risk assessments. The Department invites comments on the risk assessment schedule for housing programs receiving project-based assistance. Specifically, HUD requests comments on how to address the risk assessment requirements of Title X in residential property where the HAP contracts are due to expire within the next few years.

Under this subpart, each tenant residing in a dwelling unit prior to the effective date of the regulation

implementing Section 1018 of Title X shall receive a lead hazard information pamphlet. Each owner shall provide notices of evaluation, paint repair and hazard reduction activities to tenants. Each owner shall complete a risk assessment prior to execution of the HAP contract. If a risk assessment report identifies lead-based paint hazards, the owner is required to develop a hazard reduction plan (''reduction'' is defined as measures to reduce or eliminate lead-based paint hazards including interim controls or abatement) proposing hazard reduction activities consistent with the recommendations of the risk assessment report, and a schedule for completing hazard reduction activities. The hazard reduction plan will supplement the owner's application for rent increase and shall be submitted to HUD and a copy must be provided to any Contract Administrator or HA in conjunction with the next rent increase request, but no later than 120 calendar days after completion of the risk assessment. HUD will review each plan submitted by an owner and may recommend alternative reduction activities if the activities proposed are too costly. Before approving a hazard reduction plan or recommending alternative activities, the HUD official reviewing the plan shall also conduct a limited environmental review in accordance with 24 CFR part 50. A copy of the Department's determinations must be transmitted to any Contract Administrator or HA. If no rent increase is necessary to implement the plan, the owner shall certify to HUD that the contents of the plan are consistent with Part 37; in this instance, the owner does not have to submit the actual plan to HUD. However, certification must be submitted to the Department and a copy must be provided to any Contract Administrator or HA no later than 120 calendar days after completion of the risk assessment.

It should be noted that the Department is concerned that if interim controls are required under this subpart in accordance with the minimum procedure specified in Title X, owners will not have the option of conducting abatement activities if they were recommended in the risk assessment report and receiving a rent adjustment if needed. As a consequence, under this subpart, both interim controls and abatement are acceptable responses to lead-based paint hazards.

In the event risk assessment and hazard reduction are not completed prior to execution of the HAP contract, a risk assessment must be completed and a hazard reduction plan submitted during the housing assistance payment period. In the latter case, each risk assessment must be completed according to a schedule which places a priority on older dwelling units that are more likely to have lead-based paint. HUD welcomes comments concerning the timing of the implementation of hazard reduction for lead-based paint hazards identified in the risk assessment.

In the case of an EBL residing in a dwelling unit, the owner shall immediately conduct risk assessment and hazard reduction in the dwelling unit, rather than adhere to the established schedule. The owner shall also report the name and address of any known EBL child to the appropriate State or local health agency. When conducting hazard reduction, the owner shall also comply with the other required practices set forth in subpart I.

10. Subparts J and K—Disposition of HUD-Owned and Mortgagee-in-Possession Multifamily Property (With and Without Sufficient Appropriations)

These subparts set out requirements for the disposition (*i.e.* sale) of HUD-owned multifamily property. The requirements of subpart J would apply in the event the Secretary determines that there are sufficient appropriations to cover the costs of evaluation and reduction of lead-based paint hazards as set out in Section 1013 of Title X. The requirements of subpart K would apply in the event the Secretary determines that there are not sufficient appropriations to cover the costs of evaluation and reduction of lead-based paint hazards as set out in Section 1013 of Title X. *See* the discussion in Section V.A. of the Preamble above.

Under subpart J, for multifamily property constructed prior to 1960, HUD shall conduct a paint inspection and risk assessment before publicly advertising the property for sale. Abatement of all identified lead-based paint hazards must be completed no later than conveyance of the title or before a foreclosure sale required by the Secretary. If the disposition program provides for repairs to be performed by the purchaser, abatement may be included in the required repairs. A residential property is exempt from the requirements of this subpart if extensive damage requires major rehabilitation or demolition.

For residential property constructed after 1959 and before 1978, HUD shall conduct a paint inspection and risk assessment before publicly advertising the property for sale. Results of the paint inspection and risk assessment would be provided to purchasers in accordance with the disclosure requirements of Section 1018. Title X gives the Secretary authority to waive the paint inspection and risk assessment requirements if a federally or *privately* funded risk assessment, performed by a certified risk assessor, shows an absence of lead-based paint hazards; or that a federally or *privately* funded paint inspection, performed by a certified paint inspector, shows an absence of lead-based paint. In addition, the Secretary may waive the requirements for residential property constructed after 1959 and before 1978 if a clearance test conducted by a certified risk assessor shows an absence of lead-based paint hazards. The Department shall also comply with the other required practices set forth in subpart J.

Under subpart K, before publicly advertising a residential property for sale, HUD shall conduct a visual evaluation of all paint surfaces to identify deteriorated paint. The Department shall repair deteriorated paint surfaces and perform cleanup of the work area in accordance with Part 37, no later than conveyance of the title by HUD or before a foreclosure sale caused by the Secretary. If the disposition program provides for repairs to be performed by the purchaser, paint repair and cleanup may be included in the required repairs. If the Department retains ownership of a residential property for more than one year, monitoring must be conducted in accordance with subpart J of Part 37 and paint repair and cleanup conducted if necessary. HUD may be exempt from the requirements to repair a specific deteriorated paint surface if a limited paint inspection has been completed and shows an absence of lead-based paint on the specific surface. A residential property is exempt from the requirements of this subpart if extensive damage requires major rehabilitation or demolition.

Again, risk assessments are not specifically required for federally owned residential properties under Section 1013. In fact, Section 1013 contains language requiring inspections for lead-based paint and lead-based paint hazards. However, Title X itself defines ''inspection'' as an investigation for lead-based paint on a surface-by-surface basis, and defines a ''risk assessment'' as an investigation for lead-based paint hazards, which include lead in dust, paint and soil. Since Section 1013 requires actions to be taken to treat lead-based paint hazards, the Department interprets Section 1013 to also require risk assessments of federally owned residential properties in subpart J.

Unlike the requirements for single family property in subparts F and G,

subparts J and K require specific actions regarding an EBL child. As stated above, with respect to single family property, less than 1 percent of the single family property is occupied when HUD acquires ownership and all HUD-owned single family property must be vacant within three months of the transfer of ownership to HUD. This is not the case for multifamily property. Therefore, if a child with an EBL resides in a HUD-owned multifamily dwelling unit, the Department shall immediately conduct risk assessment and interim controls in that unit. The Department shall also report the presence of an EBL child, and any risk assessment or interim controls conducted, to the appropriate State or local health agency.

11. Subpart L—Rehabilitation

This subpart sets out the requirements for the Department's programs which provide assistance for rehabilitation. The majority of this assistance is provided through the Department's CPD programs. Other rehabilitation assistance is provided under the Flexible Subsidy-Capital Improvement Loan Program (CILP) for multifamily property. This subpart does not include other HUD programs that may be tied to rehabilitation activities, but do not provide direct funding of such activities. These include the Department's insurance programs and the Section 8 Moderate Rehabilitation program, which are covered in other subparts of the proposed rule. Public housing modernization programs are not included under this subpart.

Since rehabilitation work typically disturbs a painted surface and, therefore, the result of Federal involvement may be to create or exacerbate a lead-based paint hazard condition, the requirements under Title X for rehabilitation or renovation assistance are the most stringent. Title X requirements for rehabilitation vary based on whether federal rehabilitation assistance is above or below $25,000. The subpart discusses the manner in which rehabilitation costs are calculated for different programs. For purposes of determining whether the rehabilitation cost is under or over $25,000, the Department will look at the hard costs of rehabilitation and not at soft costs, such as administrative fees. Lead-based paint hazard evaluation and cleanup activities will not be considered part of the rehabilitation costs. The Department recognizes that it may be difficult in practice to distinguish between rehabilitation and lead-based paint hazard evaluation and reduction activities and welcomes comments on this issue.

There are three general exemptions in this subpart. Rehabilitation that does not disturb a painted surface is exempt from the requirements of this subpart for the reasons discussed below. Also, if a grantee, participating jurisdiction or CILP recipient certifies to the Department that a dwelling unit undergoing federally funded rehabilitation has been previously abated of all lead-based paint, the requirements of this subpart do not apply. A dwelling unit may also be exempt from the requirement to conduct a limited paint inspection if the grantee, participating jurisdiction or CILP recipient certifies that a paint inspection has been completed and indicates the absence of lead-based paint.

Although many of the requirements under this subpart refer to the grantee or participating jurisdiction, as is the case with many CPD programs, the grantee or participating jurisdiction may require virtually all of these functions to be performed by a subrecipient or other entity administering the financial assistance. A subrecipient can be a public or private nonprofit agency, authority or organization, or a for-profit entity, selected by the grantee or participating jurisdiction to administer all or a portion of the financial assistance. An owner or developer receiving Federal rehabilitation assistance for a residential property is not considered a subrecipient for the purposes of carrying out that project.

All tenants or owner-occupants shall be provided with the lead hazard information pamphlet by the grantee, participating jurisdiction or CILP recipient. In all cases where evaluation, paint repair and hazard reduction activities are undertaken, each grantee, participating jurisdiction or CILP recipient shall post or distribute a notice to tenants 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.

For housing receiving an average of less than $5,000 per unit in Federal funds for rehabilitation, HUD is requiring the grantee, participating jurisdiction or CILP recipient to conduct a visual evaluation of all painted surfaces to identify deteriorated paint. Before occupancy of a vacant dwelling unit or, where a dwelling unit is occupied, before rehabilitation work begins, the subrecipient or other entity (defined to include an owner) shall repair deteriorated paint surfaces and perform cleanup in accordance with subpart D of part 37. HUD has created this special category for housing receiving less than $5,000 in Federal funds for rehabilitation, for which the evaluation and hazard reduction requirements are more lenient, because the rehabilitation activity is limited and the paint disturbance minimal. Rather than exclude this category from coverage under the proposed rule, the Department chose a ''do no harm'' policy when minimally disturbing a painted surface. This category of housing receiving an average of less than $5,000 per unit in Federal funds for rehabilitation, however, should not be confused with the category of housing established in the statute receiving less than $5,000 in project-based assistance.

For housing receiving an average of $25,000 or less per unit (but greater than $5,000) in Federal funds for rehabilitation, the grantee, participating jurisdiction or CILP recipient is required to conduct a paint inspection of surfaces to be disturbed in the course of the rehabilitation. A paint inspection must be completed before occupancy of a vacant dwelling unit or, where a dwelling unit is occupied, before rehabilitation work begins, in accordance with subpart C of part 37. In addition, each grantee, participating jurisdiction or CILP recipient shall complete a risk assessment in a sample of the federally assisted dwelling units (including common areas and exteriors) in accordance with subpart B of part 37. A risk assessment must be completed before occupancy of a vacant dwelling unit or, where a dwelling unit is occupied, before rehabilitation work begins, and may be done in conjunction with the paint inspection. Hazard reduction activities are required to address any lead-based paint hazards found.

For housing receiving an average of more than $25,000 per unit in Federal funds for rehabilitation, the grantee, participating jurisdiction or CILP recipient is required to conduct a paint inspection of surfaces to be disturbed in the course of the rehabilitation. A paint inspection must be completed before occupancy of a vacant dwelling unit or, where a dwelling unit is occupied, before rehabilitation work begins, in accordance with subpart C of part 37. In addition, each grantee, participating jurisdiction or CILP recipient shall also complete a risk assessment in a sample of the federally assisted dwelling units (including common areas and exteriors) in accordance with subpart B of part 37. A risk assessment must be completed before occupancy of a vacant dwelling unit or, where a dwelling unit is occupied, before rehabilitation work begins, and may be done in conjunction with the paint inspection. Abatement of

lead-based paint hazards identified on a surface to be disturbed by rehabilitation is required. Each grantee, participating jurisdiction or CILP recipient shall conduct hazard reduction activities if lead-based paint hazards are identified in the risk assessment on a surface not to be disturbed by rehabilitation.

Because the relationship between the Department and the grantee, participating jurisdiction or CILP recipient is not ongoing, HUD deemed it impracticable to include requirements for an EBL child. The grantee, participating jurisdiction or CILP recipient, however, shall comply with the other required practices set forth in subpart L.

The Department includes risk assessments as a requirement for rehabilitation programs although risk assessments are not clearly required for rehabilitation activities under Title X. The statute does, however, in new subparagraphs (a)(1)(D) and (E), require reduction or abatement of lead-based paint hazards. Grantees, participating jurisdictions or CILP recipients receiving rehabilitation funds, therefore, are required to perform a risk assessment to determine where lead-based paint hazards exist, so they can then reduce or abate all such hazards.

New subparagraph (a)(1)(C) requires inspection for the presence of lead-based paint prior to federally funded renovation or rehabilitation likely to disturb painted surfaces. HUD has interpreted this language to require inspection of the painted surfaces to be disturbed in the course of federally funded rehabilitation (the term ''rehabilitation'' includes ''renovation''). HUD's interpretation does not require inspection of all painted surfaces in the dwelling unit to be rehabilitated. HUD has attempted to focus paint inspection and abatement efforts on those surfaces where the greatest hazard may be created. This focus seems to be consistent with legislative intent. The Senate Report, cited *supra*, at page 117, specifically states that ''prior to beginning work likely to disturb painted surfaces, owners would be required to have an paint inspection performed to determine the lead content of the paint.''

After the inspection of the painted surfaces to be disturbed is performed, for rehabilitation receiving an average of $25,000 or less (but more than $5,000) per unit, the grantee, participating jurisdiction or CILP recipient is responsible for reduction of any lead-based paint hazards identified in the risk assessment in the entire dwelling unit. HUD has extended the hazard reduction requirement to the entire dwelling unit to correspond with the areas covered in the risk assessment. For rehabilitation receiving an average of $25,000 or more per unit, grantee, participant jurisdiction or CILP recipient is responsible for abating lead-based paint hazards on surfaces to be disturbed by the rehabilitation, and reducing lead-based paint hazards identified in the risk assessment in the rest of the dwelling unit.

12. Subpart M—Community Planning and Development (CPD) Non-Rehabilitation Programs

This subpart sets out the requirements for certain CPD programs which provide Federal funding for acquisition, leasing, tenant-based rental assistance, operating or support services. With the exception of tenant-based rental assistance, since the Federal funding for these programs is often provided by the HUD grantees or participating jurisdictions to the property owner or developer in a single instance and the relationship is not ongoing, the requirements under Title X are limited. For the CPD tenant-based rental assistance program, the requirements of subpart O of Part 36 apply, except for the provision of the lead hazard information pamphlet. Instead, the lead hazard information pamphlet must be distributed in accordance with the requirements set out in subpart M (§ 36.256). Although all the requirements under this subpart refer to the grantee or participating jurisdiction, the grantee or participating jurisdiction may require virtually all of these functions to be performed by the subrecipient administering the financial assistance. A subrecipient can be a public or private nonprofit agency, authority or organization, or a for-profit entity, selected by the grantee or participating jurisdiction to administer all or a portion of the financial assistance. An owner or developer of an assisted residential property is not considered a subrecipient for the purposes of carrying out that project.

All tenants or owner-occupants shall be provided with the lead hazard information pamphlet by the grantee or participating jurisdiction. Before providing financial assistance to an owner, each grantee or participating jurisdiction shall conduct a visual evaluation of all painted surfaces to identify deteriorated paint. For housing constructed before 1950, each grantee or participating jurisdiction shall also conduct dust sampling to determine the presence of lead-contaminated dust. Before occupancy of a vacant dwelling unit or, where a dwelling unit is occupied, immediately after receipt of financial assistance, the grantee or participating jurisdiction shall repair any deteriorated paint surfaces and perform cleanup of the worksite in accordance with part 37. For housing constructed before 1950, if dust sampling identifies lead-contaminated dust, the grantee or participating jurisdiction shall conduct cleanup of the horizontal surfaces in the room, dwelling unit or common areas where lead-contaminated dust is located. The grantee or participating jurisdiction is exempt from the requirement to repair a specific deteriorated paint surface if a limited paint inspection has been completed in accordance with part 37 and indicates an absence of lead-based paint on the specific surface.

As stated above, because the relationship between the HUD grantee or participating jurisdiction and the property owner or developer is not ongoing, HUD deemed it impracticable to include requirements for an EBL child, except in the case of the CPD tenant-based rental assistance programs.

13. Subpart N—Public and Indian Housing Programs

Section 1012 of Title X does not specifically add new requirements to public or Indian housing. The Senate Report, cited *infra*, at page 118, states that Congress did not intend the changes to the Lead-Based Paint Act introduced by Title X to pose a barrier to ongoing efforts by PIH to conduct risk assessments, 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.'' Nevertheless, in order to consolidate all of the lead-based paint requirements for HUD in a single place, the Department is including subpart N for public and Indian housing in this rulemaking. This subpart implements the requirements set out in 42 U.S.C. 4822(d)(1) and (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 in the subpart discussion.

If a tenant has resided in a public or Indian housing unit prior to the effective date of the regulation implementing Section 1018, the HA shall provide the tenant with the new lead hazard information pamphlet. In all cases where lead-based paint or lead-based paint hazard evaluation or reduction activities are undertaken, the HA shall post or distribute a notice to tenants of the results of the evaluation. The HA shall also post or distribute a

notice of the results of the hazard reduction or abatement activities. The notification requirement is intended to respond, in part, to the recommendations made in the 1993 General Accounting Office (GAO) report entitled, *Lead-Based Paint Poisoning: Children in Public Housing Are Not Adequately Protected* (GAO/RCED–93–138).

The Lead-Based Paint Act requires HAs to complete paint inspections by December 6, 1994. The proposed rule adds a supplemental requirement to the regulations for HAs that have not completed paint inspections: any paint inspection not completed by the effective date of this rule must then be immediately conducted in accordance with part 37. If a paint inspection was completed prior to the effective date of this regulation, the Department strongly encourages HAs to conduct quality control activities prescribed by PIH to ensure that paint inspections were conducted properly. PIH set out these quality control procedures in Notice PIH 95–8, issued February 9, 1995.

If a paint inspection has indicated the presence of lead-based paint, each HA shall complete a visual evaluation, dust and soil test, in accordance with part 37, in the housing project before January 1, 1999. If a paint inspection has indicated that no lead-based paint is present, the HA shall complete a soil test (with limited exceptions) in the housing project. A housing project shall be exempt from these requirements if the HA can certify that it has been abated of all lead-based paint and lead-based paint hazards; or that a paint inspection, and a risk assessment conducted in accordance with part 37, was completed prior to January 1, 1999 and identifies the absence of any lead-based paint and lead-based paint hazards in the housing project.

As discussed in Section V.C. of the Preamble above, HAs conducting dust and soil testing for public and Indian housing are not required by this proposed rule to be certified in accordance with the new EPA requirements for lead-based paint activities. However, HAs were required to complete paint inspections by December 6, 1994 and many HAs have already taken the initiative to conduct risk assessments in housing projects; consequently, it seems burdensome to impose new certification requirements for dust and soil testing conducted in public and Indian housing. Since the Department has not applied certification requirements to dust and soil testing conducted by HAs, the individual or firm conducting these activities on behalf of the HA shall be trained in lead hazard evaluation and additional descriptive material concerning soil and dust testing has been added to subpart B of part 37.

As stated in Section II.A. of the Preamble above, most of HUD's lead-based paint requirements will focus on reducing lead-based paint hazards in residential property, pursuant to Title X. The notable exception to this policy continues to be the required abatement of all lead-based paint and lead-based paint hazards in public and Indian housing, as set forth in 42 U.S.C. 4822(d) (1) and (3).

Each HA shall abate all identified lead-based paint and lead-based paint hazards during the course of physical improvements conducted under modernization, or as soon as practical after completing the evaluation requirements set out in this subpart. Each HA shall also conduct interim controls to treat lead-based paint hazards identified in dust and soil testing prior to abatement of these hazards; initial interim controls must be conducted within 30 calendar days of completing the evaluation requirements set out in this subpart. Whenever hazard reduction is conducted, the HA shall comply with the other required practices set forth in § 36.286 of this subpart. A public or Indian housing project shall be exempt from this requirement if the HA can provide documentation to the Department that interim controls are already being conducted in accordance with part 37.

To be consistent with the Title X definition of a lead-based paint hazard, the Department thought it necessary to include the requirement for dust and soil sampling. The Department recognizes that many HAs have taken the initiative to conduct risk assessments in housing projects. The Department does not intend to penalize those HAs at the forefront of lead-based paint hazard control, and provides certain evaluation exemptions to address this situation. Where a lead-based paint hazard is identified and is not being addressed prior to a HA's planned abatement schedule, the proposed rule requires the HA to implement interim controls.

If an EBL child is identified in a public or Indian housing project, the HA shall complete a risk assessment of the dwelling unit in accordance with part 37 within 15 calendar days of notification of the EBL condition, and shall conduct hazard reduction of identified lead-based paint hazards in accordance with part 37 within 15 calendar days of receipt of the risk assessment report. The HA may relocate the family to a post-1978 or previously evaluated dwelling unit that was found to be free of lead-based paint hazards. Because many HAs have completed paint inspection and abatement in their housing projects, the Department has determined that relocation to a dwelling unit free of lead-based paint hazards is a reasonable option to conducting risk assessment and interim controls. In addition, the HA shall report the name and address of the EBL child to the State or local health agency.

The requirements for conducting risk assessment and hazard reduction activities when an EBL child is identified and reporting EBL information to the State or local health agency, and the requirement to notify tenants whenever lead-based paint or a lead-based paint hazard is identified, are intended to address, in part, GAO's concerns about protecting children in public housing from lead-based paint poisoning (*See Lead-Based Paint Poisoning: Children in Public Housing Are Not Adequately Protected,* (GAO/RCED–93–138), and Secretary Cisneros' written reply to Senator John Glenn, past-Chairman, Committee on Government Affairs, United States Senate, December 20, 1993).

14. Subpart O—Tenant-Based Rental Assistance

This subpart sets out new lead-based paint requirements for the Department's tenant-based rental assistance programs. The Title X Task Force on Lead-Based Paint Hazard Reduction and Financing issued recommendations on reducing lead-based paint hazards in the Section 8 housing stock. The Task Force's June 1995 report, discussed in Section IV.B. of the Preamble above, provided the Department with a set of national ''benchmark standards'' to reduce lead-based paint hazards in private rental property. To the extent practicable, the proposed rule incorporates these standards into the lead-based paint requirements for tenant-based rental assistance programs.

As stated in Section V.A., the Department believes that Congress did not intend for HUD to apply the new minimum procedures for lead-based paint hazard notification, evaluation and reduction set out in Title X to tenant-based rental assistance. However, HUD does not believe that Congress intended to abolish HUD's current procedures, which serve to protect, in a minimal way, the recipients of this type of housing assistance. In this proposed rule, HUD continues to require tenant-based rental property to meet the minimal standards for lead-based paint found in the Department's HQS. The proposed rule slightly modifies these

standards to incorporate the spirit of Title X and its new lead-based paint terminology, as well as incorporating some of the recommendations of the Title X Task Force.

The requirements set forth in subpart O apply only to dwelling units in which a family with a child under age six resides. The scope of this subpart is more narrow than the scope of other program subparts, and deviates from Title X's directive to address lead-based paint hazards in *all* federally owned residential property or housing receiving Federal assistance (with limited exceptions for the elderly, disabled and single room occupancy dwelling units). The Department thought it reasonable to continue to restrict the lead-based paint requirements for the tenant-based rental assistance programs to dwelling units in which a family with a child under age six resides because of the program's ability to identify any changes in the composition of an assisted family. In addition, the HAs are able to monitor the property owner's compliance with HQS through initial and periodic dwelling unit inspections. These two safeguards will help to ensure that an HA will know whether a child under age 6 resides in a dwelling unit. It should be noted that an owner that refuses to rent a dwelling unit to a family with a child under the age of six may be in violation of the provisions of the Fair Housing Act prohibiting discrimination on the basis of familial status.

Because this subpart focuses on dwelling units with young children who are at greatest risk of lead poisoning, the Department has added a requirement for dust testing to the existing requirement for visual evaluation in order to identify potential lead-based paint hazards. This additional protection applies to initial inspections of rental property constructed prior to 1950, where lead-based paint hazards are more prevalent.

If a tenant has resided in a dwelling unit prior to the effective date of the regulation implementing Section 1018, the HA shall provide the tenant with a lead hazard information pamphlet at the next periodic dwelling unit inspection. Prior to approval by the HA for a family to lease a dwelling unit constructed before 1950, an HQS inspector shall conduct a visual evaluation of all painted surfaces to identify deteriorated paint and conduct dust sampling in accordance with part 37. Since the proposed rule does not require a complete risk assessment, and the Department recognizes the cost constraints faced by HAs, the HQS inspector need not be certified as a paint inspector or risk assessor in accordance with Section 402 of TSCA, in order to conduct dust tests. Rather, this subpart requires the HQS inspector to be trained in lead-based paint hazard evaluation that must include proper procedures for dust sampling and additional descriptive material concerning dust testing has been added to subpart B of part 37.

The owner shall repair deteriorated paint surfaces before occupancy of a vacant dwelling unit constructed before 1950, or where the pre-1950 dwelling unit is occupied, within 30 days of notification of the results of the visual evaluation. If dust sampling identifies lead-contaminated dust above the applicable level, cleanup of the horizontal surfaces in the room, dwelling unit or common areas where lead-contaminated dust is located must be completed prior to occupancy. If dust sampling does not indicate lead-contaminated dust, cleanup of the worksite must be completed prior to occupancy.

Prior to approval by the HA for a family to lease a dwelling unit constructed after 1949, an HQS inspector shall conduct a visual evaluation of all painted surfaces to identify deteriorated paint. The owner shall repair deteriorated paint surfaces and perform cleanup of the worksite prior to occupancy or, if the dwelling unit is unoccupied, within 30 calendar days of the results of the visual evaluation.

If an EBL child is identified in a dwelling unit receiving Federal assistance under this subpart, the owner shall complete a risk assessment of the dwelling unit where the EBL child resides within 15 calendar days of notification, and conduct interim controls to treat the identified lead-based paint hazards within 15 calendar days of receiving the risk assessment report. The HA shall also, to the extent practicable, attempt to obtain the names and addresses of EBL children from local public health agencies on an annual basis and match this information with the names and addresses of families receiving tenant-based rental assistance. As discussed in VII.A.1.(c) of the Preamble above, these additional lead-based paint requirements imposed on the tenant-based rental assistance programs when an EBL child is identified respond to concerns about protecting children living in Section 8 tenant-based rental property from lead poisoning (*See* the United States General Accounting Office report entitled ''Children in Section 8 Tenant-Based Housing are not Adequately Protected'' (GAO/RCED–94–137, dated May 13, 1994), and are consistent with the recommendations of the Title X Task Force.

The requirements of this subpart do not apply for specific deteriorated paint surfaces if the owner certifies that a limited paint inspection was completed with respect to the specific surfaces and indicated an absence of lead-based paint on those surfaces. An owner shall also be exempt from the evaluation and hazard reduction requirements of this subpart if certification is provided to the HA that the dwelling unit has been abated of all lead-based paint hazards.

The Department considered several options for addressing lead-based paint hazards in the tenant-based rental assistance program. The requirements set forth in subpart O attempt to strike a balance between the tradition of limiting Federal requirements imposed on the private housing stock associated with tenant-based rental assistance programs, and the recognition that as HUD's Reinvention shifts to tenant-based rental assistance instead of subsidies to public housing agencies, protections must continue to be provided to HUD clients living in private rental property (*See* Section III of the Preamble above).

B. Part 37

The requirements set forth in part 37 are designed to ensure that lead-based paint hazard evaluation and reduction activities are performed safely and effectively. They prescribe *''how''* these activities are to be accomplished. In writing part 37, the Department sought to balance the competing objectives of effectiveness and affordability by including only the requirements needed to achieve acceptable performance. The Department also incorporated performance-oriented requirements wherever possible, thereby allowing residential property owners to use the most cost-effective methods for their properties and to take advantage of cost-saving improvements in technology as they occur. The requirements included in part 37 are based on the HUD Guidelines, which contain standard methods for effectively identifying and controlling lead-based paint hazards, given current knowledge and technology.

1. Subpart A—General Requirements

Subpart A explains the purpose and applicability of part 37, noting that paint inspection, risk assessment and abatement activities (including clearance examinations) must be conducted by paint inspectors, risk assessors and abatement supervisors and workers certified in accordance

with EPA regulations (40 CFR 745.226). Part 37 provides interim requirements for these activities when paint inspectors, risk assessors and abatement supervisors and workers are not certified in accordance with EPA regulations. Recognizing that the supply of certified paint inspectors, risk assessors and abatement supervisors and workers may be inadequate at the effective date of this rule, this subpart also authorizes the Secretary to establish temporary qualifications for these individuals until such time as there is a sufficient number of certified personnel. In addition, Subpart A notes that any lead-based paint hazard evaluation and reduction activities that are *not* included in 40 CFR 745.226 (e.g. paint repair, interim controls) are to be conducted in accordance with the standards and methods set out at 24 CFR part 37. The Department requests comment on the level of detail necessary in 24 CFR part 37 to carry out the lead-based paint hazard evaluation and reduction requirements found at 24 CFR part 36.

Finally, Subpart A also includes a reference to the HUD Guidelines for more specific information, and a requirement for the accreditation of laboratories performing lead-based paint analyses by the EPA National Lead Laboratory Accreditation Program. Definitions applicable to 24 CFR part 36 are also applicable to part 37.

2. Subpart B—Risk Assessment

A risk assessment, as prescribed in subpart B, consists of a visual assessment to determine the condition of painted surfaces in the building and the need for structural repairs; limited environmental sampling of deteriorated paint, dust, and soil; and a written report that describes identified lead-based paint hazards and lists acceptable abatement or interim control methods for controlling these hazards. This subpart specifies, in some detail, elements of a visual assessment, the conditions that constitute lead-based paint hazards, and the requirements for testing paint, dust, and soil to determine whether such hazards are present. This subpart is written prescriptively because of the following reasons: (1) The risk assessment requirements found in part 37 are intended to be HUD's minimum requirements for performing risk assessments as required by 24 CFR part 36. The Department is concerned that without the guidance of this subpart, a risk assessor may include additional testing protocols that would not accurately reflect the Department's intent. In such a case, a HUD client may misinterpret the risk assessor's recommendations as the Department's minimum requirements for risk assessment. This could result in significant increases in cost to the Department and its clients; (2) the concept of risk assessment is new; (3) there does not exist at the time of this writing a well established consensus standard for risk assessments; (4) very few risk assessors have been trained and certified; and (5) housing authority employees with some degree of training, but not certified, will be performing dust and soil sampling for public housing and require more detailed guidance. The Department requests comments on these procedures particularly interpreting dust sample results to determine what surfaces should be cleaned.

Subpart B requires that a risk assessment be performed by risk assessors certified under EPA certification regulations. Recognizing that the supply of certified risk assessors may be inadequate at the effective date of this proposed rule, this subpart authorizes the Secretary to establish temporary qualifications for risk assessors until such time when State programs can produce a sufficient number of certified personnel.

This subpart incorporates EPA guidance for lead in dust, paint, and soil. At the time of this writing, EPA had not yet published the health-based standards mandated by Section 403 of TSCA (added pursuant to Section 1021 of Title X) that will apply to lead in dust (including dust in carpeted floors), paint or soil. When the health-based standards are published, HUD will consider modifying the requirements set out in 24 CFR parts 36 and 37, accordingly.

Because risk assessors will need guidance in evaluating surfaces with wall-to-wall carpeting, HUD has included in this proposed rule a dust standard for carpeted floors equal to the standard for hard surface floors. HUD believes that a carpet dust standard that parallels the threshold for hard floors provides a reasonable level of protection. HUD requests information on levels of lead dust in carpets that would be dangerous to young children, the prevalence of lead dust in carpets in the nation's housing stock, and effective and feasible methods of removing lead dust from carpets.

Under this subpart, risk assessments of multifamily properties must evaluate the conditions in every dwelling unit, except when five or more similar dwelling units are present. Among similar dwelling units, a targeted sample of dwelling units may be used as the basis for evaluating the nature and extent of lead-based paint hazards among all units. This subpart establishes parameters that must be satisfied when selecting a targeted sample of dwelling units.

The HUD Guidelines permit the use of a lead-based paint hazard screen in properties that are in good physical condition. This technique is a modified risk assessment using limited paint sampling and dust sampling of the floors and window troughs. The standards for passing a lead-based paint hazard screen are more stringent than those for passing a risk assessment. This procedure was excluded from the proposed rule because the results of sampling dust in window troughs would probably fail the standards set out in part 37 in a large majority of dwelling units. Window troughs are essentially an exterior window surface that is frequently in poor condition due to weathering; troughs are subject to continuous contamination and, therefore, are difficult to clean to the extent necessary in order to satisfy the standards set out in part 37.

3. Subpart C—Paint Inspection

A paint inspection, as prescribed in Subpart C, is a surface-by-surface investigation of all similarly painted surfaces in a dwelling unit, both interior and exterior, to determine the presence and location of lead-based paint. In multifamily properties, the paint inspection also includes an investigation of surfaces in the common areas of buildings.

This subpart specifies the minimum requirements for selecting surfaces to inspect in single family and multifamily property and identifies acceptable methods for testing the lead content of the paint on these surfaces with portable x-ray fluorescence (XRF) analyzers and, if necessary, laboratory analysis of paint samples. Paint inspections of multifamily property of 21 or more dwelling units may rely on the results from a random sample of units selected in accordance with the procedures established by this subpart. This sample is more extensive than that required in current HUD regulations and provides a 95 percent confidence level.

The purpose of a paint inspection is to identify the location of lead-based paint in a dwelling unit or building, not the presence of lead-based paint hazards. Paint inspections, as required by part 36, aid in planning abatement in modernization of public and Indian housing, and rehabilitation or renovation work by identifying the surfaces where precautions must be taken during construction to avoid creating lead-based paint hazards.

The requirements for paint inspection, like those for risk assessment, are much more prescriptive than existing regulations. This is so because (1) correct paint inspection procedures are essential to ensure accurate results, and (2) new paint inspection procedures have resulted from recent research by EPA and HUD.

4. Subpart D—Paint Repair

Paint repair constitutes the minimum treatment for deteriorated paint surfaces. It requires only surface preparation by acceptable methods, surface cleaning, repainting, and a modified cleanup of the immediate worksite. This subpart exempts treatment of deteriorated paint surfaces below a de minimis level.

5. Subpart E—Interim Controls

Subpart E, like subpart B concerning risk assessment, describes in prescriptive terms the requirements for performing effective interim control treatments to reduce lead-based paint hazards. Interim controls refer to a set of hazard reduction measures designed to achieve temporary control of identified lead-based paint hazards. The requirements are prescriptive because the concept of interim controls is new, and there is no established training or certification program for interim control workers. For this reason, the regulation requires these workers to be supervised by a certified abatement supervisor.

There are four basic types of interim control treatments: paint stabilization, friction and impact surface controls, dust controls, and soil controls. In addition to establishing requirements for these treatments, this subpart identifies methods that may not be used as interim controls. The subpart also specifies circumstances when interim controls are not acceptable hazard reduction methods. This subpart exempts treatment of deteriorated paint surfaces below a de minimis level.

Interim controls often have a lower initial cost than abatement methods. However, interim controls require regular monitoring and reevaluation because they are not permanent treatments. The cost of monitoring should be considered when deciding whether to use interim controls or to abate a lead-based paint hazard. For some hazards, abatement methods will be more cost-effective than interim controls when the cost of monitoring is considered.

6. Subpart F—Abatement

This subpart, which establishes the requirements for abatement, is written largely in performance terms (e.g. permanently eliminate the lead-based paint hazard) since abatement procedures are well established, and a significant number of qualified abatement supervisors and workers currently exists.

The regulation defines component replacement, enclosure, removal, and encapsulation as acceptable methods of abatement. It also prohibits seven methods of paint removal because they can easily contaminate the environment and/or are dangerous for workers to use. One abatement method, encapsulation, is prescribed in more detail, because there are no performance standards for encapsulants at this time.

There is no exclusion for deteriorated paint surfaces below a de minimis level from abatement requirements in subpart F. The two types of HUD programs that are most affected by the abatement requirements set out in this subpart are public and Indian housing projects and rehabilitation assistance programs. HAs are required under the Lead-Based Paint Act to abate *all* lead-based paint and lead-based paint hazards. For rehabilitation programs providing more than $25,000 in Federal rehabilitation assistance, abatement must occur on all lead-based paint surfaces to be disturbed by the rehabilitation. As a result, it is the Department's view that where abatement is required, an exclusion for a de minimis level would not be appropriate.

7. Subpart G—Occupant Protection and Worksite Preparation

This subpart establishes minimum requirements for protecting occupants of dwelling units undergoing lead-based paint hazard reduction activities from exposure to lead-based paint hazards while this work is being performed. It also establishes a performance requirement for preparing the hazard reduction worksite to prevent the uncontrolled release of lead-contaminated dust and debris beyond this area.

Lead-based paint hazard reduction activities frequently generate lead-based paint hazards while work is underway. Subpart G requires that the occupants of a dwelling unit undergoing hazard reduction not be permitted to enter the worksite until hazard reduction activities have been completed and the area has passed a clearance examination performed in accordance with subpart I. It also requires that occupant belongings be protected from contamination while work is in progress.

If occupants cannot safely live in a dwelling unit while lead-based paint hazard reduction is being performed, they must be temporarily relocated to a suitable dwelling unit until work is completed and the dwelling unit has passed a clearance examination. This subpart describes those circumstances when tenants can safely remain in the dwelling unit while hazard reduction is being performed. HUD recognizes that temporary relocation adds to the cost of hazard reduction and can inconvenience occupants. The Department believes that the provisions of this subpart require relocation only when it is essential to the safety of the occupants.

Protections are also needed to prevent any hazards generated during hazard reduction from spreading beyond the worksite. The level of protection needed to meet these requirements will vary depending on the type and extent of hazards to be treated, the methods of treatment, and the characteristics of the dwelling unit. HUD has not established a detailed set of protective measures that apply to all worksites because in some cases such protections would exceed those needed while in others, the protections would be inadequate. Instead, HUD is requiring that a properly certified risk assessor, abatement supervisor, or trained lead-based paint designer/planner determine the specific protections that must be used in a worksite to meet the requirements of this subpart.

8. Subpart H—Cleanup

Subpart H describes required cleanup activities following lead-based paint hazard reduction activities. Cleanup is the process of removing debris and dust.

The regulation specifies two types of cleanup activities: daily cleanup, and final cleanup. Daily cleanup is required at the end of each work day after hazard reduction activities. When cleaning debris, workers must use practices that minimize the generation of dust. Cleaning the troughs of windows is required in this process since they are frequent dust traps and can be cleaned along with the window sill. Troughs are not, however, required to be tested in the clearance examinations. Finally, the containment area's protective coverings must be examined and any defects repaired.

Final cleanup is performed after all hazard reduction activities have been completed. Final cleanup requirements establish safe practices for the removal of dust, debris and the protective coverings of the containment area. If the residential property is not required to pass a clearance examination, final cleanup may begin no sooner than one hour after hazard reduction activities have ceased.

The Department requests comments on the level of detail and the necessity of this subpart for the following reasons. If the final performance requirement is the safe reoccupancy of the residential property after passing a clearance examination, the need for cleanup regulations may be questionable. Although proper cleanup is a critical factor in satisfying clearance standards, the ultimate test is clearance which is likely not to occur if cleanup is neglected or incomplete. This is not intended to eliminate the requirement for modified cleanup in properties which have undergone lead-based paint hazard reduction work such as paint repair, but do not require a clearance examination.

9. Subpart I—Clearance

Subpart I establishes the minimum requirements for performing clearance examinations following lead-based paint hazard reduction. Clearance consists of a visual examination, dust testing and soil testing. A visual examination is done to ensure that all hazard reduction work was properly completed and to check for any remaining dust and debris. Dust testing is also required to confirm that no lead dust hazards remain in the residential property. This subpart establishes requirements for the number and location of dust and soil samples.

Clearance examinations may begin one hour after completing final cleanup. This is a significant change from previous guidance which required a 24-hour waiting period. The Department has acted upon analysis that indicates lead-contaminated dust settles much faster than originally determined—most of it within 1 hour.

Clearance examinations must be performed in all dwelling units and common areas in a multifamily property with less than 21 units. In properties with more than 21 dwelling units, a random sample of units may be examined if the dwelling units are selected in accordance with the unit sampling requirements established in subpart C. The regulation requires that components, rooms, or common areas that fail clearance testing be re-cleaned and retested until they pass.

10. Subpart J—Monitoring

Subpart J prescribes requirements for monitoring of residential properties to assure the effectiveness of the interim controls required in subpart E or other lead-based paint hazard reduction activities. If a residential property has no lead-based paint or has had all lead-based paint removed or permanently controlled (excluding encapsulation), monitoring is not required.

Monitoring consists of two types of activities: visual surveys by the property owner and a reevaluation by a risk assessor. A visual survey examines painted surfaces, lead-based paint hazard reduction treatments, and ground cover for signs of lead-based paint hazards. Any identified hazards must be promptly and safely corrected. In most cases, visual surveys will be performed annually.

A reevaluation is a modified risk assessment that includes a visual assessment of painted surfaces and lead-based paint hazard reduction treatments in conjunction with limited dust and soil sampling to determine if any hazards have developed since the most recent hazard reduction treatments were performed. This subpart establishes the minimum requirements for performing visual assessments, as well as dust and soil sampling. In multifamily properties with five or more similar dwelling units, a targeted sample of units selected in accordance with the unit selection requirements of subpart B, or a random sample selected according to requirements of subpart C, may be used as the basis for reevaluating all such units.

Reevaluations must be performed by a certified risk assessor (40 CFR 745.226) in accordance with the minimum schedule requirements established by this subpart. As part of each reevaluation, the risk assessor must prepare a report documenting the presence or absence of lead-based paint hazards, and acceptable control options for new hazards.

C. Regulatory Assessment

HUD has prepared a Regulatory Impact Analysis (RIA) that examines the costs and benefits of the proposed regulatory action in conjunction with this proposed rule. The major findings in the RIA are presented in this summary, organized into four sections appearing below: Cost-Benefit Analysis; Sensitivity Analysis and Regulatory Alternatives; Economic Impacts; and Environmental Justice. The complete document is available for inspection in the Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street, SW, Washington, DC.

1. Cost-Benefit Analysis

The analysis of net benefits in the RIA reflects costs and benefits associated with the first year of hazard evaluation and reduction activities under the proposed rule. These costs and benefits, however, 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 that first year, and for children living in or visiting that unit during the second and subsequent years after hazard reduction activities.

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 RIA presents estimated benefits of increased lifetime earnings using two different discount rates for lifetime earnings—3 percent and 7 percent. For estimates of costs and all other benefits, the RIA uses a 7 percent rate.

Employing a 3 percent discount rate of the lifetime earnings estimates, the RIA concludes that benefits of first-year activities are $1,538.2 million; costs are only $458 million. Thus the estimated net benefit is $1,080.2 million. If a 7 percent discount rate is used for lifetime earnings benefits, the present value of the benefits of the proposed rule associated with first year activities is estimated to be $497 million, and estimated costs remain at $458 million. The proposed rule would therefore realize a net-benefit of only $39 million using the 7 percent discount rate. Benefits and costs of the proposed rule using both discount rates are shown in Tables 7A and 7B.

While the Office of Management and Budget specifies 7 percent as the appropriate discount rate for most regulatory analyses, EPA's analysis of this issue (in the 1994 RIA for the proposed regulations implementing sections 402 and 404 of the Toxic Substances Control Act) has concluded that a 3 percent discount rate best reflects the social rate of time preference for annualized, non-capital costs and benefits. OMB guidance recognizes that a special social rate of time preference is appropriate when conducting intergenerational analysis. An intergenerational discount rate is applicable to the proposed rule because the costs will be borne by adult taxpayers, and lifetime earning benefits will be realized by the children and grandchildren of these adult taxpayers.

An intermediate approach, not quantified in the RIA, could have used a real discount rate based on the long-term borrowing costs of the Federal government. The 7 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 proposed 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, and the long-term AFR adjusted for the implicit price deflator results in real AFRs of approximately 4 to 5 percent for the past 6 years. Therefore, benefits could be discounted at the same real AFR rate (*i.e.*, 4 to 5 percent).

By presenting results using both 3 and 7 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.

Cost Estimation. The methodology used to estimate annual costs for the proposed rule is based on the following formula:

Regulatory Cost=(unit cost)×(unit cost frequency)×(number of affected units)

The ''unit cost'' estimates reflect the average estimated costs associated with specific hazard evaluation and reduction activities in a ''typical'' single or multifamily housing unit affected by the proposed rule. These unit cost estimates are based on interviews with lead-based paint hazard evaluation and abatement contractors, state officials, and other experts familiar with lead-based paint hazard evaluation and reduction costs. These cost estimates are also consistent with those presented in HUD's ''Comprehensive and Workable Plan for the Abatement of Lead-Based Paint in Privately Owned Housing'' (1990) and in the Lead-Based Paint Hazard Reduction and Financing Task Force report, ''Putting the Pieces Together: Controlling Lead Hazards in the Nation's Housing'' (1995).

Table 1 presents estimated average costs for lead-based paint hazard evaluation and both full and incremental cost estimates for hazard reduction activities. Incremental paint repair and abatement costs are those additional costs associated with the rule beyond the costs of non-lead-based paint repair and rehabilitation work in the absence of lead-based paint. Only incremental costs are incurred under rehabilitation programs, and full costs under other programs are offset by the estimated market values of routine paint repair and rehabilitation work.

Relocation costs are not included in this analysis, because HUD expects that relocation of occupants will rarely be required as a result of the proposed regulations. Most interim controls and small-scale abatements can be conducted without relocation by carefully containing dust to work areas and keeping occupants out of work areas. Relocation is usually only necessary in cases of extensive abatement of lead-based paint throughout the living areas of a housing unit. In the proposed regulations, abatement of lead-based paint or lead-based paint hazards is required in only two programmatic situations: public and Indian housing, and substantial rehabilitation projects receiving more than $25,000 per unit in Federal funds. This proposed rule, however, does not initiate the full abatement requirement in public and Indian housing; that requirement has been in place since 1986. In the case of substantial rehabilitation projects, it is unlikely that such housing will be occupied, so relocation will not be necessary. It is possible that extensive interim controls in occupied housing may necessitate relocation; but HUD believes this will be rare because, through the hazard control plan provision, HUD has given property owners receiving project-based assistance the flexibility to schedule such activity at the time of unit turnover. It is possible that extensive interim controls may sometimes be needed in units occupied by children with elevated blood-lead levels in public and Indian housing or in tenant-based assistance programs. HUD has not been able to estimate the frequency with which this will occur, but is of the opinion that it will be rare and that any such relocation costs will not materially affect the results of this cost-benefit analysis.

''Unit cost frequencies'' reflect the extent of required hazard evaluation activities under the proposed rule and the occurrence frequencies of different lead-based paint hazards that trigger hazard reduction requirements. Occurrence frequency estimates in this analysis generally reflect data from the National Survey of Lead-Based Paint in Housing completed in 1990 and are presented in Table 2. Estimates are provided for three construction-year intervals: Pre-1940, 1940–1959, and 1960–1977.

The ''number of affected units'' is the annual number of HUD-owned or assisted units affected by the proposed rule. Data gathered from each HUD program office indicates that more than 1.6 million housing units are affected Department-wide during the first year after promulgation. The number of affected units is shown in Table 3 by program and construction period.

The estimated incremental cost of the proposed rule during the first year of hazard evaluation and reduction activities is $458 million, or an average of $283 per unit, if it is assumed there are no appropriations to implement section 1013 of the Act for HUD-owned housing. The estimated incremental cost with appropriations is $572 million, or an average of $353 per unit. The estimated incremental cost by program is presented in Table 4.

TABLE 1.—ESTIMATED COSTS PER DWELLING UNIT FOR HAZARD EVALUATION AND REDUCTION ACTIVITIES

Unit cost activity	Cost per single family unit	Cost per multifamily unit
Hazard Evaluation:		
Visual Evaluation	$10	$5
Risk Assessment (RA)	375	260
RA and PI	550	400
Paint Inspection (PI)	400	300
2 composite dust tests	70	70
Clearance	150	120
Reevaluation	271	217
Hazard Reduction:		
Exterior paint repair	1,000	100

TABLE 1.—ESTIMATED COSTS PER DWELLING UNIT FOR HAZARD EVALUATION AND REDUCTION ACTIVITIES—Continued

Unit cost activity	Cost per single family unit	Cost per multifamily unit
Interior paint repair	500	500
Incremental exterior paint repair	100	10
Incremental interior paint repair	20	20
Incremental interior paint repair with rehab	60	40
Window work	300	200
Other friction/impact work	300	200
Soil cover	200	10
Exterior abatement	5,000	250
Interior abatement	3,000	2,000
Incremental exterior abatement	1,000	50
Incremental interior abatement	600	400
Area cleanup	75	75
Unit cleanup	450	300

TABLE 2.—ESTIMATED OCCURRENCE FREQUENCIES FOR COSTS AND BENEFITS

Unit cost occurrence trigger	(Percentage of all units): Freq.		
	Pre-1940	1940–1959	1960–1977
Multifamily Sample Testing:			
Risk assessment/RA and PI	16	16	16
Paint inspection only	23	23	23
Interior LBP Disturbed by Rehab:			
Single family interior <5K	45	22	11
Other Interior disturbed by rehab	80	40	20
Deteriorated Paint:			
Interior paint	41	24	9
Single family exterior deteriorated paint	42	28	12
Multifamily exterior deteriorated paint	21	14	6
Dust and Soil Hazards:			
Window sill dust >500 ug/sq. ft	54	14	13
Floor dust >100 ug/sq. ft	36	17	4
Bare soil >2000 ug/g	27	4	0
Deteriorated LBP:			
Interior LBP	16	6	3
Single family det. exterior LBP	28	12	6
Multifamily det. exterior LBP	14	6	3
Single family deteriorated interior plus exterior LBP	44	18	9
Multifamily deteriorated interior plus exterior LBP	30	12	6
Combined and Partial Hazards:			
Sill and/or floor dust	61	26	16
Interior deteriorated LBP without lead floor dust	3	3	2
Interior deteriorated paint without lead floor dust	14	13	5
Sill and/or floor dust and/or interior deteriorated LBP	4	29	18
Paint repair area dust	8	3	1

TABLE 3.—HUD-OWNED OR -ASSISTED HOUSING UNITS

Subparts	Number of units			Total
	Pre-1940	1940–1959	1960–1977	
Single Family Insurance	5,000	6,300	361,600	372,900
HUD-Owned Single Family Housing	22,528	12,672	20,240	55,440
Multifamily Insured	1,875	1,875	11,250	15,000
Multifamily Housing w/ Project-Based Assistance	25,030	25,030	74,484	124,544
HUD-Owned Multifamily Housing	991	3,364	18,592	22,947
Housing Rehab:				
HOME	2,090	2,578	243	.....
HOPE III	129	156	15	.....
CDBG	6,082	9,193	884	.....
Total Single Family Rehab <5K	8,301	11,927	1,142	21,370
HOME	8,832	10,680	1,026	.....
HOPE III	542	655	63	.....
CDBG	24,326	27,579	2,652	.....
Total Single Family Rehab 5K–25K	33,700	38,914	3,741	76,355
HOME	3,012	3,642	350	.....
HOPE III	189	229	22	.....

TABLE 3.—HUD-OWNED OR -ASSISTED HOUSING UNITS—Continued

Subparts	Number of units			Total
	Pre-1940	1940–1959	1960–1977	
CDBG	7,602	9,193	884	.....
Total Single Family Rehab >25K	10,803	13,064	1,256	25,123
HOME	2,960	2,247	274	.....
Multifamily	20	20	360	.....
CDBG	4,100	4,983	2,459	.....
Total Multifamily Rehab <5K	7,080	7,250	3,093	17,423
HOME	12,507	9,497	1,158	.....
Multifamily	80	80	1,440	.....
CDBG	12,300	14,950	7,376	.....
Total Multifamily Rehab 5K–25K	24,887	24,527	9,974	59,388
HOME	4,265	3,238	395	.....
Multifamily	10	10	180	.....
CDBG	4,101	4,983	2,459	.....
Total Multifamily Rehab >25K	8,376	8,231	3,034	19,641
Total Single Family Acquisition Under CPD Program	1,190	1,585	2,318	.....
Total Multifamily Acquisition Under CPD Program	1,998	1,514	2,591	.....
Pre-1950 Single Family Acquisition Under CPD Program	1,190	793	0	1,983
Pre-1950 Multifamily Acquisition Under CPD Program	1,998	757	0	2,755
Post-1949 Single Family Acquisition Under CPD Program	0	793	2,318	3,111
Post-1949 Multifamily Acquisition Under CPD Program	0	757	2,591	3,348
Public Housing	13,330	208,839	222,169	444,338
Indian Housing	259	4,050	4,308	8,617
Tenant-Based Rental Assistance:				
HOME	566	538	1,075	.....
Section 8	109,862	87,889	145,017	.....
Total	110,428	88,427	146,093	.....
Pre-1950	110,428	44,214	0	154,641
Post-1949	0	44,214	146,093	190,306
Total Number of Units	275,775	457,569	885,885	1,619,228

TABLE 4.—TOTAL COST BY PROGRAM

Subparts	Program cost			
	Pre-1940	1940–1959	1960–1977	Subpart total
Single Family Insured Housing	3,328,750	2,696,400	65,720,800	71,745,950
HUD-Owned Single Family Housing w/Appropriations	94,262,784	27,247,968	11,132,000	132,642,752
HUD-Owned Single Family Housing w/o Appropriations	14,772,736	5,296,896	3,476,220	23,545,852
Multifamily Insured Housing	490,781	294,375	705,938	1,491,094
Multifamily Housing w/ Project-Based Assistance	12,076,224	6,186,665	11,993,394	30,256,283
HUD-Owned Multifamily Housing w/Appropriations	1,563,699	2,686,490	2,472,736	6,722,925
HUD-Owned Multifamily Housing w/o Appropriations	254,439	511,328	1,073,688	1,839,455
Single Family Rehab <5K	2,278,625	3,273,962	313,479	5,866,065
Single Family Rehab 5K–25K	30,515,350	27,628,940	1,964,025	60,108,315
Single Family Rehab >25K	11,013,659	11,431,000	779,976	23,224,635
Multifamily Rehab <5K	1,940,628	1,982,150	843,152	4,765,930
Multifamily Rehab 5K–25K	10,176,294	5,685,359	1,367,435	17,229,088
Multifamily Rehab >25K	5,234,162	2,813,356	610,137	8,657,656
Pre-1950 Single Family CPD Program	1,212,610	466,386	0	1,678,996
Pre-1950 Multifamily CPD Program	1,022,976	214,231	0	1,237,207
Post-1949 Single Family CPD Program	0	331,265	398,117	729,382
Post-1949 Multifamily CPD Program	0	115,064	149,630	264,694
Public Housing	5,971,840	44,419,949	28,115,487	78,507,276
Indian Housing	257,350	1,932,053	1,261,382	3,450,785
Pre-1950 Single Family Tenant-Based Assistance	45,010,344	10,407,861	0	55,418,205
Pre-1950 Multifamily Tenant-Based Assistance	33,923,399	7,507,455	0	41,430,854
Post-1949 Single Family Tenant-Based Assistance	0	7,392,500	10,036,576	17,429,075
Post-1949 Multifamily Tenant-Based Assistance	0	4,032,273	5,062,116	9,094,388
Total Without Appropriations	179,480,167	144,619,466	133,871,551	457,971,184
Total With Appropriations	260,279,474	168,745,700	142,926,379	571,951,554
Average Cost per Unit Without Appropriations	651	316	151	283
Average Cost per Unit With Appropriations	944	369	161	353

Benefits Identification and Estimation Methodology. The methodology used to estimate annual benefits for the proposed rule is based on the following formula:

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

This analysis is based on extensive academic and government research analyzing the risks of lead-poisoning and the benefits of lead-based paint hazard reduction. The ''unit benefit'' estimates are the average benefits per dwelling unit achieved by conducting hazard reduction activities. ''Unit benefit frequencies'' are determined by the occurrence frequencies of lead-based paint hazards (shown in Table 2), because benefits are realized by hazard reduction activities. The ''number of affected units'' is the annual number of HUD-owned or assisted units affected by the proposed rule (shown in Table 3).

The benefits of preventing elevated blood lead levels in young children have been monetized in published literature by Joel Schwartz of Harvard's School of Public Health in ''The Societal Benefits of Reducing Lead Exposure'' (1993), the Center for Disease Control (CDC) in ''Strategic Plan for the Elimination of Childhood Lead Poisoning'' (1991), and most recently in EPA's draft ''Title IV, Sections 402 and 404 Regulatory Impact Analysis'' (1994). Each of these sources identified the following types of monetized benefits that are directly applicable to the analysis of the benefits from the proposed rule:

—Reductions in medical costs, including physician visits, laboratory testing, chelation therapy, neuropsychological testing, and follow-up testing;
—Reductions in special education costs; and
—Increased lifetime earnings associated with higher cognitive abilities, such as increased intelligence and better academic performance in schools.

Monetized health benefits are divided into two categories: (1) Benefits achieved only for children with blood lead levels prevented from rising above 25 ug/dL; and (2) benefits achieved regardless of blood lead levels. The Schwartz, CDC, and EPA analyses included reduction in medical costs and special education costs in the first category, and increased lifetime earnings in the second. Non-rehabilitation programs also realize the market value benefits of housing quality improvements, as measured by the difference between the full and incremental costs of paint repair and abatement.

The proposed rule is not expected to produce any significant monetized benefits associated with reduced neonatal mortality. HUD's review of data suggests that neonatal mortality may not be a demonstrated or measurable risk at maternal blood levels below 10 ug/dL. Data from CDC's Third National Health and Nutrition Examination Survey (NHANES III) indicate that only 0.5 percent of reproductive-aged females have blood lead levels above 10 ug/dL, which suggests that the monetized benefit of avoided neonatal mortality may be just $0.23 per year per housing unit abated. In addition, the small percentage of reproductive-aged females with blood lead levels above 10 ug/dL may be primarily attributable to lead risks unrelated to residential lead-based paint hazards; CDC estimates that 94 percent of very high adult elevated blood lead levels result from occupational exposure, although some of these exposures will be controlled by the previous rule.

Non-Quantifiable Benefits. The following benefits of lead-based paint hazard reduction have not been estimated in monetary terms:

—Improving children's stature, hearing, and vitamin D metabolism;
—Reducing juvenile delinquency and the burden on the educational system;
—Avoiding the parental and family time, expenses, and emotional costs involved in caring for poisoned children;
—Reducing personal injury claims and court cases; and
—Aesthetic improvements in housing quality.

At Risk Population. Based on the NHANES III prevalence data and the neurotoxicological evidence, this analysis defines the principal at-risk population for lifetime earnings to be the national population of children aged one and two. Some studies suggest that children aged one and two are also the principal at-risk population for special education benefits, although older children will also experience significant benefits.

Reductions in Medical Costs and Special Education Costs. The estimates for reduced medical and special education costs are based on the Schwartz and CDC estimates, adjusted for inflation to 1994 dollars and to reflect NHANES III data on the current extent of childhood lead poisoning above 25 μg/dL. Reduced medical and special education costs are estimated at $1,800 and $4,000 per child, respectively.

Increased Lifetime Earnings. The estimate for increased lifetime earnings reflect EPA and CDC estimates, adjusted to reflect NHANES III data on the blood lead levels in young children. The analysis adopts the EPA estimate that a 1 year old infant loses $6,092 in lifetime earnings (based on 1993 dollars) per lost IQ point. If a 7 percent discount rate is used, a 1 year old infant loses $1,400 in lifetime earnings per lost I.Q. point. This total represents the direct link between IQ and the wage rate; the indirect effect of IQ on educational attainment; and the indirect effect of lead exposure on labor force participation. CDC and Schwartz estimate that 0.245 IQ points (standard error +/−0.41) are lost, on average, for each one μg/dL increase in a 1 year old child's blood lead level. Thus, preventing a one μg/dL increase in a 1 year old child's blood lead level saves $1,493 ($6,092×0.245) in lifetime earnings discounted at 3 percent, and saves $343 ($1,400×0.245) in lifetime earnings discounted at 7 percent. The potential benefit of increased earnings associated with blood lead reductions can be calculated by multiplying the potential blood lead decline for such young children by the value per unit of blood lead ($1,493 or $343 per one μg/dL, discounted at 3 or 7 percent, respectively). The potential blood lead reduction can be calculated by multiplying the average mean blood lead for children sensitive to cognitive losses by the total number of such at-risk children.

First Year Monetized Benefits for Resident Children Aged One and Two. Medical and special education benefits of avoiding lead poisoning are $5,800 for each child aged one or two prevented from developing elevated blood lead levels above 25 μg/dL. Census data indicate there are 7.5 million children aged one and two in the United States in 1990, and NHANES III data show that 0.6 percent of these children have blood lead levels above 25 μg/dL. Therefore, the potential first year medical and special education benefits of avoiding blood lead levels above 25 μg/dL in all U.S. children aged one and two are $261 million ($5,800×7.5 million×0.006). Benefits from increased earnings are $1,493 or $343 (depending on the discount rate used) multiplied by the total blood lead decline for all 1 and 2 year old children. NHANES III reported an average blood lead for 1 and 2 year olds of 4.1 μg/dL. If, for example, average blood lead could be reduced to 0.1 μg/dL for all 7.5 million of these children, then the potential benefit would be $44.8 billion

(4.0×7.5 million×$1,493) or $10.3 billion (4.0×7.5 million×$343) for all U.S. children. (Of course, the proposed regulations would affect only children in housing receiving Federal assistance and federally owned housing.) NHANES data suggest that lead-based paint hazard reduction activities can realize only a portion of this theoretical potential benefit of $44.8 billion or $10.3 billion, because the average blood lead for children with little or no lead-based paint hazard exposure (e.g., affluent children in newer housing) is approximately 2 μg/dL.

Unit Benefit of Lead Dust Hazard Reduction. American Housing Survey data indicate that 70 percent of young children live in pre-1978 units, or approximately 5.25 million children ages one and two. Based on the National Survey of Lead-Based Paint in Housing, it is estimated that 20 percent of these children live in housing units with dust lead levels on interior window sills of greater than 1,000 μg/ft² and another 4 percent are living in units with dust lead levels of 500–999 μg/ft². The average blood lead levels in the study by the University of Rochester School of Medicine and the National Center for Lead-Safe Housing, ''The Relation of Lead-Contaminated House Dust and Blood Levels Among Urban Children'' (1995), suggest that lead dust reduction could lower the average blood lead level of children living in the highest dust lead category (greater than 1,000 μg/ft²) by 5.47 μg/dL, and the average blood lead level in the category of 500–999 μg/ft² could be reduced by 2.47 μg/dL. These data are combined with the present value of lifetime earnings associated with each one μg/dL in blood lead ($1,493 or $343) and the estimated percentage of pre-1978 housing units failing the window dust standard to produce a monetized benefit of $516 or $118 per unit (using a 3 percent or 7 percent discount rate, respectively) brought up to standard.

5.25 million×(0.2)×(5.47)×($1,493)=$8.6 billion (using a three percent discount rate)

5.25 million×(0.2)×(5.47)×($343)=$1.97 billion (using a seven percent discount rate)

5.25 million×(0.04)×(2.47)×($1,493)= $0.8 billion (using a three percent discount rate)

5.25 million×(0.04)×(2.47)×($343)=$0.18 billion (using a seven percent discount rate)

Monetized benefit of enforcing dust standard in all units=$9.4 billion (using a 3 percent discount rate) and $2.5 billion (using a seven percent discount rate).

24% of 75.8 million pre-1979 housing units failing window dust standard=18.2 million units

Monetized benefit per unit brought up to standard=$516/unit using a 3 percent discount rate and $118/unit using a 7 percent discount rate.

Unit Benefit of Paint Repair. The RIA presents a summary of recent studies of lead-based paint hazard reduction benefits, as measured by reductions in childhood elevated blood lead levels. These studies are presented to illustrate why the subsequent analysis of paint repair distinguishes between the direct benefit of avoided paint chip ingestion and the indirect benefit of reduced lead dust hazards associated with interior deteriorated lead-based paint. This distinction is essential to avoid double counting of benefits.

Although the frequency of children with high elevated blood lead levels has declined, recent research indicates that paint chip ingestion is still a significant factor in the prevalence of very high blood lead levels in children. Analysis of data from abdominal radiographs of children in St. Louis with high blood lead levels indicates that approximately one-fourth of all childhood blood lead levels above 25 μg/dL may be attributable to paint chip ingestion. Based on the same data, it is estimated that the average blood lead level for all children above 25 μg/dL due to paint chip ingestion is approximately 40 μg/dL above the Rochester mean of 6.37 μg/dL for those children living in units belonging to the lowest dust lead category (under 249 μg/ft ²).

This analysis assumes that the estimated lifetime earnings benefit of avoided paint chip ingestion does not double count the estimated benefits for dust reduction because the Rochester study excluded children with medical interventions for very high elevated blood lead levels. Therefore, the Rochester data probably excluded children recovering from paint chip ingestion. Conversely, this analysis assumes that the Rochester data used in the unit benefit analysis for lead dust removal also reflects benefits for the fraction of elevated blood lead children under 25 μg/dL that may be recovering from paint chip ingestion, because the Rochester data showed a clear correlation between deteriorated lead-based paint and lead dust levels.

Data on the number of 1 and 2 year olds in pre-1978 housing (5.25 million), the percentage of these children with very high elevated blood lead levels due to paint chip ingestion (25 percent of 0.6 percent = 0.15 percent), the average blood lead decline for all children above 25 μg/dL achieved by repairing deteriorated lead-based paint (40 μg/dL), and the lifetime earnings benefit achieved by each one μg/dL decline in blood lead ($1,493 or $343) combine to produce a $535 million or $123 million total benefit of avoided paint chip ingestion. Combined with National Survey data that indicates about 20 percent of the inventory has deteriorated lead-based paint (15 million), the monetized benefit per unit in the first year of lead-based paint repair is $36 or $12 per unit, using a 3 percent or 7 percent discount rate, respectively.

National Survey data indicates that approximately 78 percent of units with deteriorated interior lead-based paint also fail the standards for window sill and/ or floor dust lead. By contrast, only 30 percent of the units with no deteriorated interior lead-based paint fail the dust standards. These data suggest that more than 60 percent of the dust hazards in units with deteriorated interior lead-based paint are attributable to that deteriorated lead-based paint.

The higher frequency of dust hazards in units with deteriorated interior lead-based paint is at least partially explained by correlation that does not reflect causation, because deteriorated lead-based paint and dust and soil hazards are all disproportionately concentrated in pre-1940 housing. However, National Survey data also indicate that dust hazards are approximately twice as common in post-1940 units with deteriorated lead-based paint as in post-1940 units without deteriorated interior lead-based paint. Therefore, this analysis assumes that area cleanup after paint repair realizes the same benefits as unit cleanup in one-half of the units with deteriorated lead-based paint.

Unit Benefit of Soil Hazard Reduction. The estimated unit benefit of soil cover is based on the EPA-funded study by Ann Aschengrau et. al., ''The Impact of Soil Lead Abatement on Urban Children's Blood Lead Levels: Phase II Results from the Boston Lead-in-Soil Lead Demonstration Project'' (1994), which tested the hypothesis that a reduction of lead in soil accessible to children would result in a decrease in blood lead levels. In this study, the mean blood lead level of the children whose homes received soil hazard reduction plus paint repair and dust removal declined by 2.5 μg/dL more than a comparison group whose homes just received dust removal and paint repair. With eight percent of units failing the proposed soil standard, the calculated total benefit of covering all soil that fails the standard is $1.57

billion or $361 million, which is a $261 or $60 benefit per unit with soil cover, using a 3 percent or 7 percent discount rate, respectively.

The proposed rule requires soil abatement when lead in bare soil exceeds 5,000 μg/g, but National Survey data indicate that only 3 percent of U.S. homes exhibit soil lead above this concentration. The costs of abating soil lead hazards (i.e. removing/replacing the soil, or providing permanent cover) will exceed the cost of interim control soil cover, but benefits would also be realized over many more years. The RIA estimates only the costs and benefits of soil cover for all soil hazards above 2000 μg/g, because the net effect of incorporating soil abatement costs and benefits for the small percentage of affected units is not expected to materially affect the cost-benefit analysis.

Duration of Benefits. The unit benefit estimates derived for lead dust and soil hazard reduction and paint repair are first year benefits, almost entirely attributable to the present value of increased lifetime earnings associated with higher IQs resulting from the prevention of childhood lead poisoning among resident children ages one and two. This present value represents only the first year benefit because additional benefits will accrue to a new population of 1 year olds each year, and to children older than 1 who move into or visit units in the years after hazard reduction activities are performed. Therefore, a critical issue in assigning total unit benefits to specific hazard reduction activities is the expected duration of risk reductions associated with those activities.

This analysis assumes that benefits from lead dust reduction activities associated with interim controls are realized for 4 years. In those cases where the proposed rule requires lead-based paint hazard abatement, the analysis assumes that dust benefits are realized for 8 years. These estimates are based on studies by Farfel et. al. (1994) and Clark (1995) that measured dust lead reaccumulation rates in treated housing. Farfel studied lead dust levels in abated units over a maximum 3.5 year period. From the data in the article, dust lead reaccumulation rates on floors and interior window sills following abatement were 11 μg/ft² per year and 36 μg/ft² per year, respectively. Since the guidance level for floors and sills is 100 μg/ft² and 500 μg/ft² respectively, these data suggest it would take approximately 8 years for dust lead to reaccumulate to levels above the clearance standards following abatement, assuming a linear increase (average dust lead levels at clearance were 14 μg/ft² for floors, and 13 μg/ft² for sills in the Farfel study). Unpublished data from the Cincinnati part of the EPA Three Cities Soil Abatement study by Clark generally support this conclusion. In the Three Cities Study in Cincinnati, soil was abated but no paint abatement or interim controls occurred. Lead dust reaccumulation rates were 10–15 μg/ft² per year on floors and 20–35 μg/ft² per year on sills, which is generally consistent with Farfel's work. For the purposes of this regulatory impact analysis, we have assumed that abatement will be twice as effective as interim controls in controlling dust lead levels over time. Paint repair benefits of avoided paint chip ingestion are realized for 5 years because paint repair should provide approximately 5 years of protection against significant amounts of deteriorated lead-based paint, as most paint will last at least 5 years. The annual unit benefit for soil cover is assumed to provide 5 years of benefits, because the proposed rule requires repair of any deteriorated exterior lead-based paint whenever soil cover is required. This assumption reflects National Survey data indicating a very high correlation between exterior deteriorated lead-based paint and soil hazards.

At this point in the analysis, the first year benefits calculated for resident 1 and 2 year olds also do not include any benefits for infants under age one, or for children over age three. Furthermore, these estimates do not include any benefits for other children who may visit units where hazard reduction activities are performed, because first year benefits were calculated only for children living in units with lead-based paint hazards. The total monetized unit benefits of lead-based paint hazard reduction activities and rough estimates for additional benefits realized by children other than the 1 and 2 year olds actually residing in targeted units is shown in both Tables 5A (3 percent discount rate) and 5B (7 percent discount rate). The first row in each table shows the first year benefit for resident 1 and 2 year olds for each type of lead-based paint hazard activity. The second row shows the estimated additional first year benefits for resident children ages 3 and older and for other children visiting the targeted unit. This analysis assumes that the sum of these benefits is 50 percent of the benefits realized by 1 and 2 year olds. The third line shows the second-year benefit for a new population of 1 year-olds, discounted at 7 percent. The fourth line shows the estimated second-year benefit for children visiting the unit and for new residents, discounted at 7 percent. This analysis assumes that second-year benefits for these other children are 20 percent of the benefit for the new population of 1 year-olds in the targeted units. This percentage is lower than the ''other benefit'' assumption for the first year, because any new population of resident children over the age of one would be limited to units with new residents (i.e., resulting from unit turnover). The benefits for years 3 through 20 are calculated using the same assumptions as applied to year 2, reflecting the anticipated average duration of each unit benefit.

Total First-Year Benefit Estimation. The estimated total benefit of first-year hazard evaluation and reduction activities is $1.54 billion or $496.6 million, which is an average of $950 or $307 per unit using a 3 percent or a 7 percent discount rate, respectively, assuming no appropriations for treatment of HUD-owned housing. The estimated benefit with appropriations is $1.64 billion or $563.1 million, which is an average of $1,014 or $348 per unit (using a 3 percent or a 7 percent discount rate, respectively). Total benefits by program are presented in Tables 6A and 6B.

Net Benefit Estimation. Estimated net benefits reflect the difference between costs and benefits associated with the first year of hazard evaluation and reduction activities under the proposed rule. These costs and benefits, however, include the present value of future costs and benefits associated with first year hazard reduction activities (e.g., reevaluation costs, lifetime earnings benefits, and benefits associated with the second and subsequent years after hazard reduction activities).

The first-year total net benefits are $1.08 billion or $38.6 million without appropriations for HUD-owned housing and $1.07 billion or $8.8 million with appropriations. Tables 7A (3 percent discount rate) and 7B (7 percent discount rate) present summaries of the estimated incremental costs, benefits, and net benefits of the first-year activities under the proposed rule, without appropriations for HUD-owned housing. Tables 8A (3 percent discount rate) and 8B (7 percent discount rate) present incremental net benefit (cost) data by program. Tables 9A (3 percent discount rate) and 9B (7 percent discount rate) present estimated incremental benefit (cost) data per dwelling unit by program.

Use of Cost-Benefit Analysis in Policy Development HUD has sought, within the flexibility provided in the statute, to

maximize the benefits relative to the costs that will derive from the proposed regulations. The cost-benefit analysis was useful in estimating the net benefit that might accrue from alternative lead-based paint policies.

An example of how this occurred is in the tenant-based rental assistance programs (subpart O of Part 36). One policy option for these programs was to apply the requirements under these programs to all housing units, as was done in other subparts of the rule. An alternative was to continue the current policy of limiting the applicability of the requirements only to housing occupied by families with young children. (This alternative was uniquely available in the tenant-based assistance programs, because the composition of the households receiving the rental assistance is known to the agencies administering the program.) As shown in tables 5A and 5B, the cost-benefit analysis indicates that limiting applicability to units occupied by young children yields benefits per affected unit in the tenant-based assistance programs that are over four times those in other programs. Therefore the limitation on applicability was retained in the proposed rule.

Another policy issue in the tenant-based assistance programs was whether to require any testing for lead-based paint hazards or to retain the current policy of not requiring dust testing and only requiring treatment of deteriorated paint. Based on the cost-benefit analysis, HUD concluded that the maximum net benefit of dust testing would derive from composite testing of housing built prior to 1950 combined with a thorough cleanup of housing units that had lead-contaminated dust. Therefore, that policy is being proposed.

Another example of use of cost-benefit analysis is found in the project-based rental assistance programs. The Department is proposing to give property owners in these programs the flexibility to gain some of the efficiencies available from prioritizing hazard reduction according to urgency. As explained above, under subpart I, part 36, HUD is proposing that owners with properties found to have lead-based paint hazards must prepare a hazard reduction plan that will include a schedule of hazard reduction activities consistent with the findings and recommendations of the risk assessment report. It is the Department's intent that owners should use the hazard reduction plan to schedule hazard reduction actions in order of priority, in accordance with the specific conditions of each property. For example, units occupied by young children could be treated immediately, and those not occupied by children might be treated at turnover to take advantage of the economies of working in vacant units. This will maintain benefits while minimizing costs.

2. Sensitivity Analysis and Regulatory Alternatives

The estimate of benefits is very sensitive to certain assumptions: (1) That blood lead levels have remained steady since phase I of NHANES III, (2) that the estimated loss of IQ associated with increased blood lead levels is correct, (3) that the amount of lifetime earnings lost per IQ point lost is correct, and (4) that the blood lead to IQ relationship holds at all blood lead levels. In addition, the RIA assumes that market value benefits offset all paint repair and abatement costs, except for incremental costs, and that lead hazard education activities play a role in reducing the reaccumulation of lead dust.

TABLE 5A.—SUMMARY TABLE OF MONETIZED UNIT BENEFITS DISCOUNTING INCREASED LIFETIME EARNINGS AT 3 PERCENT

Source of benefits	Unit dust 4 year	Unit dust 8 year	Paint repair	Paint hazard abatement	Soil cover
1st Year, 1 and 2 year olds	$516	$516	$36	$36	$261
1st Year, other	258	258	18	18	130
2nd Year, 1 year olds	241	241	17	17	122
2nd Year, other	48	48	3	3	25
3rd and 4th Year, 1 year olds	436	436	30	30	221
3rd and 4th Year, other	87	87	6	6	43
5th Year, 1 year olds	.....	197	14	14	100
5th Year, other	.....	39	3	3	20
Years 6–8, 1 year olds	.....	517	.....	36	.....
Years 6–8, other	.....	103	.....	7	.....
Years 9–20, 1 year olds	.....	.....	.....	118	.....
Years 9–20, other	.....	.....	.....	24	.....
Total $	1,586	2,442	127	312	922
Tenant-Based Assistance	8,882	.....	711	.....	.....
Public Housing	2,165	.....	173	.....	1,258
Project Based Assistance	2,062	.....	165	.....	1,199
Resident children aged 1 and 2	75%	78%	76%	80%	(76%)
Other children	25%	22%	24%	20%	(24%)

TABLE 5B.—SUMMARY TABLE OF MONETIZED UNIT BENEFITS DISCOUNTING INCREASED LIFETIME EARNINGS AT 7 PERCENT

Source of benefits	Unit dust 4 year	Unit dust 8 year	Paint repair	Paint hazard abatement	Soil cover
1st Year, 1 and 2 year olds	$118	$118	$12	$12	$60
1st Year, other	59	59	6	6	30
2nd Year, 1 year olds	55	55	6	6	28
2nd Year, other	11	11	1	1	6

TABLE 5B.—SUMMARY TABLE OF MONETIZED UNIT BENEFITS DISCOUNTING INCREASED LIFETIME EARNINGS AT 7 PERCENT—Continued

Source of benefits	Unit dust 4 year	Unit dust 8 year	Paint repair	Paint hazard abatement	Soil cover
3rd and 4th Year, 1 year olds	100	100	10	10	51
3rd and 4th Year, other	20	20	2	2	10
5th Year, 1 year olds	.....	45	5	5	23
5th Year, other	.....	9	1	1	5
Years 6–8, 1 year olds	.....	118	.....	12	.....
Years 6–8, other	.....	24	.....	2	.....
Years 9–20, 1 year olds	.....	.....	.....	30	.....
Years 9–20, other	.....	.....	.....	6	.....
Total $	363	559	43	93	213
Tenant-Based Assistance	2,033	.....	241	.....	.....
Public Housing	495	.....	59	.....	290
Project Based Assistance	472	.....	56	.....	277
Resident children aged 1 and	275%	78%	76%	80%	(76%)
Other children	25%	22%	24%	20%	(24%)

TABLE 6A.—TOTAL BENEFIT BY PROGRAM DISCOUNTING INCREASED LIFETIME EARNINGS AT 3 PERCENT

Subparts	Program benefit			
	Pre-1940	1940–1959	1960–1977	Subpart total
Single Family Insured Housing	$3,787,800	$2,757,132	$64,541,984	$71,086,916
HUD-Owned Single Family Housing w/ Appropriations	102,093,292	24,126,981	0	126,220,273
HUD-Owned Single Family Housing w/o Appropriations	17,066,312	5,545,774	3,612,638	26,224,723
Multifamily Insured Housing	713,775	357,413	810,900	1,882,088
Multifamily Housing w/ Project-Based Assistance	43,062,864	15,971,142	26,584,785	85,618,791
HUD-Owned Multifamily Housing w/ Appropriations	2,858,203	3,987,147	0	6,845,350
HUD-Owned Multifamily Housing w/o Appropriations	377,254	641,246	1,340,111	2,358,611
Single Family Rehab <5K	6,873,228	4,843,197	231,141	11,947,566
Single Family Rehab 5K–25K	55,770,130	28,692,070	1,310,173	85,772,374
Single Family Rehab >25K	26,874,623	15,072,198	701,376	42,648,197
Multifamily Rehab <5K	9,828,314	5,022,945	1,071,446	15,922,706
Multifamily Rehab 5K–25K	40,743,005	17,897,352	3,455,093	62,095,451
Multifamily Rehab >25K	20,688,050	9,433,549	1,682,687	31,804,286
Pre-1950 Single Family CPD Program	1,901,787	635,918	0	2,537,704
Pre-1950 Multifamily CPD Program	2,440,077	420,438	0	2,860,515
Post-1949 Single Family CPD Program	0	346,830	413,740	760,570
Post-1949 Multifamily CPD Program	0	144,299	186,759	331,059
Public Housing	24,015,461	139,541,709	83,064,546	246,621,716
Indian Housing	533,862	3,163,698	1,854,034	5,551,594
Pre-1950 Single Family Tenant-Based Assistance	278,527,893	49,598,721	0	328,126,614
Pre-1950 Multifamily Tenant-Based Assistance	387,403,895	66,915,563	0	454,319,457
Post-1949 Single Family Tenant-Based Assistance	0	13,469,912	17,765,470	31,235,382
Post-1949 Multifamily Tenant-Based Assistance	0	12,722,350	15,785,036	28,507,386
Total Without Appropriations	920,608,330	393,193,456	224,411,917	1,538,213,703
Total With Appropriations	1,008,116,258	415,120,564	219,459,168	1,642,695,991
Average Benefit per Unit Without Appropriations	3,338	859	253	950
Average Benefit per Unit With Appropriations	3,656	907	248	1,014

TABLE 6B.—TOTAL BENEFIT BY PROGRAM DISCOUNTING INCREASED LIFETIME EARNINGS AT 7 PERCENT

Subparts	Program benefit			
	Pre-1940	1940–1959	1960–1977	Subpart total
Single Family Insured Housing	$3,113,800	$2,430,729	$57,385,920	$62,930,449
HUD-Owned Single Family Housing w/ Appropriations	69,733,622	17,064,115	0	86,797,737
HUD-Owned Single Family Housing w/o Appropriations	14,029,537	4,889,238	3,212,088	22,130,863
Multifamily Insured Housing	483,075	269,719	616,613	1,369,406
Multifamily Housing w/ Project-Based Assistance	11,736,817	4,373,242	7,148,962	23,259,021
HUD-Owned Multifamily Housing w/ Appropriations	1,465,094	2,156,391	0	3,621,486
HUD-Owned Multifamily Housing w/o Appropriations	255,321	483,911	1,019,028	1,758,260
Single Family Rehab <5K	1,677,217	1,183,278	56,403	2,916,898

TABLE 6B.—TOTAL BENEFIT BY PROGRAM DISCOUNTING INCREASED LIFETIME EARNINGS AT 7 PERCENT—Continued

Subparts	Program benefit			
	Pre-1940	1940–1959	1960–1977	Subpart total
Single Family Rehab 5K–25K	13,289,595	6,851,977	313,421	20,454,993
Single Family Rehab >25K	6,386,193	3,585,807	167,023	10,139,023
Multifamily Rehab <5K	2,342,206	1,196,105	255,142	3,793,452
Multifamily Rehab 5K–25K	9,664,369	4,255,435	822,755	14,742,558
Multifamily Rehab >25K	4,901,049	2,238,009	399,547	7,538,605
Pre-1950 Single Family CPD Program	970,029	371,936	0	1,341,965
Pre-1950 Multifamily CPD Program	899,160	172,096	0	1,071,256
Post-1949 Single Family CPD Program	0	305,770	367,867	673,637
Post-1949 Multifamily CPD Program	0	108,894	142,013	250,907
Public Housing	6,496,376	37,920,895	22,181,353	66,598,623
Indian Housing	190,000	1,165,266	658,736	2,014,002
Pre-1950 Single Family Tenant-Based Assistance	84,851,344	16,609,426	0	101,460,770
Pre-1950 Multifamily Tenant-Based Assistance	101,248,758	18,179,713	0	119,428,471
Post-1949 Single Family Tenant-Based Assistance	0	8,339,907	11,291,221	19,631,128
Post-1949 Multifamily Tenant-Based Assistance	0	5,775,435	7,309,608	13,085,042
Total Without Appropriations	262,534,846	120,706,786	113,347,699	496,589,331
Total With Appropriations	319,448,703	134,554,144	109,116,583	563,119,430
Average Benefit per Unit Without Appropriations	952	264	128	307
Average Benefit per Unit With Appropriations	1,158	294	123	348

TABLE 7A.—COST-BENEFIT SUMMARY FOR FIRST YEAR ACTIVITIES DISCOUNTING INCREASED LIFETIME EARNINGS AT 3 PERCENT

[Millions of dollars, without appropriations]

Hazard Evaluation Costs	$98.4
Hazard Reduction Costs:	
Paint repair	197.5
Friction/impact work	56.8
Soil cover	3.2
Paint hazard abatement	10.4
Dust cleanup	91.7
Total First Year Costs	458.0
Monetized Benefits:	
Paint repair	77.4
Paint hazard abatement	7.7
Soil cover	47.1
Dust cleanup	1,230.4
Paint Repair Market Value	175.6
Total First Year Benefits	1,538.2
Total First Year Net Benefits	1,080.2

TABLE 7B.—COST-BENEFIT SUMMARY FOR FIRST YEAR ACTIVITIES DISCOUNTING INCREASED LIFETIME EARNINGS AT 7 PERCENT

[Millions of dollars, without appropriations]

Hazard Evaluation Costs	$98.4
Hazard Reduction Costs:	
Paint repair	197.5
Friction/impact work	56.8
Soil cover	3.2
Paint hazard abatement	10.4
Dust cleanup	91.7
Total First Year Costs	458.0
Monetized Benefits:	
Paint repair	26.2
Paint hazard abatement	2.3
Soil cover	10.9
Dust cleanup	281.6

TABLE 7B.—COST-BENEFIT SUMMARY FOR FIRST YEAR ACTIVITIES DISCOUNTING INCREASED LIFETIME EARNINGS AT 7 PERCENT—Continued

[Millions of dollars, without appropriations]

Paint Repair Market Value	175.6
Total First Year Benefits	496.6
Total First Year Net Benefits	38.6

TABLE 8A.—NET BENEFIT (COST) BY PROGRAM DISCOUNTING INCREASED LIFETIME EARNINGS AT 3 PERCENT

Subparts (Tables)	Net program benefit (cost)			Subpart total
	Pre-1940	1940–1959	1960–1977	
Single Family Insured Housing	$459,050	$60,732	($1,178,816)	($659,034)
HUD-Owned Single Family Housing w/ Appropriations	7,830,508	($3,120,987)	($11,132,000)	($6,422,479)
HUD-Owned Single Family Housing w/o Appropriations	2,293,576	248,878	136,418	2,678,871
Multifamily Insured Housing	222,994	63,038	104,963	390,994
Multifamily Housing w/ Project-Based Assistance	30,986,639	9,784,477	14,591,391	55,362,508
HUD-Owned Multifamily Housing w/ Appropriations	1,294,504	1,300,657	($2,472,736)	122,425
HUD-Owned Multifamily Housing w/o Appropriations	122,815	129,918	266,423	519,156
Single Family Rehab <5K	4,594,604	1,569,235	($82,338)	6,081,501
Single Family Rehab 5K–25K	25,254,780	1,063,130	($653,852)	25,664,059
Single Family Rehab >25K	15,860,965	3,641,198	($78,600)	19,423,562
Multifamily Rehab <5K	7,887,686	3,040,795	228,294	11,156,776
Multifamily Rehab 5K–25K	30,566,711	12,211,993	2,087,658	44,866,362
Multifamily Rehab >25K	15,453,888	6,620,193	1,072,549	23,146,630
Pre-1950 Single Family CPD Program	689,177	169,532	0	858,708
Pre-1950 Multifamily CPD Program	1,417,101	206,207	0	1,623,308
Post-1949 Single Family CPD Program	0	15,565	15,623	31,188
Post-1949 Multifamily CPD Program	0	29,235	37,129	66,364
Public Housing	18,043,621	95,121,760	54,949,059	168,114,440
Indian Housing	276,512	1,231,646	592,652	2,100,809
Pre-1950 Single Family Tenant-Based Assistance	233,517,549	39,190,859	0	272,708,409
Pre-1950 Multifamily Tenant-Based Assistance	353,480,495	59,408,108	0	412,888,603
Post-1949 Single Family Tenant-Based Assistance	0	6,077,413	7,728,894	13,806,307
Post-1949 Multifamily Tenant-Based Assistance	0	8,690,078	10,722,920	19,412,998
Total Without Appropriations	741,128,163	248,573,990	90,540,366	1,080,242,519
Total With Appropriations	747,836,784	246,374,864	76,532,789	1,070,744,437

TABLE 8B.—NET BENEFIT (COST) BY PROGRAM DISCOUNTING INCREASED LIFETIME EARNINGS AT 7 PERCENT

Subparts (tables)	Net program benefit (cost)			Subpart total
	Pre-1940	1940–1959	1960–1977	
Single Family Insured Housing	($214,950)	($265,671)	($8,334,880)	($8,815,501)
HUD-Owned Single Family Housing w/ Appropriations	(24,529,162)	(10,183,853)	(11,132,000)	(45,845,015)
HUD-Owned Single Family Housing w/o Appropriations	(743,199)	(407,658)	(264,132)	(1,414,989)
Multifamily Insured Housing	(7,706)	(24,656)	(89,325)	(121,688)
Multifamily Housing w/ Project-Based Assistance	(339,407)	(1,813,424)	(4,844,431)	(6,997,262)
HUD-Owned Multifamily Housing w/ Appropriations	(98,605)	(530,099)	(2,472,736)	(3,101,440)
HUD-Owned Multifamily Housing w/o Appropriations	882	(27,417)	(54,660)	(81,195)
Single Family Rehab <5K	(601,407)	(2,090,684)	(257,076)	(2,949,167)
Single Family Rehab 5K–25K	(17,225,755)	(20,776,963)	(1,650,604)	(39,653,322)
Single Family Rehab >25K	(4,627,465)	(7,845,193)	(612,953)	(13,085,611)
Multifamily Rehab <5K	401,578	(786,045)	(588,010)	(972,478)
Multifamily Rehab 5K–25K	(511,926)	(1,429,924)	(544,680)	(2,486,530)
Multifamily Rehab >25K	(333,114)	(575,347)	(210,590)	(1,119,050)
Pre-1950 Single Family CPD Program	(242,582)	(94,450)	0	(337,032)
Pre-1950 Multifamily CPD Program	(123,816)	(42,135)	0	(165,951)
Post-1949 Single Family CPD Program	0	(25,495)	(30,250)	(55,745)
Post-1949 Multifamily CPD Program	0	(6,170)	(7,618)	(13,787)
Public Housing	524,536	(6,499,054)	(5,934,134)	(11,908,653)
Indian Housing	(67,350)	(766,787)	(602,646)	(1,436,782)
Pre-1950 Single Family Tenant-Based Assistance	39,841,001	6,201,564	0	46,042,565
Pre-1950 Multifamily Tenant-Based Assistance	67,325,359	10,672,258	0	77,997,617
Post-1949 Single Family Tenant-Based Assistance	0	947,407	1,254,645	2,202,052
Post-1949 Multifamily Tenant-Based Assistance	0	1,743,162	2,247,492	3,990,654
Total Without Appropriations	83,054,679	(23,912,680)	(20,523,853)	38,618,147

TABLE 8B.—NET BENEFIT (COST) BY PROGRAM DISCOUNTING INCREASED LIFETIME EARNINGS AT 7 PERCENT—Continued

Subparts (tables)	Net program benefit (cost)			Subpart total
	Pre-1940	1940–1959	1960–1977	
Total With Appropriations	59,169,229	(34,191,557)	(33,809,796)	(8,832,124)

TABLE 9A.—NET BENEFIT (COST) PER UNIT BY PROGRAM DISCOUNTING INCREASED LIFETIME EARNINGS AT 3 PERCENT

Subparts	Net program		Benefit (cost)	Subpart
	Pre-1940	1940–1959	1960–1977	
Single Family Insured Housing	$92	$10	($3)	($2)
HUD-Owned Single Family Housing w/ Appropriations	348	(246)	(550)	(116)
HUD-Owned Single Family Housing w/o Appropriations	102	20	7	48
Multifamily Insured Housing	119	34	9	26
Multifamily Housing w/ Project-Based Assistance	1,238	391	196	445
HUD-Owned Multifamily Housing w/ Appropriations	1,306	387	(133)	5
HUD-Owned Multifamily Housing w/o Appropriations	124	39	14	23
Single Family Rehab <5K	554	132	(72)	285
Single Family Rehab 5K–25K	749	27	(175)	336
Single Family Rehab >25K	1,468	279	(63)	1,356
Multifamily Rehab <5K	1,114	419	74	640
Multifamily Rehab 5K–25K	1,228	498	209	755
Multifamily Rehab >25K	1,845	804	354	1,178
Pre-1950 Single Family CPD Program	579	214	0	433
Pre-1950 Multifamily CPD Program	709	272	0	589
Post-1949 Single Family CPD Program	0	20	7	10
Post-1949 Multifamily CPD Program	0	39	14	20
Public Housing	1,354	455	247	378
Indian Housing	1,070	304	138	244
Pre-1950 Single Family Tenant-Based Assistance	5,287	2,216	0	4,409
Pre-1950 Multifamily Tenant-Based Assistance	5,335	2,239	0	4,450
Post-1949 Single Family Tenant-Based Assistance	0	344	132	181
Post-1949 Multifamily Tenant-Based Assistance	0	328	122	170

TABLE 9B.—NET BENEFIT (COST) PER UNIT BY PROGRAM DISCOUNTING INCREASED LIFETIME EARNINGS AT 7 PERCENT

Subparts	Net Program		Benefit (Cost)	Subpart
	Pre-1940	1940–1959	1960–1977	
Single Family Insured Housing	($43)	($42)	($23)	($24)
HUD-Owned Single Family Housing w/ Appropriations	(1,089)	(804)	(550)	(827)
HUD-Owned Single Family Housing w/o Appropriations	(33)	(32)	(13)	(26)
Multifamily Insured Housing	(4)	(13)	(8)	(8)
Multifamily Housing w/ Project-Based Assistance	(14)	(72)	(65)	(56)
HUD-Owned Multifamily Housing w/ Appropriations	(100)	(158)	(133)	(135)
HUD-Owned Multifamily Housing w/o Appropriations	1	(8)	(3)	(4)
Single Family Rehab <5K	(72)	(175)	(225)	(138)
Single Family Rehab 5K–25K	(511)	(534)	(441)	(519)
Single Family Rehab >25K	(428)	(601)	(488)	(914)
Multifamily Rehab <5K	57	(108)	(190)	(56)
Multifamily Rehab 5K–25K	(21)	(58)	(55)	(42)
Multifamily Rehab >25K	(40)	(70)	(69)	(57)
Pre-1950 Single Family CPD Program	(204)	(119)	0	(170)
Pre-1950 Multifamily CPD Program	(62)	(56)	0	(60)
Post-1949 Single Family CPD Program	0	(32)	(13)	(18)
Post-1949 Multifamily CPD Program	0	(8)	(3)	(4)
Public Housing	39	(31)	(27)	(27)
Indian Housing	(261)	(189)	(140)	(167)
Pre-1950 Single Family Tenant-Based Assistance	902	351	0	744
Pre-1950 Multifamily Tenant-Based Assistance	1,016	402	0	841
Post-1949 Single Family Tenant-Based Assistance	0	54	21	29
Post-1949 Multifamily Tenant-Based Assistance	0	66	26	35

Steady Blood Lead Levels. Phase I of the National Health and Nutrition Evaluation Survey (NHANES) III conducted from October 1988 to October 1991 revealed that average blood lead levels for children under six

had declined since NHANES II. If blood lead levels have continued to decline since Phase I, the benefit estimate would decline. The change in net benefits of the proposed rule associated with any continuing decline in blood lead levels is impossible to quantify because the magnitude of any such decline cannot be quantified from available data, and because there are no systematic data on any associated potential declines in lead-based paint hazards (which would reduce the costs of the proposed rule). It is probable that any continuing decline in blood lead levels would reflect a continuing decline in lead-based paint hazards (e.g. soil and dust lead levels). Therefore, hazard reduction costs could decline to an extent roughly proportionate to any decline in hazard reduction benefits.

Sensitivity of Lifetime Earnings and IQ to Blood Estimates. The monetized benefits of preventing elevated blood lead levels are almost entirely due to the benefits from increased lifetime earnings associated with the higher cognitive abilities of children who are prevented from being lead poisoned. Increased lifetime earnings are quantified by multiplying the amount of lifetime earnings lost per IQ point (EPA's $6,092 estimate using a 3 percent discount rate, or $1,400 using a 7 percent discount rate) by the average amount of IQ points lost per each one ug/dL increase in blood (Schwartz' .245 point estimate). Therefore, the analysis assumes that preventing a one ug/dL increase in a 1 year old child's blood lead level saves $1,493 or $343 in lifetime earnings. However, this benefit is sensitive both to the dollar estimate of lifetime earnings per IQ point lost (and that estimate's chosen discount rate) and to the estimate of IQ points lost per one ug/dL increase in blood lead levels. Similarly, more recent meta-analysis estimated .257 IQ points lost per one ug/dL increase in blood lead levels; estimated IQ losses were found to be .185 point per one ug/dL increase in populations that were socially disadvantaged and .289 point per one ug/dL increase in populations that were not disadvantaged. Substituting the .185 figure for the .245 figure would reduce the total benefits derived from increased lifetime earnings by 27 percent (because 0.185 is 73 percent of 0.245) to a net benefit of $712 million (using a 3 percent discount rate).

Threshold for Blood Lead to IQ Relationship. Another uncertainty about the blood lead to IQ relationship is whether it applies at relatively low and high blood lead levels. The available evidence does not indicate any apparent threshold but the data on children under five ug/dL is extremely limited. If the lifetime earnings benefit is not realized at these lower levels, then the benefits of the proposed rule would be substantially reduced. For example, the Regulatory Impact Analysis estimates the annual benefit of increased lifetime earnings from preventing blood levels above 5 ug/dL for children ages one and two to equal $19.5 billion, or an average of $198 per unit brought up to the proposed standard for lead dust (using a 3 percent discount rate).

Market Value for Paint Repair and Abatement. The market value of paint repair accounts for about 11 percent, or $175 million of the $1,080 million in net benefits associated with first year hazard reduction activities under the proposed rule. The first year costs of paint repair are shown to be approximately 43 percent of total first-year costs. If the cost-benefit analysis reflected no benefits for the market value of paint repair associated with first year activities, then the proposed rule would still yield net benefits of $905 million for first year activities.

The proposed rule only requires lead-based paint hazard abatement for rehabilitation exceeding $25,000 per unit, and for HUD-owned housing with sufficient appropriations. Therefore, assigning no market value to non-rehabilitation programs does not affect the lead-based paint hazard abatement costs of the proposed rule without appropriations. Applying the full cost of abatement for HUD-owned housing with appropriations without any market value for associated rehabilitation work would result in net costs for the HUD-Owned Single Family Housing and HUD-owned and Mortgagee-in-Possession Multifamily Housing Subparts of the proposed rule. The market value of rehabilitation work associated with abatement, however, would certainly increase the expected market value of HUD-owned property. Therefore, the full costs of abatement should be substantially offset by the increased resale value of these properties.

Hazard Education. The Regulatory Impact Analysis notes that many hazard reduction studies reflect some amount of lead hazard education for residents and that it has been difficult to separate the benefits of hazard reduction from the benefits of hazard education. The estimated duration of dust removal benefits assumes that the baseline includes increased resident education about lead hazards, which reduces the reaccumulation of lead dust.

3. Economic Impacts

The economic impact analysis of which entities will bear the cost of the proposed lead-based paint hazard evaluation and reduction requirements for HUD programs is discussed below.

Single Family Insurance. Those purchasing and/or selling a home with Federal Housing Administration mortgage insurance will bear the cost of lead-based paint hazard evaluation and reduction requirements for single family insurance programs. The visual inspection required by the proposed rule will be conducted during appraisals, which are typically paid for by the purchaser. Repair of deteriorated surfaces and cleanup of the worksite area are performed before endorsement or financed through an escrow account, which implies that the FHA could pass on the cost of repair and cleanup to the buyer through raising the price of insurance. Higher insurance prices resulting from the additional costs of lead-based paint hazard evaluation and control activities could lessen the competitiveness of FHA insurance compared to other mortgage insurers.

The average cost of the proposed rule for single family insurance is $192 per unit, but 85 percent of this full cost could be recovered by the market value of paint repair. Compared to the cost of mortgage insurance and closing costs for a mortgage, the additional cost of the proposed rule is negligible. The distribution of costs for lead-based paint hazard evaluation and reduction, however, creates more significant economic impacts for units that incur the highest possible combination of costs. This combination of unit costs is incurred by units that require both interior paint repair at a cost of $500 and exterior paint repair at a cost of $100. These units would also require cleanup of the affected work area at a cost of $75, plus $10 for the initial visual evaluation, for a total cost of $1,585.

Project-Based and Tenant-Based Rental Assistance. For multifamily project-based assistance programs, the proposed rule allows the owner to request a rent increase from HUD to pay for the costs of implementing an interim control plan. For tenant-based assistance programs, the proposed rule states that the owner is responsible for paint repair and cleanup, but it may be possible for owners to raise the contract rent to finance the cost of lead-based paint hazard evaluation and reduction. Although this option is not explicitly stated in the proposed rule, it is reasonable to expect that property owners will try to recover regulatory

costs, and income-based limits on tenant-paid rents under this program suggest that HUD would pay the cost of any rent increase. For the purpose of this analysis, it is assumed that HUD will directly or indirectly pay the incremental costs of the proposed rule for tenant-based assistance programs and for project-based assistance programs.

If HUD is directly or indirectly paying the costs of the proposed rule for rental assistance programs, then the economic impact for these programs can be measured in terms of the number of households or units that HUD would be unable to assist each year with the funds that are expended on lead-based paint hazard evaluation and reduction. The total annual incremental cost of the proposed rule for tenant- and project-based assistance programs is $77 million. The annual per-household cost of tenant-based assistance is less than $7,000 per unit. Therefore, with funds expended on lead-based paint hazard evaluation and reduction for project- and tenant-based assistance programs, HUD could provide rental assistance to more than 11,000 families. This represents less than 1 percent of the total number of households presently receiving tenant-based rental assistance.

Rehabilitation Programs. In the case of rehabilitation programs, there is no explicit acknowledgement in the proposed rule that HUD will finance the additional costs of lead-based paint hazard evaluation and reduction, which suggests that the recipients of federal funds are responsible for funding these activities. These recipients, however, are receiving HUD assistance for rehabilitation. Therefore, it is reasonable to assume that the costs of the proposed rule will reduce the amount of rehabilitation work that the recipients can finance. In this case, the economic impact of the proposed rule can be measured by determining the number of rehabilitation projects that would not be funded due to the recipients' inability to finance these additional costs. Dividing the total cost of the proposed rule for rehabilitation programs ($120 million) by an average cost of $15,000 per unit for rehabilitation work indicates that the proposed rule could cause a loss of financing for more than 8,000 units in need of rehabilitation each year.

Public and Indian Housing. The economic impact of the proposed rule on Public and Indian housing programs can be measured by the amount by which annual maintenance and repair services would be reduced for each unit. Based on the average incremental cost per unit of the proposed rule, public housing programs would have to reduce annual maintenance and repair expenses by $149 per unit. Indian programs would have to reduce such expenditures by $292 per unit.

4. Environmental Justice

President Clinton issued Executive Order 12898 and an accompanying Presidential memorandum to focus attention on the environmental and human health conditions in minority and low-income communities with the goal of achieving environmental justice. As part of HUD's efforts to incorporate environmental justice into its policies and programs, the Department has examined the impacts of the proposed rule on low-income populations and minority populations. The proposed rule promotes environmental justice in the following ways:

—Conducting lead-based paint evaluation and control activities in federally assisted housing will most significantly benefit low-income and minority populations because low-income and minority families are more likely to have children with elevated blood lead levels, and because low-income families are more likely to live in federally assisted housing.

—By offering a more consistent and streamlined approach to addressing lead-based paint hazards, the proposed rule increases the effectiveness of lead-based paint hazard evaluation and control to the benefit of low-income and minority populations.

—In developing the proposed rule, the Department provided ample opportunity for participation by the public, including low-income housing advocates and tenant representatives.

—Provisions within the proposed rule ensure that low-income and minority populations will have access to public information about lead-based paint hazards. First, the proposed rule requires that the lead hazard information pamphlet developed by the EPA be distributed to existing owner-occupants and tenants residing in dwelling units covered by the proposed rule. Forthcoming Section 1018 requirements to be established in 24 CFR part 38 will require new purchasers and new tenants of target housing to receive the EPA lead hazard information pamphlet. Second, the proposed rule requires that occupants of federally owned housing and federally assisted rental housing be provided written notice of risk assessments, paint inspections, or hazard reduction activities required by this regulation and undertaken at the property.

VIII. Other Matters

Public Reporting Burden

(a) In accordance with 5 CFR 1320.5(a)(1)(iv), the Department is setting forth the following concerning the proposed collection of information:

(1) Title of the information collection proposal: Requirements for Notification, Evaluation and Reduction of Lead-Based Paint Hazards in Federally Owned Residential Property and Housing Receiving Federal Assistance (FR–3482)

(2) Summary of the collection of information: EPA Lead Hazard Information Pamphlet, Notice of Evaluation/Hazard Reduction; Hazard Reduction Plan; Elevated Blood-Level (EBL) Reporting. These collections of information are new requirements and are necessary for HUD to comply with the Residential Lead-Based Paint Hazard Reduction Act of 1992. In the case of the EPA pamphlet, notice of hazard evaluation and reduction activities, and EBL reporting, the new requirements replace existing information collection requirements found in HUD's program regulations pertaining to lead-based paint. As with the other requirements of the proposed rule, HUD has tried to simplify the information collection requirements and minimize the burden to respondents.

(3) Description of the need for the information and its proposed use:

EPA Lead Hazard Information Pamphlet: Statutory requirement, to provide information on health risks associated with exposure to lead hazards and recommended methods for evaluating and reducing such hazards, and related information.

Notice of Evaluation/Hazard Reduction: Statutory requirement, to provide notice to tenants describing the nature, scope and results of any risk assessment, paint inspection, or hazard reduction activities undertaken.

Hazard Reduction Plan: Risk assessments are statutorily required in housing receiving project-based assistance, according to a schedule set forth in the proposed rule. If a risk assessment report identifies lead-based paint hazards, and the property owner requests a rent adjustment increase from HUD to pay for hazard reduction activities, a hazard reduction plan must be submitted for approval by HUD as part of the standard rent adjustment increase request.

Elevated Blood Level (EBL) Reporting: The rule requires evaluation and reduction of lead-based paint hazards when an EBL child is identified in the covered properties in which HUD maintains a continuing relationship with the recipients of Federal housing

assistance, or that is owned and to be sold by HUD and in which an EBL child resides. The reporting requirement states that the name and address of an EBL child shall be reported to the State or local health agency to ensure coordination between housing and health agencies. The reporting requirements currently exists in some HUD programs (e.g. Section 8 tenant-based rental assistance).

(4) Description of the likely respondents, including the estimated number of likely respondents, and proposed frequency of response to the collection of information: Residential property owners and public housing agencies receiving Federal housing assistance; Federal grantees; any Federal agency that sells a pre-1978 residential property that is owned by the agency. Additional information on the numbers of respondents and frequency of responses is given in the next paragraph.

(5) Estimate of the total reporting and recordkeeping burden that will result from the collection of information:

REQUIREMENTS FOR NOTIFICATION, EVALUATION, AND REDUCTION OF LEAD-BASED PAINT HAZARDS IN FEDERALLY OWNED RESIDENTIAL PROPERTY AND HOUSING RECEIVING FEDERAL ASSISTANCE (FR–3482)

[Information collection requirement: Annual cost and hour burden]

Type of collection	Proposed section of 24 CFR affected	Number of respondents	Frequency of response	Hour burden	Annual cost
Lead Pamphlet	36.62 36.144 36.162 36.230 36.256 36.274 36.294	1,096,367	1	36,546	$825,934.00
Notice of Evaluation/Hazard Reduction	36.64 36.164 36.232 36.276	1,024,050	1	47,569	567,689.00
Hazard Reduction Plan	36.168	360	1	2,340	32,292.00
EBL Reporting	36.170 36.188 36.208 36.284 36.302	2,005	1	13,783	173,851.00
Total		2,122,782	1	100,238	1,599,766.00

(b) In accordance with 5 CFR 1320.8(d)(1), the Department is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Interested persons are invited to submit comments regarding the information collection requirements in this proposal. Under the provisions of 5 CFR part 1320, OMB is required to make a decision concerning this collection of information between 30 and 60 days after today's publication date. Therefore, a comment on the information collection requirements is best assured of having its full effect if OMB receives the comment within 30 days of today's publication. This time frame does not affect the deadline for comments to the agency on the proposed rule, however. Comments must refer to the proposal by name and docket number (FR–3482) and must be sent to:

Joseph F. Lackey, Jr., HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503

and

Reports Liaison Officer, Office of the Lead-Based Paint Abatement and Poisoning Prevention, Department of Housing & Urban Development, 451—7th Street, SW., Room B–133, Washington, DC 20410.

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The Department has determined that the following provisions contain information collection requirements.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this proposed rule before publication and by approving it certifies that this proposed rule does not have a significant economic impact on a substantial number of small entities, other than those impacts specifically required to be applied universally by the statute. The requirements of the proposed rule are applicable only to a limited and specifically defined portion of the nation's housing stock. To the extent that the requirements affect small entities, the impact is generally discussed in the economic analysis that accompanies the proposed rule.

Environmental Impact

A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the

National Environmental Policy Act of 1969 (42 U.S.C. 4332). This Finding is available for public inspection between 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.

Executive Order 12866

Consistent with Executive Order 12866 and President Clinton's memorandum of March 4, 1995, to all Federal Departments and Agencies on the subject of Regulatory Reinvention, the Department is reviewing all of its regulations to determine which regulations can be eliminated, streamlined, or consolidated with other regulations. As part of this review, at the final rule stage this proposed rule will undergo revisions in accordance with the President's regulatory reform initiatives. In addition to comments on the substance of this proposed rule, the Department welcomes comments on how this proposed rule may be made more understandable and less burdensome in its final form.

OMB reviewed this proposed rule under Executive Order 12866, Regulatory Planning and Review. Any changes made to the proposed rule as a result of that review are identified in the docket file, which is available for public inspection at 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 20410–0500. The Regulatory Impact Analysis performed on this proposed rule is also available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays at the Office of the Rules Docket Clerk.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under Section 6(a) of Executive Order 12612, *Federalism,* has determined that the policies contained in this proposed rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the proposed rule is not subject to review under the Order. Promulgation of this proposed rule expands coverage of the applicable regulatory requirements pursuant to statutory direction.

Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family,* has determined that this proposed rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the order. No significant change in existing HUD policies or programs will result from promulgation of this proposed rule, as those policies and programs relate to family concerns.

List of Subjects

24 CFR Part 36

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

24 CFR Part 37

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

Accordingly, title 24 of the Code of Federal Regulations, is proposed to be amended by removing part 35, consisting of subparts A through G, and by adding part 36, consisting of subparts A through O, and by adding part 37, consisting of subparts A through J, as follows:

PART 35—LEAD-BASED PAINT POISONING PREVENTION IN CERTAIN RESIDENTIAL STRUCTURES [REMOVED]

PART 36—EVALUATION AND REDUCTION OF LEAD-BASED PAINT HAZARDS IN FEDERALLY OWNED RESIDENTIAL PROPERTY AND HOUSING RECEIVING FEDERAL ASSISTANCE

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Authority: 42 U.S.C. 3535(d) and 4822.

Subpart A—General Requirements

§ 36.1 Purpose and applicability.

(a) The requirements of this part are promulgated to implement the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4822 *et seq.*).

(b) Subpart A of this part applies to all federally owned residential properties and housing receiving Federal assistance that is covered under this part.

§ 36.2 Exemptions.

(a) This part does not apply to the following:

(1) A residential property for which construction was completed on or after January 1, 1978;

(2) A single room occupancy (SRO) dwelling unit;

(3) Housing for the elderly or a residential property designated exclusively for persons with disabilities, except that if a child who is less than 6 years of age resides or is expected to reside (the Department interprets this phrase to include a pregnant woman), the relevant requirements of this part shall apply.

(b) A residential property undergoing emergency repairs in response to a natural disaster is exempt from the relevant evaluation and reduction requirements of this part that apply to the property.

(c) The requirements of visual evaluation, paint repair and cleanup do not apply for a dwelling unit if documentation is provided that a paint inspection has been completed in accordance with part 37, subpart C, of this subtitle and indicates the absence of lead-based paint in the dwelling unit (i.e. lead-free). Results of additional test(s) by a certified paint inspector may be used to confirm or refute a prior finding.

§ 36.3 Assumption of lead-based paint or lead-based paint hazards or both.

In subparts where interim controls or abatement are required, the presence of lead-based paint or lead-based paint hazards or both may be assumed throughout the residential property. If lead-based paint or lead-based paint hazards or both are assumed, paint inspection or risk assessment is not required. The requirements for interim controls or abatement or both must then be conducted in accordance with part 37, subparts E and F, of this subtitle. Interim controls and abatement are completed when cleanup and clearance are achieved in accordance with part 37, subparts H and I, of this subtitle.

§ 36.4 Delay of evaluation, paint repair and hazard reduction activities on exterior surfaces.

Performance of an evaluation, paint repair, lead-based paint hazard reduction, or abatement of lead-based paint on an exterior painted surface as required under this part may be delayed for a reasonable time when weather conditions are unsuitable for conventional construction activities.

§ 36.6 Prohibition against the use of paint containing lead in federally owned housing and housing receiving Federal assistance.

The use of paint containing more than 0.06 percent by weight of lead on any interior or exterior surface in federally owned housing or housing receiving Federal assistance is prohibited. Where appropriate, each Federal agency shall include the prohibition in contracts, grants, cooperative agreements, insurance agreements, guaranty agreements, trust agreements, or other similar documents.

§ 36.8 Prohibited methods of paint removal.

The following methods of paint removal may not be used to remove lead-based paint:

(a) Open flame burning or torching;

(b) Machine sanding or grinding without a high-efficiency particulate air (HEPA) exhaust control;

(c) Uncontained hydroblasting or high pressure wash;

(d) Abrasive blasting or sandblasting without HEPA exhaust control;

(e) Heat guns operating above 1100 degrees Fahrenheit;

(f) Chemical paint strippers containing methylene chloride; or

(g) Dry scraping or dry sanding, except scraping in conjunction with heat guns or around electrical outlets or when treating defective paint spots totalling no more than 2 square feet in any one interior room or space, or totalling no more than 20 square feet on exterior surfaces.

§ 36.10 Compliance with Federal laws and authorities.

All lead-based paint activities required in this part must be performed

in accordance with applicable Federal laws and authorities. Further, 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.*) and other environmental laws and authorities (See, *e.g.*, laws and authorities listed in § 50.4 of this subtitle).

§ 36.12 Compliance with local codes and regulations.

Nothing in this part is intended to relieve an owner or tenant of federally owned housing or housing receiving Federal assistance from any responsibility for compliance with State or local laws, ordinances, codes, or regulations governing lead-based paint. With respect to housing receiving Federal assistance, HUD does not assume any responsibility for ensuring compliance with such State or local requirements.

§ 36.13 Minimum requirements.

This part sets out the Department's minimum requirements for the evaluation and reduction of lead-based paint and lead-based paint hazards in federally owned housing and housing receiving Federal assistance. Nothing in this part is intended to preclude an owner or tenant of such housing from conducting additional evaluation and reduction measures. For example, if the Department requires interim controls, an owner or tenant may choose to implement abatement.

§ 36.14 Waivers.

(a) On a case-by-case basis and upon determination of good cause, the Secretary may, subject to statutory limitations, waive any provision of this part.

(b) In the case of jurisdictions which banned the sale or use of lead-based paint prior to 1978, the Secretary may designate an earlier date for certain provisions of this part.

§ 36.15 Noncompliance with the requirements of this part and part 37.

A property owner who informs a potential purchaser or tenant of possible lead-based paint hazards in the dwelling unit is not relieved of the requirements to evaluate and reduce lead-based paint or lead-based paint hazards in accordance with this part and part 37 of this subtitle. Further, noncompliance with any of these requirements by a recipient of Federal housing assistance (*e.g.*, owner, grantee or public or Indian housing agency) may result in sanctions by the Department corresponding to the type of assistance provided, or enforcement of these requirements by any other means authorized by law.

§ 36.16 Definitions.

Abatement means any set of measures designed to permanently eliminate lead-based paint or lead-based paint hazards. For the purposes of this definition, permanent means at least 20 years effective life. Abatement includes:

(1) The removal of lead-based paint and lead-contaminated dust, 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 lead-contaminated soil; and

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

Accessible (chewable) surface means an interior or exterior surface painted with lead-based paint that a young child can mouth or chew.

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

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

Certified contractor means a risk assessor, inspector, or abatement supervisor who has been certified in accordance with 40 CFR 745.226.

Clearance examination means an activity conducted and a laboratory analysis by a clearance examiner after completion of lead-based paint hazard reduction activities to determine that the hazard controls are complete and that levels of lead in settled dust or bare soil or both meet the standards established in part 37, subpart I, of this subtitle. The clearance process includes a visual evaluation and collection of environmental samples.

Common area means a portion of a residential property (except in a condominium project) generally accessible to occupants of all dwelling units. 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 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 sampling means the collection of more than one sample of the same medium (e.g. dust, soil or paint) for analysis as one sample.

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

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

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

Dry sanding means sanding by machine or by hand without moisture.

Dwelling unit means a house or an apartment, occupied or intended for occupancy, including attached structures such as balconies, porches or stoops.

Elevated blood lead level (EBL) (requiring the evaluation of lead hazards) means an excessive absorption of lead that is a confirmed concentration of lead in whole blood of 20 ug/dl (micrograms of lead per deciliter of whole blood) for a single venous test or of 15–19 ug/dl in two consecutive venous tests taken 3 to 4 months apart.

Emergency repair means a single-purpose activity that must be performed immediately to maintain the integrity and habitability of a residential property. Examples include repair of roof damage or of utility or mechanical equipment.

Encapsulation means the application of any 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.

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

Evaluation means visual evaluation, risk assessment, paint inspection, or a combination of risk assessment and paint inspection to determine the presence of deteriorated paint, a lead-based paint hazard or lead-based paint.

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 the entities mentioned above. The term ''Federal agency'' includes, but is not limited to, HUD, Rural Housing and Community Development Service (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.

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.

Grantee means any State or local government, Indian tribe or insular area that has been designated by HUD to administer Federal housing assistance under a program covered by part 36, subparts B, L or M, except the HOME program or the Flexible Subsidy-Capital Improvement Loan Program (CILP).

Hazard reduction means measures designed to reduce or eliminate human exposure to lead-based paint hazards through interim controls and abatement.

HEPA vacuum means 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.

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 at the time of initial occupancy.

Housing receiving Federal assistance means housing 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.

HUD-owned property means residential property to which HUD acquired title, or any federally owned residential property for which HUD has disposition responsibility.

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 tribes means any Indian tribe, band, group or nation, including Alaskan Indians, Aleuts and Eskimos, and any Alaskan Native Village of the United States that is considered an eligible recipient under Title I of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450), or was considered an eligible recipient under the State and Local Fiscal Assistance Act of 1972 (31 U.S.C. 1221) before repeal of that Act. Eligible recipients are determined by the Bureau of Indian Affairs.

Inspection (*See* 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 repairs, maintenance, painting, temporary containment, specialized cleaning, ongoing monitoring of lead-based paint hazards or potential hazards, and the establishment and operation of management and resident education programs.

Interior window sill means the portion of the horizontal window ledge that usually protrudes into the interior of the room, adjacent to the window sash when closed; often called 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), or another level that may be established by the Secretary.

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

Lead-contaminated dust means surface dust that contains an amount of lead exceeding the following levels, which may pose a threat of adverse health effects in pregnant women or children of less than 6 years of age:

(1) Hard floors—100 ug/ft^2;

(2) Carpeted floors—100 ug/ft^2; and

(3) Interior window sills—500 ug/ft^2.

Lead-contaminated soil means bare soil on residential property that contains lead exceeding the following levels, which may pose a threat of adverse health effects in pregnant women or children of less than 6 years of age:

(1) Children's play area—400 ug/g (micrograms per gram); and

(2) All other areas—2,000 ug/g.

Limited paint inspection means a paint inspection of only deteriorated paint surfaces or those painted surfaces likely to be disturbed or replaced during rehabilitation activities.

Multifamily property means a residence containing dwelling units for five or more families.

Occupant means a person who inhabits a dwelling unit.

Owner means a person, firm, corporation, guardian, conservator, receiver, trustee, executor, or other judicial officer who, 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 inspection means a surface-by-surface investigation of all intact and nonintact interior and exterior painted surfaces for lead-based paint using an approved x-ray fluorescence analyzer, atomic absorption spectroscopy, or comparable approved sampling or testing technique, and includes the provision of a report explaining the results of the investigation.

Paint removal means a method of abatement that entails removing lead-based paint from surfaces.

Painted surface to be disturbed means paint that is 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, paint chips, or exposed surfaces.

Participating jurisdiction means any State or local government, Indian tribe or insular area that has been designated by HUD to administer a HOME program.

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

Protective covering means a durable material, such as polyethylene or its equivalent, which protects from lead-contaminated dust, debris or abrasion.

Random sample means a sample drawn from a population (e.g. housing units in a multifamily property) so that each member of the population has an equal chance to be drawn.

Recognized laboratory means any environmental laboratory recognized by EPA under the National Lead Laboratory Accreditation Program as being capable of performing an analysis for lead compounds in paint, soil or dust.

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 such as windows, doors, and trim, and the installation of new components free of lead-based paint.

Residential property means a dwelling unit, common areas and any surrounding land belonging to an owner and accessible to occupants.

Risk assessment means an on-site investigation to determine and report the existence, nature, severity, and location of lead-based paint hazards in residential properties, including:

(1) Information gathered on the age and history of the housing and occupancy by children under age 6;

(2) Visual assessment;

(3) Limited wipe sampling or other environmental sampling techniques;

(4) Identification of hazard reduction options; and

(5) Provision of a report explaining the results of the investigation.

Room equivalent means an identifiable part of a residence such as a room, a house exterior side or area, a hallway, stairway or a playground, identified for the purpose of conducting a paint inspection.

Secretary means the Secretary of the U.S. Department of Housing and Urban Development.

Similar dwelling units means dwelling units that were built at the same time, have a common maintenance and management history, have a common painting history, and are of similar construction.

Single family property means a residence containing dwelling units for one to four families.

Single room occupancy (SRO) means a 0-bedroom dwelling unit for occupancy by a single individual which may contain food preparation or sanitary facilities or both, and is located within a residential property.

Single-surface sampling means the collection of one sample from each sampling location or individual component with the intention that each sample will be analyzed individually.

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

Targeted sample means a sample of dwelling units selected from a multifamily property using information supplied by the owner. The units are selected to have the greatest probability of having lead-based paint hazards.

Tenant means the individual named on a lease or rental agreement to lease or rent a dwelling unit.

Visual evaluation means to look at interior and exterior painted surfaces for signs of deterioration.

Wet sanding or scraping means a process of removing loose paint in which both the surface to be scraped or sanded and the scraping or sanding tool are kept wet with water to minimize the dispersal of paint chips and airborne dust.

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 window sill is sometimes referred to as the window stool.

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. The window trough is sometimes referred to as the window well.

Window well (*See* Window trough)

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

XRF reading means the measurement of lead levels in paint with a portable X-ray fluorescence (XRF) instrument. The measurement is always in mg/cm^2 (milligrams per square centimeter).

Subpart B—State Procedures

§ 36.20 Purpose and applicability.

The purpose of this subpart B is to allow States, Indian tribes and insular areas to establish alternative procedures to those required under subparts L and M of this part, to eliminate as far as practicable lead-based paint hazards in housing receiving Federal assistance, or operating a Federal housing assistance program, established by the Secretary. A State, Indian tribe or insular area shall meet the general eligibility criteria set out in § 36.22.

§ 36.22 General eligibility criteria.

(a) A State, Indian tribe or insular area shall have in place a certification program for individuals and firms engaged in lead-based paint activities that is approved by EPA pursuant to sections 402 and 404 of Title IV of the Toxic Substances Control Act (TSCA), (15 U.S.C. 2682 and 2684).

(b) A State, Indian tribe or insular area shall have in place written evaluation and hazard reduction procedures that have been approved by the Secretary prior to implementation of authority under this subpart, and when such procedures are substantially altered by such entity.

(c) A unit of general local government located in a State that has HUD-approved alternate procedures in accordance with this section may adopt those State procedures for all or part of the programs assisted under subparts L and M of this part.

§ 36.24 General procedures.

Alternative lead-based paint hazard evaluation and reduction procedures developed by a State, Indian tribe or insular area must include the following minimum requirements:

(a) *Lead hazard information pamphlet.* The State, Indian tribe or insular area shall ensure that the lead hazard information pamphlet developed by the Environmental Protection Agency, pursuant to section 406(a) of the Toxic Substances Control Act, 15 U.S.C. 2686 is provided to the tenant, owner-occupant or purchaser of housing receiving Federal assistance under this subpart.

(b) *Notice of evaluation, paint repair and hazard reduction activities.* In cases where evaluation, paint repair or hazard reduction activities are undertaken, each owner shall provide a notice to tenants. The notice must include:

(1) A summary of the nature, scope and results of the evaluation, paint repair or hazard reduction activities;

(2) Information on how to obtain access to the actual evaluation report; and

(3) Available information on the location of any remaining lead-based paint on a surface-by-surface basis after conducting hazard reduction.

(c) *Occupant protection.* Occupants may not be permitted to enter the interior worksite during lead-based paint hazard reduction activities or paint repair. Occupant re-entry into the worksite is permitted only after the hazard reduction work is completed and clearance has been achieved, or after paint repair and cleanup are completed.

§ 36.26 Specific procedures.

The specific procedures for reducing lead-based paint hazards in housing covered under this subpart B are to be developed at the discretion of the State, Indian tribe or insular area, but must include the following minimum requirements:

(a) *Clearance standards.* When clearance is required under paragraph (b) of this section the following standards shall apply:

(1) *Dust testing.* Levels of lead in dust wipe samples may not exceed the following standards:

(i) Hard floors—100 ug/ft^2;

(ii) Carpeted floors—100 ug/ft^2;

(iii) Interior window sills—500 ug/ft^2.

(2) *Soil testing.* Lead levels in samples of bare soil may not exceed the following standards:

(i) Children's play area—400 ug/g (micrograms per gram);

(ii) All other areas—2,000 ug/g.

(3) *Visual evaluation.* A visual evaluation of all painted surfaces in order to identify deteriorated paint.

(b) *Rehabilitation.* A grantee or participating jurisdiction receiving HUD rehabilitation funds for a residential property constructed before 1978 shall require the following:

(1) *Housing receiving an average of $25,000 or less per unit in HUD funds for rehabilitation.* (i) A paint inspection of each surface to be disturbed by rehabilitation or which may be replaced during rehabilitation.

(ii) A risk assessment in the units receiving HUD rehabilitation assistance and in associated common areas and exterior surfaces.

(iii) Hazard reduction activities to reduce identified lead-based paint hazards must be conducted under the supervision of a certified abatement contractor. Hazard reduction is completed when the clearance standards set out in paragraph (a) of this section are achieved.

(iv) States may adopt less stringent procedures for addressing potential lead-based paint hazards when the average amount of HUD funds for rehabilitation is less than $5,000 per unit.

(2) *Housing receiving an average of more than $25,000 per unit in HUD funds for rehabilitation.* (i) A paint inspection of each surface to be disturbed by rehabilitation or which may be replaced during rehabilitation.

(ii) A risk assessment in the units receiving HUD rehabilitation assistance and in associated common areas and exterior surfaces.

(iii) Abatement of identified lead-based paint hazards must be conducted in the course of rehabilitation. Abatement is completed when the clearance standards set out in paragraph (a) of this section are achieved.

(c) *CPD non-rehabilitation programs.* A grantee or participating jurisdiction receiving Federal assistance under a HUD program described in subpart M of this part for a residential property constructed before 1978 shall require the following:

(1) *Housing constructed before 1950.* (i) Dust testing;

(ii) Paint repair of deteriorated paint and cleanup of the worksite; and

(iii) Cleanup of surfaces with high levels of leaded dust, if dust samples above the standards set out in paragraph (a)(1) of this section are identified.

(2) *Housing constructed after 1949 and before 1978.* Paint repair of deteriorated paint and cleanup of the worksite.

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

§ 36.40 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 disposition (*i.e.* sale) of a residential property that is owned by a Federal agency other than HUD.

§ 36.42 Exemption.

In the absence of appropriations sufficient to cover the costs of §§ 36.44, 36.46 and 36.48 these requirements shall not apply to the Federal agency.

§ 36.44 Disposition of residential property constructed before 1960.

(a) *Hazard evaluation.* The Federal agency shall conduct a risk assessment and a paint inspection in accordance with part 37, subparts B and C, of this subtitle. Hazard evaluation must be completed according to a schedule determined by the Federal agency.

(b) *Abatement of lead-based paint hazards.* The Federal agency shall conduct abatement of all identified lead-based paint hazards in accordance with part 37, subpart F, of this subtitle. Abatement is completed when cleanup and clearance are achieved in accordance with part 37, subparts H and I, of this subtitle. In the case of a sale to a non-owner occupant purchaser, abatement may be made a condition of sale with sufficient funds escrowed.

§ 36.46 Disposition of residential property constructed after 1959 and before 1978.

(a) *Exemption.* The Secretary may waive the paint inspection and risk assessment requirements of this section if documentation is provided to the Secretary by the Federal agency that a risk assessment, performed by a certified risk assessor, shows the absence of lead-based paint hazards, or that a paint inspection, performed by a certified paint inspector, shows an absence of lead-based paint. In addition, the Secretary may waive the requirements of this section if a clearance test conducted by a certified risk assessor has indicated the absence of lead-based paint hazards.

(b) *Hazard evaluation.* The Federal agency shall conduct a risk assessment and a paint inspection in accordance with part 37, subparts B and C, of this subtitle. Hazard evaluation must be completed according to a schedule determined by the Federal agency.

§ 36.48 Other required practices.

(a) *Required practices.* If abatement of lead-based paint hazards is conducted the following practices are required:

(1) *Occupant protection and worksite preparation* in accordance with part 37, subpart G, of this subtitle.

(2) *Monitoring* must be conducted in accordance with part 37, subpart J, of this subtitle if the Federal agency retains ownership of the property for more than 1 year.

(b) *Control of new hazards.* If monitoring identifies new lead-based paint hazards, the Federal agency shall conduct additional abatement activities in accordance with part 37, subpart F, of this subtitle. Abatement is completed when cleanup and clearance are achieved in accordance with part 37, subparts H and I, of this subtitle.

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

§ 36.60 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 in project-based assistance under a program administered by a Federal agency other than HUD.

§ 36.62 Lead hazard information pamphlet.

If a tenant resides in a residential property prior to the effective date of the regulation implementing section 1018 of Title X of the Housing and Community Development Act of 1992 (42 U.S.C. 4852d), and the property receives Federal project-based assistance, the owner shall provide the lead hazard information pamphlet developed by the Environmental Protection Agency, pursuant to section 406(a) of the Toxic Substances Control Act, 15 U.S.C. 2686 to the tenant.

§ 36.64 Notice of evaluation, paint repair and hazard reduction activities.

In cases where evaluation, paint repair or hazard reduction is undertaken, each owner shall provide a notice to tenants. The notice must include:

(a) A summary of the nature, scope and results of the evaluation, paint repair or hazard reduction activities;

(b) Information on how to obtain access to the actual evaluation report; and

(c) Available information on the location of any remaining lead-based paint on a surface-by-surface basis after conducting hazard reduction.

§ 36.66 Risk assessments.

Each owner shall complete a risk assessment in accordance with part 37, subpart B, of this subtitle. Each risk assessment must be completed no later than the schedule established by the Federal agency.

§ 36.68 Hazard reduction.

Each owner shall conduct hazard reduction activities consistent with the findings of the risk assessment report. Hazard reduction must be conducted in accordance with part 37, subparts E and F, of this subtitle and is completed when cleanup and clearance are achieved in accordance with part 37, subparts H and I, of this subtitle.

§ 36.70 EBL child.

Risk assessment and hazard reduction. If a child less than 6 years of age living in a federally assisted dwelling unit has an EBL, the owner shall immediately conduct a risk assessment in accordance with part 37, subpart B, of this subtitle. Reduction of identified lead-based paint hazards must be conducted in accordance with part 37, subparts E and F, of this subtitle and is completed when cleanup and clearance are achieved in accordance with part 37, subparts H and I, of this subtitle. The Federal agency shall establish a schedule for completing risk assessments and hazard reduction when an EBL child is identified.

§ 36.72 Other required practices.

(a) *Required practices.* If hazard reduction is conducted, the following practices are required:

(1) *Occupant protection and worksite preparation* in accordance with part 37, subpart G, of this subtitle.

(2) *Monitoring* in accordance with part 37, subpart J, of this subtitle.

(b) *Control of new hazards.* If monitoring identifies new lead-based paint hazards, each owner shall conduct additional hazard reduction activities in accordance with part 37, subparts E and F, of this subtitle. Hazard reduction is completed when cleanup and clearance are achieved in accordance with part 37, subparts H and I, of this subtitle.

Subpart E—Single Family Insured Property

§ 36.80 Purpose and applicability.

The purpose of this subpart E is to establish procedures to eliminate as far as practicable lead-based paint hazards in a single family property that receives mortgage insurance under a program administered by the Secretary, including One- to Four-Family Home Mortgage Insurance (12 U.S.C. 1709 (b) and (i)); Rehabilitation Mortgage Insurance (12 U.S.C. 1709(k)); Homeownership Assistance for Low- and Moderate-Income Families (12 U.S.C. 1715(d)(2)); Homes for Service Members (12 U.S.C. 1715m); Housing in Declining Neighborhoods (12 U.S.C. 1715n(e)); Condominium Housing (12 U.S.C. 1715y); Special Credit Risks (12 U.S.C. 1715z–2); Housing in Military Impacted Areas (12 U.S.C. 1715z–3(c)); Single Family Home Mortgage Coinsurance (12 U.S.C. 1715z–9); Graduated Payment Mortgages (12 U.S.C. 1715z–10); Adjustable Rate Mortgages (ARMs) (12 U.S.C. 1715z–16); and Home Equity Conversion Mortgage (HECM) (12 U.S.C. 1715z–20).

§ 36.82 Exemptions.

(a) Applications for insurance in connection with a refinancing transaction are excluded from the coverage of this subpart E if an appraisal is not required under the applicable procedures established by the Secretary.

(b) *Limited paint inspection.* The requirements of §§ 36.86 and 36.88 do not apply for a specific deteriorated paint surface on which a paint inspection has been completed in accordance with part 37, subparts B or C, of this subtitle and indicates the absence of lead-based paint (*i.e.* lead-free). To be exempt from §§ 36.86 and 36.88, documentation of the absence of lead-based paint on each deteriorated surface must be provided to the fee panel appraiser or direct endorsement appraiser. Results of additional test(s) by a certified paint inspector may be used to confirm or refute a prior finding.

§ 36.84 Lead hazard information pamphlet.

When an appraisal is required for refinancing under a program described in § 36.80, each mortgagee shall provide each prospective occupant residing in the residential property prior to the effective date of the regulation implementing section 1018 of Title X of the Housing and Community Development Act of 1992, with the lead hazard information pamphlet developed by the Environmental Protection Agency, pursuant to section 406(a) of the Toxic Substances Control Act, 15 U.S.C. 2686.

§ 36.86 Visual evaluation of painted surfaces.

The mortgagee must require the appraiser to conduct a visual evaluation of all painted surfaces in order to identify deteriorated paint.

§ 36.88 Paint repair and cleanup.

(a) *Paint repair and cleanup.* (1) Each deteriorated paint surface must be repaired, and cleanup of the worksite must be conducted, in accordance with part 37, subpart D, of this subtitle.

(2) The commitment or other approval document must contain the requirement that all deteriorated paint surfaces must be repaired and cleanup of the worksite conducted before the mortgage is endorsed for insurance.

(b) *Escrow procedure.* An escrow fund may be established in order to conduct paint repair and cleanup after the mortgage is endorsed for insurance only in the following three cases:

(1) For mortgage insurance to finance rehabilitation work under 12 U.S.C. 1709(k), provided that paint repair and cleanup are conducted in conjunction with the rehabilitation work and will be completed as expeditiously as possible; or

(2) For HECM mortgage insurance, provided that the paint repair and cleanup costs do not exceed 15 percent of the HECM maximum claim amount and the payment model includes a provision for funds reserved for post-endorsement repairs. Paint repair and cleanup must be completed as expeditiously as possible; or

(3) When weather conditions prevent the completion of paint repair and cleanup on exterior surfaces, provided that paint repair and cleanup are completed as soon as practicable.

Subpart F—Disposition of HUD-Owned Single Family Property (With Sufficient Appropriations)

§ 36.100 Purpose and applicability.

The purpose of this subpart F is to establish procedures to eliminate as far as practicable lead-based paint hazards prior to the disposition (*i.e.* sale) of a single family property that is owned by HUD. The Secretary shall determine:

(a) If there are sufficient appropriations to cover the costs of §§ 36.104–36.108; and

(b) When the procedures in these sections will take effect.

§ 36.102 Exemptions.

(a) In the absence of appropriations sufficient to cover the costs of §§ 36.104 through 36.108 as determined by the

Secretary, these requirements shall not apply to the Department. Instead, the Department shall, at a minimum, follow the requirements of subpart G of this part.

(b) A dwelling unit that has sustained extensive damage requiring major rehabilitation or demolition is exempt from the requirements of §§ 36.104 through 36.108.

§ 36.104 Disposition of single family property constructed before 1960.

(a) *Hazard evaluation.* Before the closing of the sale of the property, the Department shall conduct a risk assessment and a paint inspection in accordance with part 37, subparts B and C, of this subtitle.

(b) *Abatement of lead-based paint hazards.* Before the closing of the sale of the property, the Department shall conduct abatement of all identified lead-based paint hazards in accordance with part 37, subpart F, of this subtitle. Abatement is completed when cleanup and clearance are achieved in accordance with part 37, subparts H and I, of this subtitle. In the case of a sale to a non-occupant purchaser, abatement may be made a condition of sale with sufficient funds escrowed. In the case of a HUD-owned property leased to a unit of government or a nonprofit organization under a program administered by the Secretary, the Department shall make abatement a condition of the lease agreement and the lessor shall certify acceptance of the abatement responsibility. Occupancy is not permitted in either case until all required abatement is complete.

§ 36.106 Disposition of single family property constructed after 1959 and before 1978.

(a) *Exemption.* The Secretary may waive the paint inspection and risk assessment requirements of this section if documentation is provided to the Secretary that a risk assessment, performed by a certified risk assessor, shows an absence of lead-based paint hazards, or that a paint inspection, performed by a certified paint inspector, shows an absence of lead-based paint. In addition, the Secretary may waive the requirements of this section if a clearance test conducted by a certified risk assessor has indicated the absence of lead-based paint hazards.

(b) *Hazard evaluation.* Before the closing of the sale of the property, the Department shall conduct a risk assessment and a paint inspection in accordance with part 37, subparts B and C, of this subtitle.

§ 36.108 Other required practices.

(a) *Required practices.* If abatement of lead-based paint hazards is conducted, the following practices are required:

(1) *Occupant protection and worksite preparation* in accordance with part 37, subpart G, of this subtitle.

(2) *Monitoring* must be conducted in accordance with part 37, subpart J, of this subtitle if the Department retains ownership of the property for more than 1 year. In the case of a HUD-owned property leased to a unit of government or a nonprofit organization under a program administered by the Secretary, the Department shall make monitoring a condition of the lease agreement and the lessor shall certify acceptance of the monitoring responsibility.

(b) *Control of new hazards.* If monitoring identifies new lead-based paint hazards, the Department or the lessor shall conduct additional abatement activities in accordance with part 37, subpart F, of this subtitle. Abatement is completed when cleanup and clearance are achieved in accordance with part 37, subparts H and I, of this subtitle.

Subpart G—Disposition of HUD-Owned Single Family Property (Without Sufficient Appropriations)

§ 36.120 Purpose and applicability.

In the absence of appropriations sufficient to cover the costs of subpart F of this part as determined by the Secretary, the purpose of this subpart G is to establish alternative procedures to eliminate as far as practicable lead-based paint hazards prior to the disposition (*i.e.* sale) of a single family property that is owned by HUD.

§ 36.122 Exemptions.

(a) *Limited paint inspection.* The Department shall be exempt from the requirements of §§ 36.124 through 36.128 for a specific deteriorated paint surface if documentation exists that a paint inspection has been completed in accordance with part 37, subparts B or C, of this subtitle and indicates the absence of lead-based paint on each surface to be exempt (*i.e.* lead-free). Results of additional test(s) by a certified paint inspector may be used to confirm or refute a prior finding.

(b) *Extensive damage.* A dwelling unit that has sustained extensive damage requiring major rehabilitation or demolition is exempt from the requirements of §§ 36.124 through 36.128.

§ 36.124 Visual evaluation of painted surfaces.

Before the closing of the sale of the property, the Department shall conduct a visual evaluation of all painted surfaces in order to identify deteriorated paint.

§ 36.126 Paint repair and cleanup.

(a) *Paint repair and cleanup.* Before the closing of the sale of the property, the Department shall repair each deteriorated paint surface, and conduct cleanup of the worksite, in accordance with part 37, subpart D, of this subtitle.

(b) *Repainting exemption.* The Department may be exempt from the repainting requirements described in § 37.50(f) of this subtitle if weather conditions make repainting infeasible or if the property is scheduled for major rehabilitation or demolition. If the Department does not repaint a property because of weather conditions, major rehabilitation, or demolition, the possible existence of a lead-based paint hazard must be disclosed to the potential purchaser before the closing of the sale of the property.

(c) *Condition of sale or lease.* In the case of a sale to a non-occupant purchaser, paint repair and cleanup may be made a condition of sale with sufficient sale funds escrowed. In the case of a HUD-owned property leased to a unit of government or a nonprofit organization under a program administered by the Secretary, the Department shall make paint repair and cleanup a condition of the lease agreement and the lessor shall certify acceptance of the abatement responsibility.

(d) *Occupancy.* In the case of a sale or lease, occupancy is not permitted until all required paint repair and cleanup is complete.

§ 36.128 Monitoring.

If the Department retains ownership of the property for more than 1 year, monitoring must be conducted in accordance with part 37, subpart J, of this subtitle. In the case of a HUD-owned property leased to a unit of government or a nonprofit organization under a program administered by the Secretary, the Department shall make monitoring a condition of the lease agreement and the lessor shall certify acceptance of the monitoring responsibility. If monitoring identifies new deteriorated paint surfaces, the Department or the lessor shall conduct paint repair and cleanup in accordance with part 37, subpart D, of this subtitle.

Subpart H—Multifamily Insured Property

§ 36.140 Purpose and applicability.

The purpose of this subpart H is to establish procedures to eliminate as far

as practicable lead-based paint hazards in a multifamily property that receives mortgage insurance under a program administered by the Secretary, including Multifamily Rental Housing (12 U.S.C. 1713); Cooperative Housing (12 U.S.C. 1715e); Mortgage and Major Home Improvement Loan Insurance for Urban Renewal Areas (12 U.S.C. 1715k (a) and (h)); Multifamily Rental Housing for Moderate-Income Families (12 U.S.C. 1715(l)(d) (3) and (4)); Existing Multifamily Rental Housing (12 U.S.C. 1715n(f)); Mortgage Insurance for Housing for the Elderly (12 U.S.C. 1715v); Condominium Housing (12 U.S.C. 1715y); Title II of the Housing and Community Development Act of 1987 (Emergency Low Income Housing Preservation Act of 1987; 12 U.S.C. 1715l note); section 601 of the Cranston-Gonzalez National Affordable Housing Act (Low Income Housing Preservation and Resident Ownership Act of 1990; 12 U.S.C. 1715l note); and Supplemental Loan for Project Mortgage Insurance (12 U.S.C. 1715n).

§ 36.142 Exemptions.

(a) Applications for insurance in connection with a refinancing transaction are excluded from the coverage of this subpart H if an appraisal is not required under the applicable procedures established by the Secretary.

(b) *Limited paint inspection.* The requirements of §§ 36.146 and 36.148 do not apply for a specific deteriorated paint surface on which a paint inspection has been completed in accordance with part 37, subparts B or C, of this subtitle, and indicates the absence of lead-based paint (*i.e.* lead-free). To be exempt from §§ 36.146 and 36.148, documentation of the absence of lead-based paint on each deteriorated paint surface must be provided to the Department's and the sponsor's architect. Results of additional test(s) by a certified paint inspector may be used to confirm or refute a prior finding.

§ 36.144 Lead hazard information pamphlet.

When an appraisal is required for refinancing under a program described in § 36.140, each mortgagee shall provide each prospective occupant residing in the residential property prior to the effective date of the regulation implementing section 1018 of Title X of the Housing and Community Development Act of 1992, with the lead hazard information pamphlet developed by the Environmental Protection Agency, pursuant to section 406(a) of the Toxic Substances Control Act, 15 U.S.C. 2686.

§ 36.146 Visual evaluation of painted surfaces.

Before the issuance of the firm commitment, the Department's or the sponsor's architect shall conduct a visual evaluation of all painted surfaces in order to identify deteriorated paint.

§ 36.148 Paint repair and cleanup.

Before the issuance of the firm commitment, each deteriorated paint surface must be repaired, and cleanup of the worksite conducted, in accordance with part 37, subpart D, of this subtitle.

Subpart I—Project-Based Assistance

§ 36.160 Purpose and applicability.

(a) *Purpose.* The purpose of this subpart I is to establish procedures to eliminate as far as practicable lead-based paint hazards in a multifamily property receiving more than $5,000 in project-based assistance under a program administered by the Secretary including the Rent Supplement Payment Program (12 U.S.C. 1701s); Supportive Housing for the Elderly (12 U.S.C. 1701q); Rental Assistance Payments Program (12 U.S.C. 1715z–1); Supportive Housing for Persons with Disabilities (42 U.S.C. 8013); Direct Loans for Housing for the Elderly or Handicapped (12 U.S.C. 1701q); Section 8 Housing Assistance Payments Program for New Construction, Section 8 Housing Assistance Payments Program for Substantial Rehabilitation, Section 8 Housing Assistance Payment Program for State Housing Agencies, Section 8 Housing Assistance Payment Program for Section 515 Rural Rental Housing Projects, and Section 8 Housing Assistance Payments Program—Special Allocations (LMSA & Property Disposition Set Aside); Section 8 Moderate Rehabilitation Program (42 U.S.C. 1437f); Project-Based Certificate Program (42 U.S.C. 1437f); Homeownership of Multifamily Units (HOPE 2) (42 U.S.C. 12871–12880); Shelter Plus Care Project- and Sponsor-Based Rental Assistance (42 U.S.C. 11403 *et seq.*); and Assisted Housing Drug Elimination Program (42 U.S.C. 11901 note).

(b) *Applicability.* (1) For a multifamily property receiving more than the $5,000 per unit annual initial contract rent threshold in project-based assistance under a program described in § 36.160(a), the requirements of §§ 36.162–36.172 shall apply.

(2) For a multifamily property that receives less than the $5,000 per unit annual initial contract rent threshold in project-based assistance under a program described in § 36.160(a), or a single family property that receives project-based assistance through the Department's Section 8 Moderate Rehabilitation or Project-Based Certificate programs, the requirements of §§ 36.162 through 36.172 do not apply; and the requirements set out in §§ 36.292 through 36.302 shall apply. For a multifamily property receiving less than the $5,000 per unit in project-based assistance, the owner shall implement the requirements specified for the housing authority in §§ 36.292 through 36.302.

§ 36.162 Lead hazard information pamphlet.

If a tenant resides in a residential property prior to the effective date of the regulation implementing section 1018 of Title X of the Housing and Community Development Act of 1992, and the property receives project-based assistance as described in § 36.160, the owner shall provide the lead hazard information pamphlet developed by the Environmental Protection Agency, pursuant to section 406(a) of the Toxic Substances Control Act, 15 U.S.C. 2686 to the tenant.

§ 36.164 Notice of evaluation, paint repair and hazard reduction activities.

(a) *Notice of evaluation.* In cases where evaluation is undertaken, each owner shall provide a notice to tenants.

(1) Notice of the evaluation must include:

(i) A summary of the nature, scope and results of the evaluation; and

(ii) A contact name and phone number for more information, or to obtain access to the actual evaluation report.

(2) The owner shall post or distribute the notice within 15 calendar days of receiving the evaluation report.

(b) *Notice of paint repair and hazard reduction.* In cases where paint repair or hazard reduction is undertaken, each owner shall provide a notice to tenants.

(1) Notice of paint repair or hazard reduction must include:

(i) A summary of the nature, scope and results of the paint repair or hazard reduction;

(ii) A contact name and phone number for more information; and

(iii) Available information on the location of any remaining lead-based paint on a surface-by-surface basis.

(2) The owner shall post or distribute the notice within 15 calendar days of completing paint repair or hazard reduction.

(3) The owner shall periodically update the notice, based on any reevaluation of the residential property and as additional paint repair or hazard reduction work is conducted.

(c) *Availability of notices of evaluation, paint repair and hazard reduction.* (1) The notices of evaluation, paint repair or hazard reduction must be of a size and type that is easily read by tenants.

(2) To the extent practicable, each notice shall be made available, upon request, in an accessible format to persons with disabilities (i.e. braille, large type, computer disk, audio tape).

(3) To the extent practicable, each notice shall be provided in the tenant's primary language.

(4) The owner shall provide the notices to the tenants by:

(i) Posting it in a centrally located, easily accessible common area; or

(ii) Distributing it to each occupied dwelling unit.

§ 36.166 Risk assessments.

(a) *Risk assessments prior to the agreement period.* Prior to the agreement to enter into a housing assistance payment (HAP) contract or the project rental assistance contract (PRAC), each owner shall complete a risk assessment in accordance with part 37, subpart B, of this subtitle. If the risk assessment identifies lead-based paint hazards, the owner shall also submit a plan in accordance with § 36.168 prior to execution of the Agreement to Enter into a HAP Contract or the PRAC contract.

(b) *Risk assessment during the housing assistance payment contract period.* If a risk assessment and a hazard reduction plan were not completed prior to the agreement period described in (a) of this section, each owner shall complete a risk assessment in accordance with part 37, subpart B, of this subtitle. If the risk assessment identifies lead-based paint hazards, the owner shall submit a plan in accordance with § 36.168. Each risk assessment must be completed no later than the following schedule or a schedule otherwise determined by the Secretary:

(1) Risk assessments must be completed on or before (2 years after the effective date of this rule) in a multifamily property constructed before 1960.

(2) Risk assessments must be completed on or before (4 years after the effective date of this rule) in a multifamily property constructed after 1959 and before 1965.

(3) Risk assessments must be completed on or before (6 years after the effective date of this rule) in a multifamily property constructed after 1964 and before 1971.

(4) Risk assessments must be completed on or before (8 years after the effective date of this rule) in a multifamily property constructed after 1970 and before 1978.

§ 36.168 Hazard reduction plan.

If a risk assessment report identifies lead-based paint hazards, the owner shall develop an hazard reduction plan (hereafter, ''the plan'').

(a) *Contents of the plan.* The plan must propose hazard reduction activities consistent with the findings of the risk assessment report. Hazard reduction must be conducted in accordance with part 37, subparts E and F, of this subtitle, and are completed when cleanup and clearance is achieved in accordance with part 37, subparts H and I, of this subtitle. The plan must include the following:

(1) A summary of the nature, scope and results of the risk assessment, including the acceptable hazard reduction methods identified by the risk assessor;

(2) A detailed description of the nature and scope of the hazard reduction to be conducted;

(3) A description of how the requirements of § 36.172 will be conducted;

(4) A schedule for completing initial hazard reduction;

(5) An estimated cost of conducting the initial hazard reduction activities, including costs for clean-up, clearance, and monitoring; and

(6) Proof that the owner has sufficient funds to complete the initial hazard reduction activities proposed in the plan, except that such proof is not required for properties receiving assistance under the Section 8 Project-Based Certificate program.

(b) *Owner action.* (1) If no rent adjustment is necessary to implement the plan, the owner shall certify to the Department that the contents of the plan are consistent with the requirements of part 37, subparts E, F, H, and I, of this subtitle. The certification must be submitted to the Department and a copy must be provided to any Contract Administrator or HA no later than 120 days after completion of the risk assessment, unless otherwise permitted by the Department.

(2) If a rent adjustment is necessary to implement the hazard reduction plan, the owner shall submit the plan to the Department and a copy must be provided to any Contract Administrator or HA in conjunction with the next rent adjustment request, but no later than 120 days after completion of the risk assessment, unless otherwise permitted by the Department. This requirement does not apply to properties receiving assistance under the Section 8 Project-Based Certificate program.

(c) *HUD approval.* The Department shall review each plan submitted by an owner in conjunction with a rent adjustment request. The Department may recommend alternative activities for reducing lead-based paint hazards if the hazard reduction activities described in the plan are determined by the Department to be too costly for the property. Any alternative activity proposed by the Department must be consistent with the risk assessment report for the property and must be conducted in accordance with part 37, subparts E, F, H, and I, of this subtitle. The Department shall also conduct an environmental review in accordance with part 50 of this subtitle prior to approval of the hazard reduction plan or recommendation of alternative hazard reduction activities. A copy of the Department's determinations shall be transmitted to any Contract Administrator or HA. The requirements of this paragraph (c) do not apply to properties receiving assistance under the Section 8 Project-Based Certificate program.

§ 36.169 Hazard reduction.

Each owner shall conduct hazard reduction to treat the lead-based paint hazards identified in § 36.166 in accordance with part 37, subparts E and F, of this subtitle. Hazard reduction are considered completed when cleanup and clearance are achieved in accordance with part 37, subparts H and I, of this subtitle.

§ 36.170 EBL child.

(a) *Risk assessment and hazard reduction.* If a child less than 6 years of age living in a dwelling unit has an EBL, the owner shall immediately conduct a risk assessment in accordance with part 37, subpart B, of this subtitle. Hazard reduction of identified lead-based paint hazards must be conducted in accordance with part 37, subparts E and F, of this subtitle, and are completed when cleanup and clearance are achieved in accordance with part 37, subparts H and I, of this subtitle.

(b) *Reporting requirement.* The owner shall report the name and address of an identified EBL child to the State or local health agency. In the case of a property receiving assistance under the Section 8 Project-Based Certificate program and the Section 8 Moderate Rehabilitation program, the owner shall also report the name and address of the EBL child to the public housing agency.

§ 36.172 Other required practices.

(a) *Required practices.* If hazard reduction is conducted the following practices are required:

(1) *Occupant protection and worksite preparation* in accordance with part 37, subpart G, of this subtitle.

(2) *Monitoring* in accordance with part 37, subpart J, of this subtitle.

(b) *Control of new hazards.* If monitoring identifies new lead-based paint hazards, each owner shall conduct additional hazard reduction activities in accordance with subparts E and F. Hazard reduction is completed when cleanup and clearance are achieved in accordance with part 37, subparts H and I, of this subtitle.

Subpart J—Disposition of HUD-Owned and Mortgagee-in-Possession Multifamily Property (With Sufficient Appropriations)

§ 36.180 Purpose and applicability.

The purpose of this subpart is to establish procedures to eliminate as far as practicable lead-based paint hazards prior to the disposition (*i.e.* sale) of a multifamily property that is owned by HUD or for which HUD is identified as mortgagee-in-possession. The Secretary shall determine:

(a) if there are sufficient appropriations to cover the costs of §§ 36.184 through 36.190; and

(b) when the procedures in these sections will take effect.

§ 36.182 Exemption.

(a) In the absence of appropriations sufficient to cover the costs of §§ 36.184 through 36.190 as determined by the Secretary, these requirements shall not apply to the Department. Instead, the Department shall, at a minimum, follow the requirements of subpart K of this part.

(b) A dwelling unit that has sustained extensive damage requiring major rehabilitation or demolition is exempt from the requirements of §§ 36.184 through 36.190.

§ 36.184 Disposition of multifamily property constructed before 1960.

(a) *Hazard evaluation.* Before publicly advertising the property for sale, the Department shall conduct a risk assessment and a paint inspection in accordance with part 37, subparts B and C, of this subtitle.

(b) *Abatement of lead-based paint hazards.* The Department shall conduct abatement of identified lead-based paint hazards in accordance with part 37, subpart F, of this subtitle. Abatement is completed when cleanup and clearance are achieved in accordance with part 37, subparts H and I, of this subtitle. Abatement of all lead-based paint hazards must be completed no later than conveyance of the title by the Department at a HUD-owned sale, or before a foreclosure sale caused by the Secretary when the Department is Mortgagee-in-Possession of the property. If the disposition program under part 290 of this title provides for repairs to be performed by the purchaser, abatement may be included in the required repairs.

§ 36.186 Disposition of multifamily property constructed after 1959 and before 1978.

(a) *Exemption.* The Secretary may waive the paint inspection and risk assessment requirements of this section if documentation is provided to the Secretary that a risk assessment, performed by a certified risk assessor, shows an absence of lead-based paint hazards, or that a paint inspection, performed by a certified paint inspector, shows an absence of lead-based paint. In addition, the Secretary may waive the requirements of this section if a clearance test conducted by a certified risk assessor has indicated the absence of lead-based paint hazards.

(b) *Hazard evaluation.* Before publicly advertising the property for sale, the Department shall conduct a risk assessment and a paint inspection in accordance with part 37, subparts B and C, of this subtitle.

§ 36.188 EBL child.

(a) *Hazard evaluation and reduction.* If a child less than age 6 living in a multifamily dwelling unit owned by the Department (or where the Department is Mortgagee-in-Possession) has an EBL, the Department shall immediately conduct a risk assessment and a paint inspection in accordance with part 37, subparts B and C, of this subtitle. Reduction of identified lead-based paint hazards must be conducted in accordance with part 37, subparts E and F, of this subtitle, and is completed when cleanup and clearance are achieved in accordance with part 37, subparts H and I, of this subtitle.

(b) *Reporting requirement.* The Department shall report the name and address of an identified EBL child to the State or local health agency.

§ 36.190 Other required practices.

(a) *Required practices.* If reduction of lead-based paint hazards is conducted, the following practices are required:

(1) *Occupant protection and worksite preparation* in accordance with part 37, subpart G, of this subtitle.

(2) *Monitoring* must be conducted in accordance with part 37, subpart J, of this subtitle if the Department retains ownership of the property for more than 1 year.

(b) *Control of new hazards.* If monitoring identifies new lead-based paint hazards, the Department shall conduct abatement in accordance with part 37, subpart F, of this subtitle. Abatement is completed when cleanup and clearance are achieved in accordance with part 37, subparts H and I, of this subtitle.

Subpart K—Disposition of HUD-Owned and Mortgagee-in-Possession Multifamily Property (Without Sufficient Appropriations)

§ 36.200 Purpose and applicability.

In the absence of appropriations sufficient to cover the costs of subpart J as determined by the Secretary, the purpose of this subpart is to establish alternative procedures to eliminate as far as practicable lead-based paint hazards prior to the disposition (*i.e.* sale) of a multifamily property that is owned by HUD or for which HUD is identified as mortgagee-in-possession.

§ 36.202 Exemptions.

(a) *Limited paint inspection.* The Department shall be exempt from the requirements of §§ 36.204 through 36.210 for a specific deteriorated paint surface if documentation exists that a paint inspection has been completed in accordance with part 37, subparts B or C, of this subtitle, and indicates the absence of lead-based paint on each surface to be exempt (*i.e.* lead-free). Results of additional test(s) by a certified paint inspector may be used to confirm or refute a prior finding.

(b) *Extensive damage.* A dwelling unit that has sustained extensive damage requiring major rehabilitation or demolition is exempt from the requirements of §§ 36.204 through 36.210.

§ 36.204 Visual evaluation of painted surfaces.

Before publicly advertising the property for sale, the Department shall conduct a visual evaluation of all painted surfaces in order to identify deteriorated paint.

§ 36.206 Paint repair and cleanup.

(a) *Paint repair and cleanup.* The Department shall repair each deteriorated paint surface and conduct cleanup of the worksite in accordance with part 37, subpart D, of this subtitle.

(b) *Completion of paint repair and cleanup.* Paint repair and cleanup of deteriorated paint surfaces must be completed no later than conveyance of the title by the Department at a HUD-owned sale, or before a foreclosure sale caused by the Secretary when the Department is Mortgagee-in-Possession of the property. If the disposition program under part 290 of this title

provides for repairs to be performed by the purchaser, paint repair and cleanup may be included in the required repairs.

(c) *Occupancy.* In the case of sale or lease, occupancy is not permitted until all required paint repair and cleanup is complete.

§ 36.208 EBL child.

(a) *Hazard evaluation and reduction.* If a child less than age 6 living in a multifamily dwelling unit owned by the Department (or where the Department is Mortgagee-in-Possession) has an EBL, the Department shall immediately conduct a risk assessment in accordance with part 37, subpart B, of this subtitle. Reduction of identified lead-based paint hazards must be conducted in accordance with part 37, subparts E and F, of this subtitle, and are completed when cleanup and clearance are achieved in accordance with part 37, subparts H and I, of this subtitle.

(b) *Reporting requirement.* The Department shall report the name and address of an identified EBL child to the State or local health agency.

§ 36.210 Monitoring.

If the Department retains ownership of the property for more than 1 year, monitoring must be conducted in accordance with part 37, subpart J, of this subtitle. If monitoring identifies new deteriorated paint surfaces, the Department shall conduct paint repair and cleanup in accordance with part 37, subpart D, of this subtitle.

Subpart L—Rehabilitation

§ 36.220 Purpose and applicability.

(a) *Purpose and applicability.* The purpose of this subpart 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 the Secretary. These programs include the Community Development Block Grant (42 U.S.C. 5301 *et seq.*), HOME Investment Partnerships (42 U.S.C. 12701–12840), HOPE for Homeownership of Single Family Homes (HOPE 3), (42 U.S.C. 12891–12898); Indian Community Development Block Grant Program (42 U.S.C. 5301 *et seq.*, and 25 U.S.C. 450 *et seq.*); Indian HOME Investment Partnerships (42 U.S.C. 12701–12840, and 25 U.S.C. 450 *et seq.*); Homeownership of Multifamily Units (HOPE 2) (42 U.S.C. 12871–12880); Emergency Shelter Grants (42 U.S.C. 11371–11378); Permanent Housing for Handicapped Homeless Persons (42 U.S.C. 11381 *et seq.*); Supportive Housing Program (42 U.S.C. 11381–11389); and the Flexible Subsidy-Capital Improvement Loan Program (12 U.S.C. 1715z–1a).

(b) *Delegation of responsibility.* Where applicable, the grantee or participating jurisdiction may require the subrecipient or other entity administering Federal rehabilitation assistance to perform the responsibilities set forth in this subpart.

§ 36.222 Definitions.

For purposes of this subpart:

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

Hard costs of rehabilitation means:

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

(2) Costs to make essential improvements, including energy-related repairs, and those necessary to permit use by handicapped persons; 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.

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

§ 36.224 Exemptions.

(a) Any rehabilitation that does not disturb a painted surface is exempt from the requirements of this subpart, except for the requirements of § 36.230.

(b) If a grantee, participating jurisdiction or CILP recipient certifies to the Department that a residential property undergoing federally funded rehabilitation has previously removed all lead-based paint, the requirements of this subpart do not apply.

(c) A dwelling unit may be exempt from the requirement to conduct a limited paint inspection if the grantee, participating jurisdiction or CILP recipient provides certification that a paint inspection has been previously completed in accordance with part 37, subpart C, of this subtitle and indicates the absence of lead-based paint in the dwelling unit (i.e. lead-free). Results of additional test(s) by a certified paint inspector may be used to confirm or refute a prior finding.

§ 36.226 Rehabilitation costs.

(a) *Applicability.* This section applies to recipients of Federal rehabilitation assistance as described in § 36.220, except for CILP recipients.

(b) *Rehabilitation assistance.* For purposes of implementing §§ 36.234 through 36.238, rehabilitation assistance is based on an average per unit investment of Federal funds for the hard costs of rehabilitation excluding lead-based paint hazard evaluation and cleanup activities.

(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 Rehab $ = [Total Federal Rehab Assistance for Units + (Federal Rehab $ for Common Areas & Exterior Painted Surfaces × % of Units Federally Assisted)] / Number of Federally Assisted Units.

(2) Example: 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 would be $12,250. This is illustrated as follows: $12,250 = [$90,000 + ($10,000 × 80%)] / 8.

§ 36.228 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.

§ 36.229 Determining evaluation, paint repair and hazard reduction requirements.

The following examples illustrate how to determine whether the requirements of §§ 36.234, 36.236, or 36.238 apply to a dwelling unit receiving Federal rehabilitation assistance (dollar amounts are on a per unit basis):

(a) If the total investment of Federal assistance is $2,000, and the hard costs of rehabilitation are $10,000, the lead-based paint requirements would be: visual evaluation, paint repair and cleanup under § 36.232, because Federal assistance is less than $5,000.

(b) If the total investment of Federal assistance is $6,000, and the hard costs of rehabilitation are $2,000, the lead-

based paint requirements would be the same as in paragraph (a) of this section. Although the total Federal investment is more than $5,000, only $2,000 constitutes Federal rehabilitation assistance.

(c) If the total investment of Federal assistance is $6,000, and the hard costs of rehabilitation are $6,000, the lead-based paint requirements would be: paint inspection, risk assessment and reduction under § 36.236.

§ 36.230 Lead hazard information pamphlet.

The grantee, participating jurisdiction or CILP recipient shall provide the lead hazard information pamphlet developed by the Environmental Protection Agency pursuant to section 406(a) of the Toxic Substance Control Act, 15 U.S.C. 2686 to the tenant, owner-occupant or purchaser of a residential property that receives Federal rehabilitation assistance under this subpart.

§ 36.232 Notice of evaluation, paint repair and hazard reduction activities.

(a) *Notice of evaluation.* In cases where evaluation is undertaken as part of federally funded rehabilitation, each grantee, participating jurisdiction or CILP recipient shall provide a notice to tenants.

(1) Notice of the evaluation must include:

(i) A summary of the nature, scope and results of the evaluation; and

(ii) A contact name and phone number for more information or to obtain access to the actual evaluation report.

(2) The grantee, participating jurisdiction or CILP recipient shall post or distribute the notice within 15 calendar days of receiving the evaluation report.

(b) *Notice of paint repair and hazard reduction activities.* In cases where paint repair or hazard reduction activities are undertaken as part of a federally assisted rehabilitation, each grantee, participating jurisdiction or CILP recipient shall provide a notice to tenants.

(1) Notice of paint repair or hazard reduction activities must include:

(i) A summary of the nature, scope and results of the paint repair or lead hazard reduction activities;

(ii) A contact name and phone number for more information; and

(iii) Available information on the location of any remaining lead-based paint on a surface-by-surface basis.

(2) The grantee, participating jurisdiction or CILP recipient shall post or distribute the notice within 15 calendar days of completing hazard reduction activities.

(3) The grantee, participating jurisdiction or CILP recipient shall periodically update the notice, based on any reevaluation of the residential property and as additional paint repair or lead hazard reduction work is conducted.

(c) *Availability of notices of evaluation, paint repair and hazard reduction.* (1) The notices of evaluation, paint repair or hazard reduction must be of a size and type that are easily read by tenants.

(2) To the extent practicable, each notice shall be made available, upon request, in an accessible format to persons with disabilities (i.e. braille, large type, computer disk, audio tape).

(3) To the extent practicable, each notice shall be provided in the tenant's primary language.

(4) The owner shall provide each notice to the tenants by:

(i) Posting it in a centrally located, easily accessible common area; or

(ii) Distributing it to each occupied dwelling unit.

§ 36.234 Residential property receiving an average of less than $5,000 per unit in Federal rehabilitation assistance.

(a) *Visual evaluation.* Each grantee, participating jurisdiction or CILP recipient shall conduct a visual evaluation of all painted surfaces to be disturbed by rehabilitation in order to identify deteriorated paint.

(b) *Paint repair and cleanup.* Before occupancy of a vacant dwelling unit or, where a unit is occupied, before completion of rehabilitation, the grantee, participating jurisdiction or CILP recipient shall repair each deteriorated paint surface and conduct cleanup of the worksite in accordance with part 37, subpart D, of this subtitle.

§ 36.236 Residential property receiving an average of $5,000 or more and $25,000 or less per unit in Federal rehabilitation assistance.

(a) *Limited paint inspection.* Each grantee, participating jurisdiction or CILP recipient shall complete a limited paint inspection in accordance with part 37, subpart C, of this subtitle. Each limited paint inspection must be conducted before occupancy of a vacant dwelling unit or, where a unit is occupied, before rehabilitation work begins.

(b) *Risk assessment.* Each grantee, participating jurisdiction or CILP recipient shall complete a risk assessment in the federally assisted dwelling units, and in associated common areas and exterior painted surfaces, in accordance with part 37, subpart B, of this subtitle. A risk assessment must be conducted before occupancy of a vacant dwelling unit or, where a unit is occupied, before rehabilitation work begins.

(c) *Hazard reduction.* Each grantee, participating jurisdiction or CILP recipient shall conduct hazard reduction activities in accordance with part 37, subparts E and F, of this subtitle if a limited paint inspection identifies lead-based paint, or a risk assessment identifies a lead-based paint hazard. Hazard reduction activities are completed when cleanup and clearance are achieved in accordance with part 37, subparts H and I, of this subtitle.

§ 36.238 Residential property receiving an average of more than $25,000 per unit in Federal rehabilitation assistance.

(a) *Limited paint inspection.* Each grantee, participating jurisdiction or CILP recipient shall complete a limited paint inspection in accordance with part 37, subpart C, of this subtitle. Each limited paint inspection must be conducted before occupancy of a vacant dwelling unit or, where a unit is occupied, before rehabilitation work begins.

(b) *Risk assessment.* Each grantee, participating jurisdiction or CILP recipient shall complete a risk assessment in the federally assisted dwelling units, and in associated common areas and exterior painted surfaces, in accordance with part 37, subpart B, of this subtitle. A risk assessment must be conducted before occupancy of a vacant dwelling unit or, where a unit is occupied, before rehabilitation begins.

(c) *Abatement of lead-based paint hazards.* Each grantee, participating jurisdiction or CILP recipient shall abate any lead-based paint hazard on a surface to be disturbed by rehabilitation identified in paragraphs (a) or (b) of this section in accordance with part 37, subpart F, of this subtitle. Abatement is completed when cleanup and clearance are achieved in accordance with part 37, subparts H and I, of this subtitle.

(d) *Hazard reduction.* Each grantee, participating jurisdiction or CILP recipient shall conduct hazard reduction activities in accordance with part 37, subparts E and F, of this subtitle if a risk assessment identifies a lead-based paint hazard on a surface not disturbed by rehabilitation and the hazard has not been abated in accordance with paragraph (c) of this section. Hazard reduction activities are completed when cleanup and clearance are achieved in accordance with part 37, subparts H and I, of this subtitle.

§ 36.240 Other required practices.

If paint repair or hazard reduction is conducted the following practices are required:

(a) *Occupant protection and worksite preparation* in accordance with part 37, subpart G, of this subtitle.

(b) *Monitoring,* to the extent practicable, must be conducted in accordance with part 37, subpart J, of this subtitle.

Subpart M—Community Planning and Development (CPD) Non-Rehabilitation Programs

§ 36.250 Purpose and applicability.

(a) *Purpose and applicability.* The purpose of this subpart is to establish procedures to eliminate as far as practicable lead-based paint hazards in a residential property that receives Federal assistance under certain programs administered by the Secretary for acquisition or leasing, tenant-based rental assistance, or for support services or operation provided for a property. These programs include the Community Development Block Grant (42 U.S.C. 5301 *et seq.*); HOME Investment Partnerships (42 U.S.C. 12701–12840); Homeownership of Multifamily Units (HOPE 2) (42 U.S.C. 12871–12880); HOPE for Homeownership of Single Family Homes (HOPE 3) (42 U.S.C. 12891–12898); Indian Community Development Block Grant Program (42 U.S.C. 5301 *et seq.*); Indian HOME Investment Partnerships (25 U.S.C. 450 *et seq.*); Housing Opportunities for Persons with Aids (HOPWA) (42 U.S.C. 12901–12912); Permanent Housing for Handicapped Homeless Persons (42 U.S.C. 11381 *et seq.*); and Supportive Housing Program (42 U.S.C. 11381–11389).

(b) *Delegation of responsibility.* Where applicable, the grantee or participating jurisdiction may require the subrecipient administering Federal assistance to perform the responsibilities set forth in this subpart.

§ 36.252 Definition—subrecipient.

Subrecipient means any organization selected by the grantee or participating jurisdiction to administer all or a portion of the Federal assistance. An owner or developer of an assisted property is not considered a subrecipient for the purposes of carrying out that project.

§ 36.254 Exemption—limited paint inspection.

The requirements of §§ 36.258 and 36.260 do not apply for a specific deteriorated paint surface if the grantee or participating jurisdiction certifies that a paint inspection has been completed in accordance with part 37, subparts B or C, of this subtitle, and indicates the absence of lead-based paint on the specific deteriorated paint surface (*i.e.* lead-free). Results of additional test(s) by a certified paint inspector may be used to confirm or refute a prior finding.

§ 36.256 Lead hazard information pamphlet.

The grantee or participating jurisdiction shall provide the lead hazard information pamphlet developed by the Environmental Protection Agency pursuant to section 406(a) of the Toxic Substance Control Act, 15 U.S.C. 2686 to the tenant, owner-occupant or purchaser of a residential property that receives Federal assistance under this subpart.

§ 36.258 Residential property constructed before 1950.

If a dwelling unit receives Federal assistance under this subpart (except with tenant-based rental assistance), each grantee or participating jurisdiction shall conduct:

(a) A visual evaluation of all painted surfaces in order to identify deteriorated paint;

(b) Dust testing in accordance with § 37.16 of this subtitle to determine the presence of lead-contaminated dust; and

(c) Paint repair of each deteriorated surface and cleanup in accordance with part 37, subpart D, of this subtitle before occupancy of a vacant dwelling unit or, where a unit is occupied, immediately after receipt of Federal assistance. If the dust testing required in paragraph (b) of this section identifies the presence of lead-contaminated dust, the grantee or participating jurisdiction shall conduct cleanup of the horizontal surfaces in the room, dwelling unit or common areas where the lead-contaminated dust is located. If the dust testing indicates the absence of lead-contaminated dust, the grantee or participating jurisdiction shall conduct cleanup of the worksite.

§ 36.260 Residential property constructed after 1949 and before 1978.

If a dwelling unit receives Federal assistance under this subpart (except with tenant-based rental assistance), each grantee or participating jurisdiction shall conduct:

(a) A visual evaluation of all painted surfaces in order to identify deteriorated paint;

(b) Paint repair of each deteriorated surface and cleanup of the worksite in accordance with part 37, subpart D, of this subtitle before occupancy of a vacant dwelling unit or, where a unit is occupied, immediately after receipt of Federal assistance.

§ 36.262 Tenant-based rental assistance.

(a) *Applicability.* Tenant-based rental assistance provided to a family with a child less than 6 years of age is subject to the requirements of part 36, subpart O, of this subtitle, except for § 36.294.

(1) *Lead hazard information pamphlet.* The grantee or participating jurisdiction shall provide the lead hazard information pamphlet in accordance with § 36.256.

(2) The HOME administering agency shall assume the responsibilities of the HA set out in subpart O of this part.

(b) *Monitoring.* For assistance provided under part 92 of this subtitle, monitoring must be conducted as part of the periodic unit inspection required under § 92.211(g) of this subtitle.

Subpart N—Public and Indian Housing Programs

§ 36.270 Purpose and applicability.

The purpose of this subpart is to establish procedures to eliminate as far as practicable lead-based paint hazards in existing public and Indian housing projects that are covered under Public Housing Development (42 U.S.C. 1437b, 1437c and 1437g); Public Housing Operating Subsidy (42 U.S.C. 1437g); Public Housing Authority Owned or Leased Projects—Maintenance and Operation (42 U.S.C. 1437d and 1437g); Public Housing Modernization (Comprehensive Grant Program) (42 U.S.C. 1437l); Public Housing Modernization (Comprehensive Improvement Assistance Program) (42 U.S.C. 1437l); Homeownership and Opportunity for People Everywhere (HOPE 1) (42 U.S.C. 1437aaa *et seq.*); Public and Indian Housing Drug Elimination (42 U.S.C. 11901 note); and the Indian Housing Programs (42 U.S.C. 1437aa *et seq.*).

§ 36.272 Definition—Public or Indian housing project.

Public or Indian housing project means a residential property developed, acquired or assisted by a public or Indian housing agency under the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*) and the improvement of any such property, other than under section 8 of that 1937 Act.

§ 36.274 Lead hazard information pamphlet.

If a tenant resides in a dwelling unit prior to the effective date of the regulation implementing section 1018 of Title X of the Housing and Community Development Act of 1992 (42 U.S.C. 4852d), and the unit receives Federal

assistance under a program described in § 36.270, the public or Indian housing agency (hereafter, ''HA'') shall provide the lead hazard information pamphlet developed by the Environmental Protection Agency, pursuant to section 406(a) of the Toxic Substances Control Act, 15 U.S.C. 2686, to the tenant upon recertification of income eligibility.

§ 36.276 Notices of evaluation and reduction of lead-based paint and lead-based paint hazards.

(a) *Notice of evaluation of lead-based paint and lead-based paint hazards.* In cases where lead-based paint or lead-based paint hazard evaluation is undertaken, each HA shall provide a notice to all tenants.

(1) Notice of the evaluation must include:

(i) A summary of the nature, scope and results of the evaluation; and

(ii) A contact name and phone number for more information, or to obtain access to the actual evaluation report.

(2) The HA shall post or distribute the notice within 15 calendar days of receiving the evaluation report.

(b) *Notice of reduction of lead-based paint or lead-based paint hazards.* In cases where reduction of lead-based paint or lead-based paint hazards is undertaken, each HA shall provide a notice to tenants.

(1) Notice of hazard reduction must include:

(i) A summary of the nature, scope and results of the hazard reduction activities;

(ii) A contact name and phone number for more information; and

(iii) Available information on the location of any remaining lead-based paint on a surface-by-surface basis.

(2) The HA shall post or distribute the notice within 15 calendar days of completing hazard reduction activities.

(3) The HA shall periodically update the notice, based on reevaluation of the public and Indian housing project and as any additional hazard reduction work is conducted.

(c) *Availability of notices of lead hazard evaluation and reduction activities.* (1) The notices of evaluation and hazard reduction must be of a size and type that is easily read by tenants.

(2) To the extent practicable, each notice shall be made available, upon request, in an accessible format to persons with disabilities (i.e. braille, large type, computer disk, audio tape).

(3) To the extent practicable, each notice shall be provided in the tenant's primary language.

(4) The HA shall provide each notice to the tenants by:

(i) Posting it in a centrally located, easily accessible common area; or

(ii) Distributing it to each occupied public and Indian housing project unit.

§ 36.278 Evaluation.

(a) *Exemption.* A public or Indian housing project shall be exempt from the requirements of this section if the HA can certify to the Department that:

(1) The public or Indian housing project has previously had all lead-based paint removed and all lead-based paint hazards have been abated; or

(2) A paint inspection described in paragraph (b) of this section and a risk assessment conducted in accordance with part 37, subpart B, of this subtitle were completed prior to (the effective date of this rule).

(b) *Paint inspection.* Each HA shall complete a paint inspection in the public and Indian housing project in accordance with part 37, subpart C, of this subtitle no later than (the effective date of this rule). If a paint inspection was completed prior to [the effective date of this rule], the Department strongly encourages each HA to conduct quality control activities in accordance with procedures established by the Secretary for on-site lead-based paint testing activities. Quality control activities are encouraged in order to determine whether a paint inspection has been properly performed and the results are reliable.

(c) *Visual evaluation, dust and soil tests.* If a paint inspection has indicated the presence of lead-based paint, each HA shall complete a visual evaluation to identify the location of deteriorated paint and conduct dust and soil tests in the public and Indian housing project. Dust and soil tests must be conducted in accordance with §§ 37.16 and 37.18, of this subtitle, respectively, and must be completed on or before January 1, 1999. The HA shall identify locations of deteriorated lead-based paint based upon the visual evaluation and the paint inspection.

(d) *Soil test.* Except for the mutual-help homeownership projects and Turnkey III projects covered under the Indian Housing Program, each HA shall complete a soil test in the public and Indian housing project, even if a paint inspection has indicated that no lead-based paint is present. A soil test must be conducted in accordance with § 37.18 of this subtitle and must be completed on or before January 1, 1999.

(e) *Training.* An individual or firm conducting evaluation other than paint inspection on behalf of an HA shall be trained in lead hazard evaluation. An individual or firm conducting paint inspection shall meet the qualifications set out in § 37.1(b) of this subtitle.

§ 36.280 Interim controls.

Each HA shall conduct interim controls to treat the lead-based paint hazards identified in § 36.278 in accordance with part 37, subpart E, of this subtitle, prior to abatement of these hazards as required in § 36.282. Initial interim controls must begin within 30 days of completing the evaluation requirements described in § 36.278. Interim controls are completed when cleanup and clearance are achieved in accordance with part 37, subparts H and I, of this subtitle.

§ 36.282 Abatement.

Each HA shall abate all lead-based paint and lead-based paint hazards identified in § 36.278 in accordance with part 37, subpart F, of this subtitle. Abatement must be conducted according to the following schedule:

(a) *HAs receiving modernization assistance.* Each HA shall conduct abatement of lead-based paint and lead-based paint hazards during the course of physical improvements conducted under modernization as described in part 968 of this title.

(b) *HAs not receiving modernization assistance.* Each HA shall conduct abatement of lead-based paint and lead-based paint hazards as soon as practicable after the evaluation requirements of § 36.278 are completed. Abatement is completed when cleanup and clearance are achieved in accordance with part 37, subparts H and I, of this subtitle.

§ 36.284 EBL child.

(a) *Hazard evaluation and reduction.* If a child less than 6 years of age living in a public or Indian housing project has an EBL, the HA shall complete a risk assessment in accordance with part 37, subpart B, of this subtitle, within 15 days of notification of the child's EBL. The HA shall conduct reduction of identified lead-based paint hazards in accordance with part 37, subparts E and F, of this subtitle, within 15 days from receipt of the risk assessment report. Hazard reduction activities are completed when cleanup and clearance are achieved in accordance with part 37, subparts H and I, of this subtitle; or

(b) *Relocation.* If a child less than 6 years of age living in a public or Indian housing project has an EBL, the HA may assign the family to a post-1978 or previously evaluated unit (as described in § 36.278) which was found to be free of lead-based paint hazards, or in which such hazards have been abated as described in § 36.282.

(c) *Notice of hazard evaluation and reduction.* The HA shall notify building tenants of any evaluation or hazard reduction activities as described in § 36.276.

(d) *Reporting requirement.* The HA shall report the name and address of an identified EBL child to the State or local health agency.

§ 36.286 Other required practices.

(a) *Required practices.* If hazard reduction is conducted, the following practices are required:

(1) *Occupant protection and worksite preparation* in accordance with part 37, subpart G, of this subtitle.

(2) *Monitoring* in accordance with part 37, subpart J, of this subtitle.

(b) *Control of new hazards.* If monitoring identifies new lead-based paint hazards, each HA shall conduct additional hazard reduction activities in accordance with part 37, subparts E and F, of this subtitle. Hazard reduction is completed when cleanup and clearance are achieved in accordance with part 37, subparts H and I, of this subtitle.

Subpart O—Tenant-Based Rental Assistance

§ 36.290 Purpose and applicability.

(a) *Purpose.* The purpose of this subpart is to establish procedures to eliminate as far as practicable lead-based paint hazards in existing dwelling units where a tenant with a child less than 6 years of age resides and the tenant receives assistance through a tenant-based housing assistance program administered by the Secretary. The tenant-based housing assistance programs are the section 8 tenant-based rental certificate program and the section 8 rental voucher program under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f); the HOME Tenant-Based Rental Assistance Program (42 U.S.C. 12701–12840); and Shelter Plus Care Tenant-Based Rental Assistance (42 U.S.C. 11403 *et.seq.*).

(b) *Applicability.* The requirements of this subpart apply to:

(1) All painted surfaces within a dwelling unit constructed before 1978 (including ceilings);

(2) Painted surfaces in the entrance and hallway providing access to a unit;

(3) Exterior painted surfaces up to 5 feet from the floor or ground that are readily accessible to a child under age six including, but not limited to, walls, stairs, decks, porches, railings, windows and doors; and

(4) painted playground equipment and painted boundary fences surrounding a child's exterior play area.

(c) The requirements of this section do not apply to outbuildings such as garages and sheds, or bare soil surrounding the residential property.

§ 36.292 Exemptions.

(a) *Limited paint inspection.* The requirements of §§ 36.296 through 36.302 do not apply for a specific deteriorated paint surface if the owner certifies to the HA that a paint inspection has been completed in accordance with part 37, subparts B or C, of this subtitle, and indicates the absence of lead-based paint on the specific deteriorated paint surface (i.e. lead-free). Results of additional test(s) by a certified paint inspector may be used to confirm or refute a prior finding.

(b) *Abatement of lead-based paint.* An owner shall be exempt from the requirements of §§ 36.296 through 36.302 for a dwelling unit if certification is provided to the HA that the unit has been abated of all lead-based paint in accordance with part 37, subpart F, of this subtitle.

§ 36.294 Lead hazard information pamphlet.

If a tenant resides in a dwelling unit prior to the effective date of the regulation implementing section 1018 of Title X of the Housing and Community Development Act of 1992, and receives Federal assistance under a program described in § 36.290, the HA shall provide the lead hazard information pamphlet developed by the Environmental Protection Agency, pursuant to section 406(a) of the Toxic Substance Control Act, 15 U.S.C. 2686 to the tenant at the next periodic unit inspection required under § 982.405 of this title.

§ 36.296 Residential property constructed before 1950; initial inspections.

(a) *Evaluation.* During the initial inspection required at § 982.305 of this title, a Housing Quality Standards (HQS) inspector trained in lead hazard evaluation shall conduct:

(1) A visual evaluation of all painted surfaces in order to identify deteriorated paint; and

(2) Dust testing in accordance with § 37.16 of this subtitle to determine the presence of lead in dust.

(b) *Paint repair and cleanup.* The owner shall repair each deteriorated paint surface and conduct cleanup in accordance with part 37, subpart D, of this subtitle before occupancy of a vacant dwelling unit or, where a unit is occupied, within 30 days of notification of the results of the visual evaluation. If the dust testing required in paragraph (b)(2) of this section identifies the presence of lead-contaminated dust, the owner shall conduct cleanup of the horizontal surfaces in the room, dwelling unit or common areas where the lead-contaminated dust is located. If the dust testing indicates the absence of lead-contaminated dust, the owner shall conduct cleanup of the worksite.

§ 36.298 Residential property constructed before 1950; periodic inspections.

(a) *Visual evaluation.* During the periodic inspection required at § 982.405 of this title, an HQS inspector trained in lead hazard evaluation shall conduct a visual evaluation of all painted surfaces in order to identify deteriorated paint.

(b) *Paint repair and cleanup.* The owner shall repair each deteriorated paint surface and conduct cleanup of the worksite in accordance with part 37, subpart D, of this subtitle, within 30 days of notification of the results of the visual evaluation.

§ 36.300 Residential property constructed after 1949 and before 1978; initial and periodic inspections.

(a) *Visual evaluation.* During the initial and periodic inspections required at §§ 982.305 and 982.405 of this title, an HQS inspector trained in lead hazard evaluation shall conduct a visual evaluation of all painted surfaces in order to identify deteriorated paint.

(b) *Paint repair and cleanup.* The owner shall repair each deteriorated paint surface and conduct cleanup of the worksite, in accordance with part 37, subpart D, of this subtitle, within 30 days of notification of the results of the visual evaluation.

§ 36.302 EBL child.

(a) *Risk assessment and interim controls.* If a child less than 6 years of age living in a dwelling unit where the family receives Federal assistance has an EBL, the owner shall complete a risk assessment in accordance with part 37, subpart B, of this subtitle within 15 calendar days of notification of the child's EBL. The owner shall conduct interim controls of identified lead-based paint hazards in accordance with part 37, subpart E, of this subtitle, within 15 calendar days from receipt of the risk assessment report. Interim controls are completed when cleanup and clearance are achieved in accordance with part 37, subparts H and I, of this subtitle.

(b) *Data collection and recordkeeping responsibilities.* To the extent practicable, the HA or the administering agency shall attempt to obtain annually from the State or local health agency the names and addresses of children less than age six with identified EBLs. The HA or the administering agency shall annually match this information with the names and addresses of families

receiving Federal assistance under a program described in § 36.290. If a match occurs, the HA or the administering agency shall require a risk assessment and interim controls in accordance with § 36.302(a).

PART 37—STANDARDS AND METHODS FOR LEAD-BASED PAINT HAZARD EVALUATION AND REDUCTION ACTIVITIES IN FEDERALLY OWNED RESIDENTIAL PROPERTIES AND HOUSING RECEIVING FEDERAL ASSISTANCE

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Authority: 42 U.S.C. 3535(d) and 4822.

Subpart A—General Requirements

§ 37.1 Purpose and applicability.

(a) This part provides standards and methods for lead-based paint activities required in part 36 of this subtitle.

(b) Paint inspection, risk assessment, and abatement activities, including clearance examinations, shall be performed by paint inspectors, risk assessors and abatement supervisors and workers certified in accordance with EPA regulations at 40 CFR 745.226 (implementing sections 402 and 404 of TSCA (as amended by section 1021 of the Lead-Based Paint Hazard Reduction Act of 1992, 15 U.S.C. 2681 *et seq.*). When paint inspectors, risk assessors and abatement supervisors and workers are not certified in accordance with 40 CFR 745.226, the applicable requirements set forth in this part 37 shall apply. The Secretary may also establish temporary qualifications for paint inspectors, risk assessors, and abatement supervisors and workers, if it is determined that the number of certified personnel is insufficient. With respect to the standards and methods for lead-based paint hazard evaluation and reduction activities that are not included in 40 CFR 745.226, the applicable requirements set forth in this part 37 shall apply.

§ 37.2 Definitions.

Definitions of terms used in this part are found in § 36.3 of this subtitle.

§ 37.4 Reference.

Further information regarding lead-based paint hazard evaluation and reduction activities described in this part 37 is contained in the HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing (June 1995). For information on obtaining copies of these guidelines, contact HUD's Office of Lead-Based Paint Abatement and Poisoning Prevention, 451 Seventh Street, SW, Room B–133, Washington, DC 20410.

§ 37.6 Laboratory analysis.

All laboratories performing analyses of lead in paint, dust, and soil under these regulations shall be accredited by the U.S. Environmental Protection Agency's National Lead Laboratory Accreditation Program (NLLAP). Paint samples must be analyzed in accordance with the requirements of the Environmental Lead Proficiency Analytical Testing Program (ELPAT).

Subpart B—Risk Assessment

§ 37.10 Unit selection.

(a) *Risk assessments of five or more similar dwelling units.* (1) For risk assessments involving five or more similar dwelling units, the risk assessor may perform the risk assessment using a sample of dwelling units. The units in the sample shall be selected in accordance with:

(i) The targeted sampling requirements established by this section; or

(ii) The random sampling requirements established in subpart C of this part.

(2) Any common areas servicing the dwelling units in the sample shall be evaluated in the risk assessment, as well as the surrounding land belonging to the residential property owner.

(3) Any dwelling unit occupied by a child with an elevated blood level shall be excluded from the minimum number of units to be sampled unless units occupied by an EBL child are needed to make up the necessary unit sample size. All units occupied by an EBL child must be investigated in accordance with the requirements of part 36 of this subtitle.

(b) *Risk assessments of less than five dwelling units or of 5 or more dwelling units that are not similar.* For risk assessments of less than 5 dwelling units or of five or more dwelling units that are not similar, the risk assessment shall evaluate each dwelling unit, any common areas, and any surrounding land belonging to the owner.

(c) *Targeted samples.* To obtain a targeted sample of dwelling units, individual units shall be selected in accordance with the following procedures:

(1) Determine the minimum number of dwelling units to be sampled according to Table 1—Minimum Number of Targeted Dwelling Units to Sample Among Similar Dwelling Units.

(2) Rank dwelling units by the following criteria which are listed in order of priority:

(i) Dwelling units cited for housing or building code violations within the past year.

(ii) Dwelling units that the owner designates are in poor condition.

(iii) Dwelling units that contain two or more children between the ages of six months and 6 years with preference given to dwelling units housing the largest number of children.

(iv) Dwelling units that serve as day care facilities.

(v) Dwelling units prepared for reoccupancy within the past three months.

(3) Select dwelling units to meet as many of the criteria as possible.

(i) The risk assessor shall select at least one but not more than four dwelling units that have recently been prepared for reoccupancy, if possible.

(ii) If additional dwelling units are required to meet the minimum sampling number, the risk assessor shall select them randomly.

(iii) If there are many dwelling units that satisfy the same criteria, those with the largest number of children of less than 6 years of age shall be selected.

TABLE 1.—MINIMUM NUMBER OF TARGETED DWELLING UNITS TO SAMPLE AMONG SIMILAR DWELLING UNITS*

Number of similar dwelling units	Number of dwelling units to sample
1–4	All.
15–20	4 units or 50% (whichever is greater).**
21–75	10 units or 20% (whichever is greater).**
76–125	17.
126–175	19.
176–225	20.
226–300	21.
301–400	22.
401–500	23.
501+	24 + 1 for each additional increment of 100 dwelling units or less.

*Does not include dwelling units with EBL children.

**For percentages, round up to determine number of dwelling units to be sampled.

§ 37.12 Requirements for risk assessments.

(a) *General.* (1) Risk assessments shall be conducted in accordance with procedures described in this section. The objectives of a risk assessment are to:

(i) Identify and report on the existence, nature, severity, source, and location of lead-based paint hazards or document that no such hazards have been identified; and

(ii) Identify and report acceptable methods for controlling lead-based paint hazards that are identified, including interim control and abatement measures.

(2) The scope of the risk assessment shall include the worksite, and dwelling units and common areas selected in accordance with § 37.10.

(b) *Visual assessment.* The risk assessor shall perform a visual assessment of the selected dwelling units, common areas, exterior building surfaces and any surrounding land belonging to the owner to identify potential lead-based paint hazards, as follows:

(1) If prior paint inspection reports are available, risk assessors shall consider whether the past paint inspection conformed to current standards. If the prior paint inspection is determined to be reliable and complete, the risk assessor is only required to visually assess surfaces that have been determined to contain lead-based paint. If a paint inspection has not been completed or if the risk assessor determines that the paint inspection report is or may be unreliable, painted surfaces shall be assumed to contain lead-based paint unless tests performed in accordance with the requirements of § 37.14 show that the paint's lead concentration does not exceed the applicable standards.

(2) The risk assessor shall identify any deteriorated paint surfaces and assess the extent of the deterioration. Based on the extent of the deterioration observed, the risk assessor shall rate the paint film condition of each deteriorated surface as intact, fair, or poor using the standards presented in Table 2: Categories of Paint Film Condition.

TABLE 2.—CATEGORIES OF PAINT FILM CONDITION

Type of building component*	Size of affected surface area		
	Intact	Fair	Poor
Exterior components with large surface areas.	Entire surface is intact.	Less than or equal to 10 square feet nonintact.	More than 10 square feet nonintact.
Interior components with large surface areas (walls, ceilings, floors, doors).	Entire surface is intact.	Less than or equal to 2 square feet nonintact.	More than 2 square feet nonintact.
Interior and exterior components with small surface areas (window sills, baseboards, soffits, trim).	Entire surface is intact.	Less than or equal to 10 percent of the total surface area of the component nonintact.	More than 10 percent of the total surface area of the component nonintact.

*Building component in this table refers to each individual component or side of building, not the combined surface area of all similar components in a room (e.g., a wall with one square foot of deteriorated paint is in ''fair'' condition, even if the other 3 walls in a room have no deteriorated paint).

(3) The risk assessor shall identify any painted surfaces where the component has been chewed or mouthed by a child. Painted surfaces where there is clear evidence of teeth marks or that are identified by residents as having been chewed or mouthed by children are examples of such evidence.

(4) The risk assessor shall identify any painted surfaces that are subject to friction or impact such as windows, doors, stair treads, or floors.

(5) The risk assessor shall identify potential soil hazards on the residential property. Potential soil hazards are:

(i) Any large soil in play areas, including sand boxes; and

(ii) Bare soil in areas other than play areas (such as soil along the building foundation or drip line, vegetable gardens, pet sleeping areas, bare dirt pathways) that totals more than 9 square feet per property.

(6) The risk assessor shall examine buildings and the worksite for structural deficiencies or conditions that contribute to observed paint deterioration and other potential lead-based paint hazards. Deterioration in the roof that results in water leaks is an example.

(c) *Evaluation of potential lead-based paint hazards.* (1) The risk assessor shall determine if deteriorated paint surfaces in poor condition and chewed paint surfaces identified during the visual assessment are lead-based paint hazards.

(i) Such surfaces known or assumed to contain lead-based paint shall be considered lead-based paint hazards, except that intact factory applied prime coatings on metal surfaces shall not be considered lead-based paint hazards.

(ii) Such surfaces tested in accordance with the requirements of § 37.14 that have a lead concentration equal to or exceeding 1.0 mg/cm2 (one milligram per square centimeter) or 0.5 percent by weight (5000 parts per million) shall be considered lead-based paint hazards.

(iii) Surfaces in fair condition do not constitute lead-based paint hazards, but may become hazardous in the future. Risk assessors shall recommend that such surfaces be repaired.

(2) Dust tests of all selected dwelling units and common areas shall be performed in accordance with § 37.16 to determine if lead-contaminated dust is present. If either the single surface or composite test results for any room, room equivalent, unit, or common area exceed the following standards, a lead-based paint hazard exists in that room, room equivalent, dwelling unit or common area due to the presence of lead-contaminated dust:

(i) Hard floors—100 ug/ft.^{2} (micrograms of lead per square foot).

(ii) Carpeted floors—100 ug/ft.^{2} (micrograms of lead per square foot).

(iii) Interior window sills—500 ug/ft.^{2} (micrograms of lead per square foot).

(3) If a potential soil hazard is identified during a visual assessment of the worksite, soil tests shall be performed in accordance with § 37.18. If the test results exceed the following standards, the bare soil in these areas shall be considered lead-contaminated:

(i) 400 ug/g (micrograms of lead per gram of soil) in play areas and sand boxes.

(ii) 2,000 ug/g (micrograms of lead per gram of soil) in other areas.

(d) *Evaluation of potential lead-based paint hazards when targeted sampling of units is used.* (1) If a targeted sampling of dwelling units was used to evaluate paint, the results of the paint evaluation shall be analyzed by component and location, as follows:

(i) If all sampled components at a given location (for example, all hallway baseboards or all bathroom walls) exceed the standard or all are below the standard, the risk assessor shall conclude that this condition is true for the total population of similar dwelling units, common areas, and exterior surfaces.

(ii) If a component contains lead-based paint in some dwelling units and not in others, the risk assessor shall conclude that all similar components constitute a hazard, unless a paint inspection is completed in every dwelling unit, common area, or exterior surface, in accordance with the requirements of subpart C of this part.

(2) If targeted sampling was used to evaluate dust, the risk assessor shall calculate the arithmetic mean of the results for each type of component (floors and window sills) by room type. If the mean dust level for a component in the targeted dwelling units exceeds the standard all of the components represented by the sample constitute a hazard in all dwelling units except those components with negative results. If the mean is below the standard, but some of the individual sample results exceed the standard, only those individual surfaces constitute a hazard, and the risk assessor shall use professional judgment to determine if additional testing is necessary for those components in the untested units of the sample.

(e) *Identify acceptable lead hazard control options.* Using information on existing hazards and the condition of the building, the risk assessor shall identify acceptable lead-based paint hazard control methods.

(f) *Report.* The risk assessor shall prepare a final report documenting the findings of the risk assessment in accordance with the requirements of 40 CFR part 745.228.

§ 37.14 Requirements for testing paint for a risk assessment.

(a) *General.* Deteriorated paint in poor condition or chewed surfaces in a dwelling unit or a common area shall be tested according to the following procedures. Paint testing is optional for intact paint on friction and impact surfaces; it is not required:

(b) *X-ray fluorescence (XRF) testing.* An XRF analyzer may be used to test the lead concentration of a painted surface, unless the surface is not suitable for this method of analysis. The use of an XRF analyzer to test a painted surface shall be performed in accordance with the requirements of subpart C of this part.

(c) *Testing of paint chip samples.* A surface may also be tested for lead-based paint by laboratory analysis of paint chip samples in accordance with the following requirements. Paint chip samples must be collected after dust sampling is completed to minimize the possibility of cross sample contamination.

(1) One paint chip sample shall be collected in each sampled dwelling unit to represent each component with deteriorated or chewed surfaces, both interior and exterior.

(2) Composite sampling of paint chips is permitted as follows, but compositing shall not occur across different components:

(i) No more than five subsamples shall be used.

(ii) Each sample shall be composited in the laboratory.

(iii) The lead-based paint standard shall be divided by the number of subsamples contained in the composite sample to determine if any subsample could exceed the standard.

§ 37.16 Requirements for dust testing.

(a) *General.* Risk assessors and others required to conduct dust testing shall test for lead-contaminated dust in dwelling units and common areas in accordance with the procedures described in this section.

(b) *Number and location of dust samples within dwelling units.* (1) Dust testing within dwelling units shall be conducted by collecting either composite or single-surface wipe samples.

(2) The same room/component combination shall not be sampled twice. For example, if the principal play area (identified pursuant to § 37.16(b)(3)(ii)) is the kitchen, a substitute must be selected for the required sample of an interior window sill in the kitchen.

(3) If single-surface dust sampling is used, a minimum number of six locations per dwelling unit shall be sampled, three floors and three interior window sills from the following specific locations:

(i) The floor and an interior window sill of the bedroom of the youngest child six months of age or more. If there are no children living in the dwelling unit or if the dwelling unit is vacant, the samples shall be collected from the room that would likely be the bedroom of the youngest child six months of age or more (usually the smallest bedroom).

(ii) The floor and an interior window sill of the principal play area of the youngest child six months of age or more other than his or her bedroom. If there are no children living in the dwelling unit or if the dwelling unit is

vacant, the samples shall be collected from the room that would likely be the play room of the youngest child six months of age or more. If there is no window in the sampled play room, a sample shall be collected from the interior window sill of another room that would likely be frequented by the youngest child six months of age or more.

(iii) The floor of the principal entryway. If the principal entryway is not distinguishable from the sampled play area or the sampled bedroom, the sample shall be collected from the floor of another high-traffic area (such as the living room, family room, TV room, dining area, or kitchen) that is distinguishable from the sampled play room or the sampled bedroom.

(iv) An interior window sill sample from the kitchen. If there is no window in the kitchen, the sample shall be collected from an interior window sill in the dining area or another room likely to be frequented by the youngest child six months of age or more.

(4) If composite sampling is used, a minimum number of eight locations per dwelling unit shall be sampled, four floors and four interior window sills. The location of six of these samples shall be determined in accordance with the requirements of paragraph (b)(3) of this section. The other two samples shall be collected from the floor and an interior window sill of the bedroom of the next oldest child six months of age or more.

(c) *Number and location of dust samples in common areas.* Dust samples shall be collected from the following locations in common areas:

(1) In multifamily buildings of four stories or less, one sample from the entry area floor and one from the floor of the first landing of a common stairway or from the first floor hallway. If there is a hallway window that is frequently used, the risk assessor shall collect a sample from the interior window sill and substitute this sample for the floor sample from the first landing or hallway.

(2) In multifamily buildings higher than four stories, one sample each from the hallway of every fourth floor and one each from the stairways between every fourth floor.

(3) In on-site community buildings, day care centers, or other buildings frequented by children, dust sampling shall be completed in accordance with the following:

(i) For spaces up to 2000 square feet, collect two dust samples from widely separated locations in high traffic areas used by or accessible to children, and one dust sample from an interior window sill.

(ii) For spaces over 2000 square feet, collect one additional floor sample for each increment of 2000 square feet, and one additional sample of an interior window sill for each additional increment of 2000 square feet.

(iii) In the building's management office, one dust sample shall be collected from the floor of the resident waiting area; two dust samples shall be collected if the area is more than 400 square feet.

(d) *Selection of specific sampling locations on floors and interior window sills.* Specific dust sampling locations shall be determined as follows:

(1) *Floors:* Select hard floor surfaces that are reasonably accessible. If hard floor surfaces are not available, select carpeted surfaces. If there are friction or impact surfaces in the room select a floor location near the friction or impact surface that is most likely to be generating lead contaminated dust. If there are no friction or impact surfaces but there is visible floor dust, select one or more dusty locations accessible to children if 6 to 59 months of age. If none of these conditions are present, select the highest traffic area in the room.

(2) *Interior window sills:* Select windows that are frequently opened especially those most frequently contacted by children. If children's use patterns are unknown, select windows that have friction surfaces. If none of these conditions are present, select randomly.

(3) *Common areas:* Select floor locations in a high traffic area and window sill locations at windows that are frequently operated.

(e) *Sample collection procedure.* (1) Additional information concerning these procedures is contained in the HUD Guidelines.

(2) Wet wipes shall be used to collect all dust samples.

(3) If composite sampling is used, samples shall be composited according to the following requirements:

(i) Separate composite samples are required from each different type of component sampled. For example, subsamples from both floors and window sills shall not be combined into a single composite sample. Subsamples from both carpeted and hard floors may be combined in a single sample.

(ii) Separate composite samples are required for each dwelling unit.

(iii) The surface areas of subsamples shall be the same size.

(iv) The same dust wipe shall not be used to sample two different locations.

(v) A maximum of four dust wipe subsamples shall be placed in a single container for a composite sample.

(4) One blank dust wipe sample must be sent to the laboratory for every 25 dust wipe samples, or less if fewer than 25 dust wipe samples are used. If composite samples are used, the blank dust wipe sample shall consist of four dust wipe samples inserted into a single container. For single surface samples one blank dust wipe sample shall be inserted into the container. Spiked field samples are not required.

(5) All samples shall be submitted to an EPA recognized laboratory for analysis.

§ 37.18 Requirements for testing potential soil hazards.

(a) *General.* The risk assessor and others required to conduct soil testing shall collect and submit samples of bare soil in the yard. Except for play areas, sampling is not required unless other bare soil areas total more than 9 square feet.

(b) *Selecting areas to sample.* One composite sample shall be collected from the child's principal play area if it exists and one composite sample from the front or back yard and/or a sample from along the foundation drip line.

(c) *Sampling procedures.* The risk assessor and others required to conduct soil testing shall use the following procedures to collect the soil samples:

(1) Each sample shall consist of equal soil subsamples taken from the top one-half inch (1 centimeter) of soil at three to ten locations equidistant from each other. For samples taken from along the foundation, subsamples shall be collected 2 to 6 feet from each other.

(2) The yard and the foundation drip line subsample may be combined into a single composite sample, but the subsamples from the principal play area shall be composited as a single sample.

(3) If paint chips are present in the soil they shall be included as part of the soil sample.

Subpart C—Paint Inspection

§ 37.30 Paint inspection methods.

The lead content of paint on components being inspected shall be tested by using portable X-ray fluorescence analyzer (XRF), in combination with:

(a) Laboratory analysis of paint chip samples in accordance with the requirements of § 37.6; or

(b) Other methods approved by the Secretary.

§ 37.32 Paint inspection of single-family and small multifamily residential properties.

The following requirements shall apply to paint inspections of single-family and multifamily residential properties of fewer than 20 units.

(a) Paint inspections shall be performed on all testing combinations on the residential property that are coated with paint, varnish, shellac, stain, or other coating, including those that have been coated and covered with wallpaper, except components known to have been replaced after 1980. Limited paint inspections shall be performed in accordance with the requirements of this subpart on all testing combinations to be disturbed during rehabilitation activities. Examples of testing combinations are shown in the chart at the end of this paragraph.

EXAMPLES OF A FEW TESTING COMBINATIONS

Room equivalent	Component	Substrate	Color
Bedroom	Door	Wood	Brown.
Kitchen	Wall	Plaster	Green.
Garage	Floor	Concrete	Red on black.
West side of house	Siding	Wood	White.
Exterior area playground	Swing set	Metal	Orange.

(b) *XRF Testing protocol.* (1) XRF testing shall be accomplished according to the instrument manufacturer's instructions and shall include quality control procedures, except that substrate corrections inconclusive ranges and calibration shall be made in accordance with the HUD/EPA Performance Characteristics Sheet for the XRF model being used.

(2) Paint inspections shall include the analysis of each testing combination on the residential property. One XRF reading shall be taken at three different test locations on each testing combination. The test locations shall be representative of the testing combination including all layers of paint, and be a sufficient distance from pipes or electrical outlets to avoid interference. If testing combinations are replicated, (i.e. three windows in the same room) the selection of test locations shall include a location on up to three replicates. If acceptable test locations cannot be found for XRF testing, a paint chip sample shall be collected for laboratory analysis.

(3) An average of the three readings taken on different parts of the component shall be computed for each testing combination. That average, corrected for substrate interference if necessary, shall determine the classification of the testing combination as positive, negative, or inconclusive regarding the presence of lead-based paint. The positive, negative, and inconclusive ranges for XRF testing shall be determined based on the HUD/EPA Performance Characteristics Sheets of the model of XRF being used.

(4) A paint chip sample shall be collected for laboratory analysis from all testing combinations that test inconclusive.

(5) Test results of 1.0 milligram of lead per square centimeter (1.0 mg/cm^2) or greater or 0.5 percent of lead by weight or greater shall be considered positive. All other results shall be considered negative.

§ 37.34 Paint inspection of multifamily property.

(a) In a multifamily property of less than 20 units all units must be inspected in accordance with the requirements of § 37.2. In a multifamily property of 20 or more units, a random sample of units shall be inspected in accordance with the following table:

NUMBER OF UNITS TO BE INSPECTED IN A MULTIFAMILY PROPERTY

Number of units in building or group of similar buildings	Number of units to be tested
20–26	20
27	21
28	22
29–30	23
31	24
32	25
33–34	26
35	27
36	28
37	29
38–39	30
40–50	31
51	32
52–53	33
54	34
55–56	35
57–58	36
59	37
60–73	38
74–75	39
76–77	40
78–79	41
80–95	42
96–97	43
98–99	44
100–117	45
118–119	46
120–138	47
139–157	48
158–177	49
178–197	50
198–218	51
219–258	52
259–299	53
300–379	54
380–499	55
500–776	56
777–1004	57
1005–1022	58
1023–1039	59
1040 or more	5.8 percent of the units.

(b) Paint inspections shall be completed on testing combinations in the selected units in accordance with the requirements of § 37.32(c) except that only one XRF reading is required on each testing combination as long as a minimum of 40 readings per testing combination will be obtained in each development. Each common area accessible to children less than 6 years of age, (i.e. lobby, laundry room) is considered a room equivalent and shall be tested.

(c) A minimum of 40 components, if possible, of a given type shall be tested within the total of all of the multifamily dwelling units being tested.

(d) *Test results.* Lead-based paint is considered to be present throughout the development on a given component if 15 percent or more of the tested components are positive. Lead-based paint is not present if 100 percent of the tested components are negative or if 100 percent of the tested components are either negative or, if in the inconclusive range, below 1.0 mg/cm^2. All other cases require confirmatory laboratory testing. If any laboratory results are 1.0 mg/cm^2 or greater or 0.5 percent by weight or greater a positive result is indicated. Test results below these standards are negative. If less than 1

percent of similar components are positive, the results shall be negative for that component. In this case, the few components that are positive shall be monitored and/or controlled. If laboratory test results conflict with XRF results, the laboratory test results shall be used.

§ 37.36 Paint inspection report.

A written paint inspection report shall be provided to the owner in accordance with the requirements of 40 CFR 745.228.

Subpart D—Paint Repair

§ 37.50 Requirements.

(a) *De minimis level.* Paint repair is required if the area of the deteriorated paint surface is more than:

(1) Ten square feet on an exterior wall;

(2) Two square feet on a component with a large surface area other than an exterior wall including, but not limited to, interior walls, ceilings, floors and doors; or

(3) Ten 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.

(b) *Protective coverings.* Before starting paint repair, protective coverings shall generally extend a minimum of 5 feet out in all directions from the surfaces being worked on to protect the floor or ground from contamination.

(c) *Occupant protection.* If units are occupied while undergoing paint repair, occupants and their belongings shall be protected from lead-based paint hazards associated with paint repair. Occupant relocation is not required. Occupants must not enter spaces undergoing paint repair until cleanup is completed. Personal belongings that are in work areas must be relocated or otherwise protected from contamination. During interior paint repair involving more than 2 square feet of deteriorated paint in a room, dust must be contained to the room or work area by installing an airlock flap or comparable device. To avoid temporary relocation, an individual or firm conducting paint repair shall ensure that occupants have safe uncontaminated access to sleeping areas, bathroom and kitchen facilities, and entryways after work hours. Work areas shall be secured against entry during non working hours.

(d) *Surface preparation.* Before repainting deteriorated paint surfaces, all loose paint and other material shall be removed from the surfaces to be treated, as follows:

(1) Acceptable methods for preparing the surface include wet scraping, and wet sanding. Dry scraping or manual or power sanding are acceptable if performed in conjunction with a HEPA vacuum filter attachment to the tool operated according to the manufacturer's instructions.

(2) Dry scraping/sanding unassisted with HEPA shall be used only when wet scraping/sanding cannot be performed safely, such as when preparing surfaces near electrical circuits.

(3) Before repainting the prepared surface, it shall be cleaned to remove dust, paint chips, and surface contaminants that may prevent proper adhesion of paint coatings.

(e) *Prohibited methods of paint removal.* The paint removal methods specified in § 37.80(b) shall not be used to remove paint known or suspected to be lead-based paint. All paint that has not been tested must be assumed to be lead-based paint.

(f) *Repainting.* Paint repair shall include the application of new paint. All paint shall be applied in accordance with the manufacturer's recommendations.

(g) *Modified Cleanup.* (1) *General.* Modified cleanup is acceptable in units where only paint repair has occurred, and shall not begin until one hour after paint repair has been completed.

(2) *Required practices.* Modified cleanup shall include the following practices:

(i) The protective coverings shall be carefully removed to control the spread of dust;

(ii) All hard, interior uncarpeted surfaces in the area of the repair shall be wet washed with a lead specific detergent or equivalent. Floors within at least 10 feet of the repaired surface shall be wet washed. For all other surfaces to be cleaned, wet washing must generally extend a minimum of 5 feet in all directions from the repaired surface and shall include walls, window sills and other horizontal surfaces excluding ceilings, unless they have been repaired. Cleanup of adjacent rooms is not required, except where paint repair has occurred at or near door openings to those rooms; and

(iii) If the floor is carpeted it shall be cleaned with a HEPA vacuum equipped with a beater-bar, if available. If a HEPA vacuum is not available, a standard vacuum cleaner shall be used with a high efficiency filter bag, if available.

(h) *Waste handling.* Waste from paint repair shall be enclosed in a way that will prevent recontamination of the interior or exterior of the residential property.

Subpart E—Interim Controls

§ 37.60 Purpose and applicability.

Interim control measures include paint stabilization, treatments for friction and impact surfaces, dust control, and lead-contaminated soil control. Interim controls may be performed in combination with more extensive, permanent abatement methods.

§ 37.62 Supervision of interim control workers.

Workers performing interim control treatments shall be trained in accordance with 29 CFR 1926.59 and supervised by an abatement supervisor certified in accordance with 40 CFR 745.226. The Secretary may establish temporary alternative qualifications for interim control supervisors if it is determined that the supply of certified abatement supervisors is insufficient.

§ 37.64 General requirements.

(a) *Acceptable methods identified by risk assessor.* If a risk assessment has been performed, only those interim control methods identified as acceptable methods in the risk assessment report shall be used to control identified hazards.

(b) *Prohibit methods of paint removal.* The paint removal methods specified in § 37.80(b) shall not be used.

(c) *Occupant protection.* Occupants of dwelling units where interim controls are being performed shall be protected during the course of the work in accordance with the requirements of subpart G of this part.

§ 37.66 Requirements for paint stabilization controls.

(a) *General.* Interim control treatments used to stabilize deteriorated lead-based paint on surfaces other than friction or impact surfaces 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 required by these regulations.

(b) *De minimis level.* Interim controls are required if the area of the deteriorated paint surface is more than:

(1) Ten square feet on an exterior wall;

(2) Two square feet on a component with a large surface area other than an exterior wall including, but not limited to, interior walls, ceilings, floors and doors; or

(3) Ten 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.

(c) *Repair substrate.* Physical defects in the substrate or component that threaten the integrity of the stabilization treatment shall be permanently repaired, as follows, prior to treating the surface. Examples of defective substrate conditions include: dry-rot, rust moisture, crumbling plaster, missing hardware, and siding or other components that are not securely fastened:

(1) If a current risk assessment or paint inspection has been performed, all physical defects in the substrate of surfaces with deteriorated lead-based paint that are listed in the risk assessment report shall be repaired.

(2) If no information on lead content is available, all readily observable substrate defects in surfaces with deteriorated paint shall be corrected.

(d) *Surface preparation.* (1) Before recoating deteriorated paint, all loose paint and other 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 vacuum filter attachment operated according to manufacturer's instructions.

(2) Dry scraping/sanding shall be used only when wet scraping/sanding cannot be performed safely, such as when preparing surfaces near electrical circuits.

(e) *Surface cleaning.* Before applying protective coatings to the prepared surface, the surface shall be cleaned to remove dust, paint chips, and surface contaminants that may prevent proper adhesion of coatings. Any paint remaining on the surface shall be deglossed if necessary to ensure proper adhesion of coatings.

(f) *Coating the deteriorated paint.* Paint stabilization shall include the application of a new protective coating. The surface substrate shall be dry and protected from future moisture damage prior to application of a protective coating. All protective coatings shall be applied in accordance with the manufacturer's recommendations.

§ 37.68 Requirements for friction and impact surface interim controls.

(a) *General.* Interim control treatments used to control lead-based paint on friction or impact surfaces shall be performed in accordance with the requirements of this section.

(b) *Affected components.* Building components that may contain friction or impact surfaces include the following: window systems; doors; stair treads and risers; baseboards and outside corners; drawers and cabinets; and porches, decks, interior floors, and any other painted surfaces that are abraded, rubbed, or impacted.

(c) *Treatments for friction surfaces.* Interim control treatments for friction surfaces with lead-based paint shall eliminate friction points or treat the friction surface so that lead-based 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. Lead-based 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, sheet flooring and some encapsulants.

(d) *Treatments for impact surfaces.* (1) Interim control treatments for impact surfaces with lead-based paint shall protect the lead-based paint on the surface from impact. Acceptable methods include:

(i) Treatments that eliminate impact with the lead-based paint surface, such as a door stop to prevent a door from striking a wall or baseboard covered with lead-based paint.

(ii) Treatments that cover the lead-based paint surface with a material that protects the paint from impact, such as installing plastic corner strips or corner beads to protect an outside corner covered by lead-based paint from impact.

(2) Covering an impact surface with a coating or other treatment that fails to protect lead-based paint from impact or abrasion, such as painting over the surface, shall not constitute an interim control for impact or friction surfaces.

§ 37.70 Requirements for lead-contaminated dust control.

(a) *General.* Interim control treatments used to control lead-contaminated dust shall be performed in accordance with the requirements of this section. If a risk assessment was performed, dust control shall be accomplished in locations specified for dust removal in the risk assessment report. If no risk assessment was performed, dust control shall be accomplished in rooms, dwelling units, or common areas assumed to have lead-contaminated dust.

(b) *Surfaces to be cleaned.* Dust control shall involve a thorough cleaning of all horizontal surfaces in the affected room, dwelling unit, or common area.

(c) *HEPA vacuuming.* Horizontal surfaces in the dust removal area shall be cleaned by first HEPA vacuuming these surfaces until surface dust is no longer visible.

(d) *Wet cleaning.* After all horizontal surfaces in the dust removal area have been HEPA vacuumed, all hard horizontal surfaces shall be wet cleaned with a lead-specific detergent solution or equivalent.

(e) *Surfaces covered by carpeting or rugs.* (1) The floor surface under rugs and carpeting shall be HEPA vacuumed where feasible.

(2) Rugs and unattached carpets located in areas of the dwelling unit with lead-contaminated floor dust shall be HEPA vacuumed on both sides. If rugs or carpets will be removed from the dwelling for off-site cleaning, workers shall take protective measures to prevent the spread of dust during the removal of these materials. For example, rugs, carpets, and padding can be misted to reduce dust generation during removal and the items being removed can be wrapped and sealed before removal from the work area.

(3) Attached carpets that are identified as hazards shall be HEPA vacuumed, cleaned, or replaced. Floors under such carpets are not required to be vacuumed.

(f) *Work practices.* Dust removal shall begin on the horizontal surfaces in the top rear room in the dwelling or common area and proceed forward and down through the work area.

§ 37.72 Requirements for lead-contaminated bare soil interim controls.

(a) *General.* Interim control treatments of lead-contaminated soil shall be performed in accordance with the requirements of this section:

(1) Interim control treatments shall be used only to control lead-contaminated bare soil that does not contain a lead concentration greater than 5,000 ug/g (micrograms per gram). In children's play areas interim controls are the minimum requirement for soil lead concentrations from 400 to 5000 ug/g. In other areas interim controls are the minimum requirement for soil lead concentrations from 2000 to 5000 ug/g.

(2) Soil with a lead concentration greater than 5,000 ug/g of lead shall be abated in accordance with the requirements of subpart F of this part.

(b) Acceptable interim control methods for lead-contaminated soil are impermanent surface coverings and land use controls.

(c) *Impermanent surface coverings.* 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:

(1) If the area to be treated is heavily traveled, impermanent surface coverings that are not designed to withstand heavy traffic, such as grass, shall not be used.

(2) Coverings such as bark or gravel shall be applied in a thickness not less than six inches.

(3) The covering material shall not contain more than 200 ug/g (micrograms per gram) of lead.

(4) Adequate controls to prevent erosion shall be used in conjunction with impermanent coverings.

(d) *Land use controls.* (1) Land use controls may be used to reduce exposure to lead-contaminated soil by effectively preventing uncontrolled access to areas with lead-contaminated soil. Examples of land use controls include: fencing, warning signs, and landscaping.

(2) Land use controls shall be implemented only if residents have reasonable alternatives to using the area to be restricted.

(3) 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.

Subpart F—Abatement

§ 37.80 Requirements for abatement of lead-based paint or lead-based paint hazards.

(a) *General.* Abatement shall permanently eliminate, enclose, or encapsulate any lead-based paint or lead-based paint hazards in accordance with the requirements of this subpart. Abatement of intact, factory applied prime coatings on metal surfaces is not required. Finish coatings on such surfaces shall be abated if required by these regulations. Acceptable methods of abatement include, but are not limited to, component replacement, enclosure, removal, and encapsulation. For the purpose of this subpart permanent means a minimum effective life of 20 years.

(b) *Prohibited methods of paint removal.* The following paint removal methods shall not be used to remove lead-based paint:

(1) Open flame burning or torching;

(2) Machine sanding or grinding without a HEPA exhaust control;

(3) Uncontained hydroblasting or high pressure wash;

(4) Abrasive blasting or sandblasting without HEPA exhaust control;

(5) Heat guns operating above 1100 degrees Fahrenheit;

(6) Chemical paint strippers containing methylene chloride; and

(7) Dry scraping or dry sanding, except in conjunction with heat guns or around electrical outlets or to remove small amounts of deteriorated paint. A small amount of deteriorated paint is less than 10 square feet for exterior components with large surface areas (such as walls), less than 2 square feet for interior components with large surface areas (such as walls, ceilings, floors, or doors), and less than 10 percent of the total surface area of interior and exterior components with small surface areas (such as window sills, baseboards, and trim).

(c) *Encapsulation.* Encapsulation treatments used in accordance with the following requirements constitute an acceptable method of abatement:

(1) The encapsulating product or system shall be warranted by the manufacturer to perform for a minimum of 20 years as a durable barrier between lead-based paint and the environment in the type of application planned.

(2) Encapsulating products or systems shall be used in a manner consistent with the manufacturer's recommendations.

(3) Surfaces treated by encapsulation shall be monitored as required by subpart J of this part.

(4) Any failures of the encapsulant shall be repaired immediately in accordance with the manufacturer's recommendations.

(d) *Occupant protection and worksite preparation.* Occupants of dwelling units where abatement work is being performed shall be protected during the course of abatement activities in accordance with the requirements of subpart G of this part.

(e) *Cleanup.* Cleanup of the work area following the completion of abatement activities shall be performed in accordance with the requirements of subpart H of this part.

(f) *Clearance.* Upon completion of abatement work and cleanup, clearance testing shall be conducted in accordance with the requirements of subpart I of this part.

§ 37.82 Soil abatement.

Bare soil surrounding a residential property that is determined to have a lead concentration that exceeds 5,000 ug/g (micrograms per gram) shall be abated. Acceptable methods of soil abatement include, but are not limited to, removal and paving.

Subpart G—Occupant Protection and Worksite Preparation

§ 37.90 Purpose and applicability.

This subpart establishes procedures for protecting dwelling unit occupants and the environment from exposure to or contamination from lead-contaminated materials during lead-based paint hazard reduction activities. The requirements established by this subpart are applicable to all lead-based paint hazard reduction activities required by part 36 of this subtitle.

§ 37.92 Requirements for occupant protection.

(a) *General requirements.* Appropriate action shall be taken to protect occupants from lead-based paint hazards associated with lead-based paint hazard reduction activities.

(b) *Occupant access to worksite.* Occupants must not be permitted to enter the worksite during lead-based paint hazard reduction activities, unless such occupants are employed in the conduct of the interim controls or abatement at the worksite. Occupant re-entry into the worksite is permitted only after lead-based paint hazard reduction work has been completed and the dwelling unit has passed a clearance examination performed in accordance with the requirements of subpart I of this part. Occupants in dwelling units where only paint repair work has been performed may re-enter after that work and cleanup have been completed. No clearance examination is required for paint repair.

(c) *Occupant relocation requirements.* Occupants of a dwelling unit shall be temporarily relocated during lead-based paint hazard reduction activities unless the lead-based paint hazard control activities being performed in the dwelling unit qualify for one of the exceptions provided in paragraph (d) of this section. The following requirements apply to occupant relocation:

(1) Occupants shall be relocated before lead-based paint hazard reduction activities begin.

(2) Occupants shall be relocated to a suitable, decent, safe, and sanitary dwelling unit that is free of lead-based paint hazards.

(d) *Exceptions to occupant relocation requirement.* Occupant relocation is not required during lead-based paint hazard reduction activities if the work to be performed meets at least one of the following three exceptions:

(1) Only the exterior of the dwelling unit is treated; and the following two conditions are met:

(i) Windows, doors, and other openings that are in the vicinity of the worksite are sealed during hazard control work and cleanup to prevent lead-contaminated dust from entering the dwelling unit.

(ii) Entry and egress free of lead-contaminated dust and debris is provided.

(2) Treatment will not disturb lead-based paint or lead-contaminated dust; or

(3) Treatment of the interior will be completed within 5 calendar days, and all of the following conditions are met:

(i) The hazard reduction work area is sealed in a manner that prevents the release of leaded dust and debris into other areas.

(ii) At the end of the each day of hazard reduction activities, the area outside the containment area that is within at least 10 feet of the containment area shall be properly cleaned to remove any lead-contaminated dust or debris that may be present.

(iii) Occupants have safe access to sleeping areas, bathroom and kitchen facilities, and entryways after work hours.

(iv) Treatment does not create other safety hazards (i.e. exposed electrical wiring or holes in the floor).

(v) The work area is secured against entry during non-working hours until the dwelling unit passes a clearance exam in accordance with subpart I. When paint repair only is being performed the work area shall be secured against entry during non-working hours until such work is complete.

(e) *Protection of occupant belongings.* Property owners shall protect tenants' personal belongings from contamination by lead contaminated dust and debris while lead-based paint hazard reduction work and cleanup are being performed. Personal belongings shall be removed from the containment area. Large items that cannot be removed shall be covered with exposed seams taped shut.

§ 37.94 Worksite preparation.

(a) *General requirements.* The worksite for lead-based paint hazard reduction activities shall be prepared to prevent the release of lead-contaminated dust. Worksite preparation shall ensure that lead-contaminated dust, lead-based paint chips and other debris from hazard reduction activities are contained within the worksite until they can be safely removed. The appropriate worksite preparation shall be determined by a certified risk assessor, a certified abatement supervisor, or a trained lead-based paint planner/designer. Any of the seven levels of containment or combination of levels described in the HUD Guidelines is permissible.

(b) *General preparation.* (1) Any large debris or loose paint chips shall be removed from the worksite before the containment area is constructed.

(2) During the construction of the containment area and the duration of lead-based paint hazard reduction activities, workers shall follow practices that minimize the spread of lead contaminated dust and debris.

(3) Warning signs shall be required at entry to the room where lead hazard reduction activities are conducted when occupants are present. Warning signs shall be required at main and secondary entryways to the building when occupants have been relocated. If exterior lead hazard reduction activities are conducted warning signs shall be required on the building and at a 20 foot perimeter around the building (or less if the distance to the next building or the sidewalk is less than 20 feet).

Subpart H—Cleanup

§ 37.110 Purpose and applicability.

This subpart establishes procedures to assure that lead-contaminated debris and dust resulting from lead-based paint hazard reduction activities are properly removed to render residential properties acceptable for clearance and occupancy. The requirements are applicable to all lead-based paint hazard reduction activities required by part 36 of this subtitle except paint repair.

§ 37.112 Requirements for daily cleanup.

(a) *General.* Daily cleanup shall occur at the end of each workday after all lead-based paint hazard reduction activities have ceased in occupied units or in units where occupants return daily, and where exterior lead-based paint hazard reduction activities have occurred. Daily cleanup is not required in vacant units:

(1) The horizontal surfaces (excluding ceilings) in all containment areas in which lead-based paint hazard reduction activities are taking place shall be cleaned in accordance with the requirements of paragraph (b) of this section, as well as, any vertical surface within 5 feet of treated surfaces.

(2) If all lead-based paint hazard reduction activities are completed by the end of the first workday, daily cleanup is not required.

(b) *Required practices.* Daily cleanup shall include the following practices:

(1) Debris shall be wrapped in a protective covering with all seams taped or placed in closed durable containers resistant to puncture.

(2) Workers shall use cleaning practices that minimize the generation of airborne dust, such as misting dust and debris with water prior to cleaning. Carpets need not be misted prior to vacuuming. A system of cleaning that involves HEPA vacuuming, wet washing with a lead-specific detergent or equivalent and then HEPA vacuuming again has been used effectively to remove lead-contaminated dust.

(3) The containment area's protective coverings shall be examined and any defects repaired.

(4) Exterior areas affected by lead-based paint hazard reduction activities shall be examined daily for lead-contaminated debris which shall be wrapped, secured, and stored until removal.

§ 37.114 Requirements for final cleanup.

(a) *General.* The work area and any surrounding areas where lead-contaminated dust or debris may be present including window troughs shall be cleaned prior to performing a clearance examination.

(b) *Timing.* Final cleanup shall begin no sooner than one hour after active lead-based paint hazard control activities have ceased, but prior to repainting or sealing floors or other surfaces.

(c) *Required practices.* Required practices for final cleanup are as follows:

(1) Debris shall be wrapped in a protective covering with all seams taped or placed in closed durable containers resistant to puncture. The debris shall then be removed from the work area and stored in a secure location until removal.

(2) Dust and debris shall be removed in a manner which effectively avoids contamination of the residential property.

(3) Workers shall use cleaning practices that effectively remove lead-contaminated dust and that minimize the generation of airborne dust. For example, a system of cleaning that involves HEPA vacuuming, wet-washing with a lead-specific detergent or equivalent and then HEPA vacuuming again has been used effectively to remove lead-contaminated dust.

(4) Protective coverings used to contain or collect dust and debris within the work area shall be removed in a manner that prevents the dispersion of lead-contaminated dust and debris.

(5) Exterior areas affected by lead-based paint hazard reduction activities shall be visually examined for lead contaminated debris. Any such debris shall be wrapped, secured, and stored until removal.

(d) Sealing treated surfaces. Treated surfaces shall be finished by painting, varnishing, or an equivalent coating, after final cleanup is completed and before a clearance examination is performed.

Subpart I—Clearance

§ 37.120 Purpose and applicability.

The purpose of clearance examinations is to assure that all lead-based paint hazard reduction activities have been properly completed.

§ 37.122 General requirements.

(a) *Qualified examiner.* Clearance examinations shall be performed by a risk assessor or inspector certified in accordance with the requirements of 40 CFR 745.226. The risk assessor or inspector must not be affiliated with, paid, employed, or otherwise compensated by the entity performing the lead-based paint hazard reduction and the cleanup.

(b) *Timing.* The clearance examination shall begin no earlier than one hour after the completion of final cleanup as performed in accordance with subpart H of this part and any finish coating of surfaces.

§ 37.124 Unit selection.

(a) *Single-family properties.* In single-family properties each dwelling unit, and the worksite shall be examined.

(b) *Multifamily properties.* In multifamily properties with less than 21 units which have undergone similar lead-based paint hazard reduction activities, all units and common areas must be examined. In properties with 21 or more units, a random sample may be selected for examination in accordance with the requirements of subpart C of this part. If any dwelling unit in this sample fails either the visual examination required in § 37.126 or the dust sampling required in § 37.128, a clearance examination of all units shall be performed.

§ 37.126 Requirements for visual examination.

(a) *General.* A visual examination of the residential property shall be performed before dust and soil samples (if required) are collected.

(b) *Examining hazard control work.* The clearance examiner shall confirm that all lead-based paint hazard controls were properly completed by visual examination and reference to such documents as the risk assessment report, the specifications for hazard reduction, or a report by the abatement supervisor.

(c) *Visual Examination for dust and debris.* (1) During the visual examination, the clearance examiner shall also inspect the dwelling unit for visual evidence of dust and debris. The interior and exterior of the residential property shall be free of waste, debris, paint chips, and settled dust.

(2) If visible dust or debris are found during the visual examination, these areas of the dwelling unit shall be determined to fail the visual examination. These areas shall be recleaned in accordance with the requirements of § 37.130. Any uncorrected hazards shall be completed before final clearance is established. All units passing clearance must be free of lead-based paint hazards.

§ 37.128 Requirements for dust testing.

(a) *General requirements.* (1) Dust samples from dwelling units and common areas shall be collected according to the procedures in this section. Dust testing shall not begin until the dwelling unit passes the visual examination.

(2) If the test results exceed the following standards, the dwelling unit or common area fails the clearance examination and the actions required by § 37.128 shall be performed:

(i) Hard floors—100 μg/ft ^{2} (micrograms of lead per square foot).

(ii) Carpeted floors—100 μg/ft ^{2}.

(iii) Interior window sills—500 μg/ft ^{2}.

(b) *Dust sampling requirements.* (1) The minimum number and location of clearance dust samples shall be taken according to Table 1: Minimum Number and Location of Clearance Dust Samples for All Abatement and Interim Control Work; or

(2) Composite dust samples from multiple rooms in the same dwelling unit are acceptable if the rooms have undergone similar lead-based paint hazard control treatments and cleanup. The minimum number and location of composite clearance dust samples shall be taken according to Table 1 at the end of this section.

TABLE 1.—MINIMUM NUMBER AND LOCATION OF CLEARANCE DUST SAMPLES FOR ABATEMENT AND INTERIM CONTROL WORK

Clearance category	Category description	Number and location of single-surface wipe samples in each room [1]	Number and location of composite wipe samples
1	Interior treatments	Two dust samples from at least four rooms in dwelling unit (whether treated or untreated)—a total of 8 samples per unit.	Three composite samples for every batch of four rooms (whether treated or untreated):
	No containment within dwelling unit.	• One interior window sill	• One floor composite with one subsample from each room.
		• One floor and	• One interior window sill composite with one subsample from each room with windows, and
		• For common areas, one for every 2,000 ft^2 of a common area room floor (if present).	• For common areas, one floor subsample for every 2,000 ft^2 (if present); up to 8,000 ft^2 for each composite.
2	Interior treatments with containment.	Same as Category 1, but only in every treated room (at least four rooms) and.	Same as Category 1 but only in every treated room and,
		One floor sample outside the containment area but within 10 feet of the airlock to determine the effectiveness of the containment system. This extra single-surface sample is required in 20 percent of the treated dwelling units in a multi-family property and all single-family properties.	One single-surface floor sample outside the containment area but within 10 feet of the airlock to determine the effectiveness of the containment a system. (This extra single-surface sample is required in 20 percent of the treated dwelling units in a multifamily property and all single-family properties.)
		• For treated Common Areas, one floor sample for every 2,000 ft^2 and one floor sample outside containment.	• For Common Areas, one floor subsample for every 2,000 ft^2 (up to 8,000 ft^2 for each composite) and one floor sample outside containment.
3	Exterior treatments	Two dust samples as follows:	Two dust samples as follows:

TABLE 1.—MINIMUM NUMBER AND LOCATION OF CLEARANCE DUST SAMPLES FOR ABATEMENT AND INTERIM CONTROL WORK—Continued

Clearance category	Category description	Number and location of single-surface wipe samples in each room [1]	Number and location of composite wipe samples
		• At least one dust sample on a horizontal surface in part of the outdoor living areas (e.g., a porch floor, balcony, or exterior entryway), and. • One interior window sill sample on each floor where exterior work was performed. An additional sill sample should be collected from a few lower floors to determine if sills below the area were contaminated by the work above.	• One composite on horizontal surfaces of the outdoor living areas (e.g., a porch floor, balcony or exterior entryway), if any and • One interior window sill composite for every 4 floors where exterior work was performed, including lower floors where exterior work was not done, if present.
4	Soil Treatment	One sample from the entryway	One sample from the entryway.

[1] A room includes a hallway or a stairway. If no window is present, collect just one floor sample. When a closet is treated, the room to which it is attached should be tested. A closet is not considered to be a separate room.

§ 37.130 Required actions for dwelling units and common areas that fail dust tests.

(a) If a single-surface dust sample for a dwelling unit or common area fails, all components that the sample represents shall be re-cleaned in accordance with § 37.114 until they pass a dust clearance test. If single surface samples in only one room or on one type of component fail, only that room or component shall be recleaned and be retested repeatedly until it passes a dust clearance test.

(b) If composite surface dust samples for a dwelling unit or common area fail, all surfaces represented by that dust sample shall be re-cleaned in accordance with § 37.114 or tested individually to determine which surfaces fail and must therefore be recleaned. The areas that fail shall be recleaned and retested repeatedly until they pass the clearance test.

§ 37.132 Requirements for soil testing.

(a) *General.* Clearance soil samples shall be taken if exterior lead-based paint hazard reduction activities have been performed. If the exterior lead-based paint hazard reduction activities involve covering bare soil only, clearance soil samples are not required. Only a visual examination is required in accordance with § 37.126(c).

(b) *Requirements.* The results of soil samples shall be collected and analyzed in accordance with the following requirements:

(1) Soil testing shall not begin until the residential property passes the visual examination.

(2) Soil sampling may be performed on a random sample of soil locations around a multifamily complex of 10 or more buildings.

(3) All soil samples shall be composite samples of bare soil only.

(4) The number and location of clearance soil samples shall be taken in accordance with the following specifications:

(i) One composite sample shall be collected around the perimeter of the building. If only selected faces of the building were treated, the subsamples should come from those faces.

(ii) A second composite sample shall be collected from nearby play areas, if any.

(6) If the test results for soil samples exceed the following standards, the worksite fails the clearance examination and the actions required by § 37.134 shall be performed:

(i) 400 ug/g (micrograms per gram) in children's play areas; or

(ii) 2,000 ug/g (micrograms per gram) in other areas.

§ 37.134 Required actions for properties that fail soil tests.

If the amount of lead in bare soil is above 400 ppm in small, compact play areas, above 2000 ppm otherwise, and at least 2 square feet of soil are bare, soil shall be re-treated using either interim controls or abatement in accordance with subparts E and F of this part.

Subpart J—Monitoring

§ 37.140 Exemptions.

Monitoring is not required when either of the following has occurred:

(a) The results of both a risk assessment and a paint inspection performed in accordance with subparts B and C of this part indicate that no lead-based paint is present in the dwelling units, common areas, or on exterior surfaces, and soil and dust lead levels are below applicable standards.

(b) All building components with lead-based paint have been removed and/or all lead-based paint has been removed, and a risk assessor determines that soil and dust lead levels are below applicable standards.

§ 37.142 General requirements.

Monitoring includes two types of procedures: Visual surveying and reevaluation.

§ 37.144 Visual survey.

(a) *Objectives.* The visual survey shall identify:

(1) Any deteriorated paint surfaces with known or suspected lead-based paint.

(2) Any failures of prior lead-based paint hazard reduction work. Encapsulation and enclosure treatments that are no longer securely attached and sealed and deteriorated paint repairs are examples of failed treatments.

(3) Structural or plumbing problems, including water leaks, that threaten the integrity of any remaining known or suspected lead-based paint or any encapsulation or enclosure treatments.

(b) *Schedule.* Property owners or other responsible entities shall conduct annual visual surveying of dwelling units, common areas, and the worksite, beginning no later than 12 months after the completion of the initial lead-based paint hazard evaluation and/or hazard reduction activities.

(1) If interim controls were used on bare soil, visual surveying must be performed three months after the controls are implemented to verify the efficacy of the controls and then annually thereafter.

(2) If encapsulation was used as a hazard control the visual survey shall be conducted at one month, six months, and annually thereafter.

(3) If the owner receives complaints from residents about potential lead-based paint hazards, if the dwelling unit changes occupants or becomes vacant, or if significant damage occurs that could affect the integrity of control treatments, visual surveying of affected surfaces shall be conducted promptly.

(c) *Correction of identified hazards.* If any of the conditions listed in § 37.144(b) are identified during visual surveying, these conditions shall be promptly and safely corrected.

§ 37.146 Reevaluation.

(a) *General.* Reevaluation is a modified risk assessment/clearance examination consists of a visual assessment of painted surfaces and prior lead-based paint hazard reduction work, and limited dust and soil sampling.

(b) *Objectives.* Reevaluations shall be conducted as required to identify:

(1) Deteriorated paint surfaces with known or suspected lead-based paint;

(2) Deteriorated or failed interim controls of lead-based paint hazards or encapsulation or enclosure treatments;

(3) Lead-contaminated dust;

(4) New bare soil with lead levels above applicable standards.

(c) *Certified risk assessor.* Reevaluations shall be performed by risk assessors certified in accordance with 40 CFR 745.226. Certified inspector technicians may conduct environmental sampling under the supervision of a certified risk assessor.

(d) *Scheduling.* (1) Reevaluations shall be conducted in accordance with the schedule in Table 1, Standard Reevaluation Schedule, in this section. Reevaluation intervals are expressed in months from the date the risk assessment was completed. Initial and follow-up reevaluations shall occur no later than the deadlines shown in Table 1, Standard Reevaluation Schedule.

(2) When more than one reevaluation schedule applies, the more stringent schedule shall be observed.

(3) If a dwelling unit, common area, or worksite fails a reevaluation, a new reevaluation schedule shall be initiated. The initial evaluation results shall dictate which reevaluation schedule shall be applied. If a dwelling unit fails two consecutive reevaluations, the reevaluation interval shall be reduced by half and the number of reevaluations shall be doubled.

TABLE 1.—STANDARD REEVALUATION SCHEDULE

Schedule	Evaluation results	Action taken	Reevaluation frequency and duration	Visual survey (by owner or owners representative)
1	Combination risk assessment/paint inspection finds no leaded dust or soil and no lead-based paint.	None	None	None.
2	No Lead-based paint hazards found during risk assessment conducted before hazard control or at clearance (hazards include dust and soil).	None	3 Years	Annually and whenever information indicates a possible problem.
3	The average of leaded dust levels on all floors or interior window sills sampled exceeds the applicable standard, but by less than a factor of 10.	A. Interim controls and/or hazard abatement (or mixture of the two), including, but not necessarily limited to dust removal. This schedule does not include window replacement.	1 Year, 2 Years.	Same as Schedule 2, except for encapsulants. The first visual survey of encapsulants shall be done one month after clearance; the second shall be done 6 months later and annually thereafter.
		B. Treatments specified in section A plus replacement of all windows with lead hazards.	1 Year	Same as Schedule 3A.
		C. Abatement of all lead-based paint using encapsulation or enclosure.	None	Same as Schedule 3A above.
		D. Removal of all lead-based paint	None	None.
4	The average of leaded dust levels on all floors or interior window sills sampled exceeds the applicable standard by a factor of 10 or more.	A. Interim controls and, or hazard abatement (or mixture of the two), including, but not necessarily limited to dust removal. This schedule does not include window replacement.	6 Months, 1 Year, 2 Years.	Same as Schedule 3A.
		B. Treatments specified in section A plus replacement of all windows with lead hazards.	6 Months, 2 Years.	Same as Schedule 3A.
		C. Abatement of all lead-based paint using encapsulation and enclosure.	None	Same as Schedule 3A.
		D. Removal of all lead-based paint	None	None.
5	No leaded dust or leaded soil hazards identified, but lead-based paint or lead-based paint hazards are found.	A. Interim controls or mixture of interim controls and abatement (not including window replacement).	2 Years	Same as Schedule 3A.
		B. Mixture of interim controls and abatement, including window replacement.	3 Years	Same as Schedule 3A.
		C. Abatement of all lead-based paint hazards, but not all lead-based paint.	4 Years	Same as Schedule 3A.
		D. Abatement of all lead-based paint using encapsulation or enclosure.	None	Same as Schedule 3A.
		E. Removal of all lead-based paint	None	None.
6	Bare leaded soil exceeds standard, but less than 5,000 ug/g.	Interim controls	None	3 months to check new ground cover, then annually to identify new bare spots.

TABLE 1.—STANDARD REEVALUATION SCHEDULE—Continued

Schedule	Evaluation results	Action taken	Reevaluation frequency and duration	Visual survey (by owner or owners representative)
7	Bare leaded soil greater than or equal to 5,000 ug/g.	Abatement (paving or removal or cultivation).	None	None for removal, annually to identify new bare spots or deterioration of paving.

(e) *Scope and dwelling unit selection.* Reevaluations of single-family and multifamily properties shall be performed as follows:

(1) In single-family properties and multifamily properties of five units or less, all dwelling units and common areas, as well as the worksite, shall be reevaluated.

(2) In multifamily properties of more than five similar dwelling units, a sample of dwelling units may be selected for reevaluation. If sampling is used, units to be reevaluated shall be selected in accordance with the targeted sampling requirements of § 37.10, or the random sampling requirements of § 37.34. If possible, some of the units selected shall be units not previously evaluated. Common areas associated with the units selected and the worksite shall also be reevaluated.

(f) *Protocol.* Reevaluations shall be performed in accordance with the following requirements:

(1) A certified risk assessor shall perform a visual assessment to identify any deteriorated lead-based paint, any failures of lead-based paint hazard reduction activities, or any other lead-based paint hazards, as follows:

(i) The risk assessor shall review any past risk assessment, paint inspection, clearance, reevaluation reports, and any other information describing the hazard reduction activities in use.

(ii) A careful visual assessment of all lead-based paint hazard reduction activities and any known or suspected lead-based paint shall then be conducted to determine whether the paint is still intact and the hazard reduction activities are well maintained.

(iii) The visual assessment of the worksite shall identify any new areas of bare soil, as well as checking for any failures of lead hazard reduction activities performed for previously contaminated soil.

(2) For deteriorated paint surfaces identified during the visual assessment for which reliable information about lead content is unavailable, the risk assessor shall measure the lead content by XRF analyzer or paint chip laboratory analysis performed in accordance with the requirements of § 37.14, except as follows:

(i) If the owner or risk assessor assumes that all such deteriorated painted surfaces contain lead-based paint, analysis of the paint's lead content is not required.

(ii) Testing is not required if the surface area of deteriorated paint on a single component does not exceed 10 square feet on exterior components with large surface areas, 2 square feet on interior components with large surface areas, or 10 percent of the total surface area of interior or exterior components with small surface areas.

(3) If any hazard reduction activity is failing (e.g. an encapsulant is peeling away from the wall or a paint stabilized surface is no longer intact) or deteriorated lead-based paint is present, the risk assessor shall determine acceptable options for controlling the hazard.

(4) Upon completion of the visual assessment, if all lead-based paint hazard reduction activities appear to be in place and no deteriorated lead-based paint is present, the risk assessor shall begin dust sampling. If any lead-based paint hazard reduction activities are not in place or deteriorated lead-based paint is present, the hazards shall be controlled before any dust sampling occurs.

(5) Dust sampling of dwelling units and common areas shall be performed as follows:

(i) For reevaluation, composite dust sampling is permitted as a cost effective method. At least two composite samples shall be taken, one from floors and the other from interior window sills. No more than four subsamples shall be collected for each composite sample. If the dwelling unit contains both carpeted and uncarpeted living areas, separate floor samples are required from the carpeted and uncarpeted areas.

(ii) Dust samples or subsamples shall be collected from locations selected in accordance with § 37.16.

(iii) If a dwelling unit or common area is found to contain lead levels that exceed the following standards, that dwelling unit or common area shall be cleaned in accordance with the requirements of § 37.114.

(A) Hard floors—100 $\mu g/ft^2$.

(B) Carpeted floors—100 $\mu g/ft_2$.

(C) Interior window sills—500 $\mu g/ft^2$.

(6) Soil testing shall be performed as part of a reevaluation if new areas of bare soil are identified during the visual assessment. Soil samples shall be collected from locations selected in accordance with § 37.18. If the amount of lead in soil is above 400 ppm in play areas or above 2000 ppm in other areas, and at least 2 square feet of soil are bare, soil shall be treated using interim controls or abatement in accordance with subparts E and F of this part.

(7) If the visual assessment reveals that the controls used for lead-contaminated soil (e.g., impermanent coverings or land use controls) have failed, more permanent soil treatments that will effectively control these hazards shall be performed. For example, if the gravel used to cover an area of contaminated soil is worn away due to use or erosion, a more durable surface covering such as artificial turf or asphalt must be used.

(g) *Reporting.* The risk assessor shall produce a written report documenting the presence or absence of lead-based paint hazards. The report shall:

(1) Identify any lead-based paint hazards previously detected and controlled and discuss the efficacy of these interventions;

(2) Describe any new hazards and present the owner with acceptable control options and their accompanying reevaluation schedules;

(3) Identify when the next reevaluation will occur, if necessary.

(h) *Completion of required reevaluations.* When all required reevaluations are completed, the dwelling unit is subject only to annual visual surveys. However, if ownership of the residential property is transferred, a new reevaluation schedule must be initiated.

Dated: December 15, 1995.

Henry G. Cisneros,

Secretary.

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