

## § 35.106

### § 35.106 Information collection requirements.

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

### § 35.110 Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Dust-lead hazard means surface dust that contains a dust-lead loading (area concentration of lead) equal to or exceeding the levels promulgated by the EPA at 40 CFR 745.65 or, if such levels are not in effect, the standards for dust-lead hazards in § 35.1320.

*Dwelling unit* means a:

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

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

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

*Enclosure* means the use of rigid, durable construction materials that are mechanically fastened to the substrate in order to act as a barrier between lead-based paint and the environment. Enclosure may be used as a method of abatement if it is designed to be permanent (see definition of “permanent”).

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

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

*Expected to reside* means there is actual knowledge that a child will reside in a dwelling unit reserved for the el-

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

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

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

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

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

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

*Grantee* means any state or local government, Indian Tribe, IHBG recipient, insular area or nonprofit organization that has been designated by HUD to administer Federal housing assistance under a program covered by subparts J and K of this part, except the HOME program.

*Hard costs of rehabilitation* means:

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

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

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costs to repair or replace major housing systems in danger of failure; and

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

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

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

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

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

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

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

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

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

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

*Indian tribe* means a tribe as defined in the Native American Housing As-

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sistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*)

*Inspection* (See Lead-based paint inspection).

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

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

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

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

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

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

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

*Mortgagee* means a lender of a mortgage loan.

*Mortgagor* means a borrower of a mortgage loan.

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

*Occupant* means a person who inhabits a dwelling unit.

*Owner* means a person, firm, corporation, nonprofit organization, partnership, government, guardian, conservator, receiver, trustee, executor, or other judicial officer, or other entity which, alone or with others, owns, holds, or controls the freehold or leasehold title or part of the title to property, with or without actually possessing it. The definition includes a vendee who possesses the title, but does not include a mortgagee or an owner of a reversionary interest under a ground rent lease.

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

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

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

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

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

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

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

*Project-based rental assistance* means Federal rental assistance that is tied to a residential property with a specific location and remains with that par-

ticular location throughout the term of the assistance.

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

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

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

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

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

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

*Risk assessment* means:

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

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

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

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

*Soil-lead hazard* means bare soil on residential property that contains lead equal to or exceeding levels promulgated by the EPA at 40 CFR 745.65 or, if such levels are not in effect, the standards for soil-lead hazards in § 35.1320.

*Sponsor* means mortgagor (borrower).

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

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

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

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

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

A *visual assessment* alone is not considered an evaluation for the purposes of this part. Visual assessment means looking for, as applicable:

- (1) Deteriorated paint;

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

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

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

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

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

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

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### § 35.115 Exemptions.

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

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

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

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