

MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY
COMMUNITY DEVELOPMENT DIVISION

Subject: LEAD BASED PAINT

Effective Date: September 1, 2015

PURPOSE

This Policy provides guidance to CDD funded MSHDA, HOME, and CDBG recipients regarding the implementation of the HUD's Lead Safe Housing Rule (Rule), 24 CFR Part 35, subparts B-R.

BACKGROUND

To protect families from lead exposure from paint, dust, and soil, Congress passed the Residential Lead-Based Paint Hazard Reduction Act of 1992, also known as Title X.

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 also suffer from excessive lead exposures, the groups most at risk are fetuses, infants, and children under the age of 6. At low levels, lead's neurotoxic effects has the greatest impact on children's developing brains and nervous systems, causing reductions in IQ and attention span, reading and learning disabilities, hyperactivity, and behavioral problems. These effects have been identified in many carefully controlled research studies (National Academy of Sciences, 1993). However, the vast majority of childhood lead-poisoning cases go undiagnosed and untreated, since most poisoned children have no obvious symptoms.

HUD estimates that three-quarters of pre-1980 housing units contain some lead-based paint. The likelihood, extent, and concentration of lead-based paint all increased with the age of the building. Fully 90% of the privately owned units built before 1940, 80% of units built between 1940 and 1959, and 62% of units built between 1960 and 1979 contain some lead-based paint (HUD, 1990b). Because the greatest risk is in dwellings built before 1950, older housing generally commands a higher priority for lead hazard controls.

The belief that in order to be poisoned children must eat lead-based paint chips is unfounded. The most common cause of poisoning is ingestion through hand-to-mouth transmission of lead contaminated dust. 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 as lead-based paint deteriorates over time, is damaged by moisture, abraded on friction and impact surfaces, or disturbed in the course of renovation, repair, or abatement projects. Lead can also be tracked into homes from exterior dust and soil.

Children can also be exposed to lead in bare soil. The high levels of lead in soil typically come from deteriorating exterior lead-based paint around the foundation of a house. The fallout of lead emissions from the combustion of leaded automobile gasoline, lead-based paint, and industrial sources also contributes to lead levels in soil. 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. Lead in soil may also be tracked into a home, increasing interior lead dust levels.

On September 15, 1999, HUD published a Final Rule at 24 CFR Part 35 to implement new regulations with regard to Lead-Based Paint in compliance with the Residential Lead-Based Paint Hazard Reduction Act of 1992. The Rule took effect on September 15, 2000.

This policy will cover the following topics as it applies to the HUD Lead Safe Housing Rule:

1. Applicability of the Regulation & General Education Requirements
2. Covered Activities and Structures
3. Properties or Activities Exempt from HUD Lead Safe Housing Rule
4. Training and Certification Requirements
5. Insurance Requirements
6. Housing Rehabilitation on HRF funded HOME or CDBG assisted units
7. Calculation of Federal Rehabilitation Assistance
8. Acquisition Assistance on HRF funded HOME or CDBG assisted units
9. Administrative Requirements
10. The Renovation, Repair and Painting Rule

1. APPLICABILITY OF THE REGULATION

The rules and policies discussed herein are applicable to:

- HRF funded CDBG grant awards, to local units of government subsequent to 8/10/01
- HRF funded CDBG grant awards made prior to 8/10/01 – any individual project activities that have written agreements (see definition below) executed with the property owner or buyer after 12/31/01
- HRF funded HOME-assisted projects for which a project-specific written agreement is entered into with the property owner subsequent to 8/10/01
- Any projects or activities funded by CDBG Program Income for which the owner's written agreement is executed after 12/31/01

Written Agreements

Written agreement means a document executed by both parties (local recipient and owner or buyer) designating a specific property for assistance, the amount of the assistance, the scope of work to be performed (if applicable), and the compliance requirements. Declaration of the project in the Consolidated Plan and/or set-up in IDIS without an executed agreement does not constitute evidence of commitment. Construction contracts, construction start dates, or acquisitions do not have to occur by this deadline.

Post-8/10/01 Change Orders or Amendments to Pre-8/10/01 Projects

Change orders or amendments may be made subsequent to 8/10/01 to any existing projects originally executed prior to 8/10/01 without triggering the applicability of the HUD Lead-Safe Housing Rule, provided such changes are minor in nature and do not alter the type of activity or the units covered by the agreement.

General Education Requirements

MSHDA requires all grantees to participate in educating the public on lead poisoning hazards. The following material must be posted or distributed to the parties indicated regardless of project activity:

- For Contractors and Sub-Contractors:
 "Lead Paint Safety: A Field Guide for Painting" This brochure must be distributed to every contractor and sub-contractor participating in a HOME or CDBG assisted housing rehabilitation program. Documentation of the distribution of this brochure to the contractors and sub-contractors shall be maintained in the project file. The recipient must create a receipt form for the contractor and sub-contractor to sign to document receipt of the brochure. This brochure can be ordered from the National Lead Information Center at (800)424-5323.
- For Homeowners and Renters:
 "Protect Your Family from Lead in Your Home"- This EPA brochure must be distributed to every family participating in any housing activity, lease and/or sales. Documentation of the distribution of this brochure to beneficiaries must be maintained in each project file. Additionally, for rental housing projects, all tenants during the affordability period must receive this brochure at move-in and sign a receipt form to be maintained in their file.

“The Lead-Safe Certified Guide to Renovate Right” (Attachment H) offers general information about legal requirements for safe lead practices for homeowners, tenants, child care providers and parents during renovation activities. Renovators must distribute to each family with the above EPA pamphlet. Documentation of the distribution of this brochure to beneficiaries must be maintained in each project file. This Guide is available on EPA’s website: <http://www2.epa.gov/lead/lead-safe-certified-guide-renovate-right>.

- For Organizations:
“Runs Better Unleaded” – This poster must be displayed at the offices of the local unit of government, sub-recipient, award administrator, and any administrative organization involved in a federally assisted project. MSHDA encourages local officials to post these posters at any public facility located in the jurisdiction.

Environmental Intervention Blood Lead Level (EIBLL) Child

If a unit or facility is to be occupied by a child under the age of six, (6) who has been identified as having Environmental Intervention Blood Lead Levels (EIBLL), the Michigan Department of Health and Human Services (MDHHS), through its county health affiliates, has authority under this Rule and other federal and state rules to conduct assessments and require hazard reduction activities above and beyond what is specified in this Policy. Nothing in this Policy is intended to compromise MDHHS authority in such cases. Recipients are required to give full cooperation to health officials in such cases, and ensure full compliance by property owners with any health agency requirements.

2. COVERED ACTIVITIES AND STRUCTURES

The HUD Lead Safe Housing Rule amended the CDBG regulation at 24 CFR 570.487 to apply the Rule to housing activities such as rehabilitation, acquisition, and homebuyer assistance. It also amended the HOME Program regulation at 24 CFR 92.355 to make all HOME-assisted housing subject to the Rule.

The HUD Lead-Safe Housing Rule addresses a range of HUD-assisted housing, and is not limited just to housing assisted with HOME or CDBG. It also addresses other housing assisted with MSHDA funding.

CDBG or HOME assisted Housing built prior to January 1, 2078 are covered by the Rule:

- Housing rehabilitation (rental, homeowner or homebuyer)
- Acquisition assistance, for homebuyer or rental activities

For a summary matrix, describing the required of level assistance based on project scope and amount of dollars used, see Attachment A, Summary of Required LBP Hazard Control. However, recipients are encouraged to read the applicable sections of the Rule and other HUD and EPA guidance as applicable.

Structure and Building Requirements

The Rule pertains to housing completed prior to 1/1/1978, and is applicable to projects that receive federal housing assistance including, but not limited to HOME, CDBG and MSHDA. If the property is subject to the Rule, then the standards apply to the interior and exterior of the entire residential structure, including all residential units (whether or not assisted) and shared or common areas and egresses, and any outbuildings, including garages, that are used and/or easily accessible by the residents. The entire property is also subject to soil standards if risk assessment standards apply.

3. PROPERTIES OR ACTIVITIES EXEMPT FROM THE FEDERAL RULE

While the Rule broadly applies to all pre-1978 units, Subpart B-R of the Rule (35.115) exempts certain pre-1978 units from the requirements of this Rule (See Attachment B, Lead Property Exemption). Exemptions include:

- **Post 1/1/78 housing** – Recipients should have documentation of the original completion date of the structure (e.g., a Certificate of Occupancy or other legal document approving occupancy).
- **Zero-bedroom units** – Including single room occupancy, boarding houses, rooming houses, efficiency apartments, dormitory, military barrack, individual room rental, or other dwellings that do not have sleeping areas separate from living areas. NOTE: While zero-bedroom units are exempt from the Rule, it is MSHDA’s policy that zero-bedroom units for which occupancy by a child under the age of six is anticipated must comply with the Rule.
- **Housing reserved exclusively for occupancy by the elderly or disabled** – This must be documented by deed restriction, covenant, or other formal restrictive document. However; units for which occupancy by a child under the age of six is anticipated must comply with the Rule. Part 35 Subpart B definition of “Housing for the Elderly” lists occupants 62 years of age and older.
- **Lead-based paint free housing**- is target housing that has been found to be free of paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter or 0.5% by weight. NOTE: Lead-based paint that has been encapsulated or enclosed would not result in a finding by a certified inspector that the target housing is free of lead-based paint. Therefore, the lead-based paint free exemption would not be available to excuse a lessor from the disclosure requirements under the Lead Disclosure Rule.
- **Unoccupied dwelling units that will remain unoccupied until demolished** – It is the policy of MSHDA to ensure that demolition is conducted in a safe manner consistent with EPA and OSHA rules to ensure worker protection, containment of dust, and proper removal and disposal of LBP debris from the site. Grantees shall consider the safety of abutters and possible future users of the site, including children who might use these sites as play areas while they remain undeveloped.
- **Non-residential spaces in residential or mixed-use properties** – However; any residential units and any common spaces that are used or shared by residential occupants, including means of egress, are covered by the Rule.
- **Rehabilitation that does not disturb a painted surface** – The Rule provides de minimis levels for the application of safe work practices; however, it does not mean that projects where disturbed painted surfaces fall below the de minimis levels are exempt from the Rule. This exemption applies only if no painted surfaces will be disturbed. Examples might be a roof repair, furnace replacement, or septic replacement.
- **Emergency actions** – The definition of “imminent danger” must be pre-approved by a CD Specialist if it is something other than natural disaster, fire, imminent structural collapse, or absence of functional utilities.

In addition, the following apply not as exemptions but as conditions for achieving compliance.

- Exterior evaluations and compliance work can be deferred for any covered activity from November – April if weather prevents completion of the activity.
- If the Michigan, State Historic Preservation Office (SHPO) requests interim controls in lieu of abatement activities (e.g., window repair versus replacement) on a property of historic significance, grantees can proceed only upon MSHDA-CDD approval, and the SHPO request shall be documented in writing. Examples of such work might be paint stabilization of clapboards rather than vinyl siding used as an

abatement enclosure method, or window repairs rather than replacement windows when such replacement windows do not meet historic standards.

If a CDBG or HOME recipient believes that it has a property that is exempt under one of the conditions listed above, they shall confirm that determination with the MSHDA-CD Specialist, by providing the appropriate file documentation as evidence of the exemption.

4. TRAINING AND CERTIFICATION REQUIREMENTS

Any project involving renovations in target housing would also be covered by the EPA Renovation, Repair and Painting Rule (RRP) and require the use of Certified Firms and Renovators. No firm may perform, offer, or claim to perform renovations without certification from EPA under §745.89 in target housing or child-occupied facilities, unless the renovation qualifies for exemption.

Risk Assessment/Inspection

Only persons who have been certified as Risk Assessors/Inspectors by the Michigan Department of Health and Human Services (MDHHS) may conduct Risk Assessments Inspections. Certified lead-based paint inspectors are not authorized to conduct Risk Assessments. MDHHS maintains a list of certified risk assessors and can provide information on courses available for persons wanting to become risk assessors. The list may be accessed on-line http://www.michigan.gov/documents/Inspectors-all_35939_7.htm and verify a license or registration at <https://w2.lara.state.mi.us/VAL/License/Search>

Abatement

Any work subject to abatement standards (i.e., federal rehabilitation assistance in excess of \$25,000 per unit) or when interim control requirement minimums are upgraded to use abatement methods, must meet all abatement supervisor/contractor/worker training and certification requirements of HUD, MDHHS and EPA. HRF funded recipients shall require documentation of appropriate certifications from all contractors, and verify compliance with certification requirements.

Interim Controls

Any interim control work, including standard treatments when LBP is presumed to be present, must be done in accordance with 24 CFR Part 35, the 2012 HUD Guidelines, and all state regulations that apply.

Interim Controls: Individual Requirements

All persons performing interim controls must be trained in accordance with the hazard communication standard for the construction industry issued by the Occupational Safety and Health Administration of the U.S. Department of Labor at 29 CFR 1926.59, and either:

1. Trained in HUD-approved lead-safe work practices for work in federally-assisted target housing. This means that all workers and project supervisors must be EPA Certified Renovators (EPA's RRP training is HUD-approved for individuals performing interim controls);
OR
2. *If any of worker is* not an RRP certified renovator, the project supervisor must be a certified lead abatement supervisor in addition to being a certified renovator;
OR
3. Interim control work can be performed by certified lead abatement workers under the supervision of an abatement supervisor, certified by MDHHS.

Interim Controls: Firm Requirements

1. Renovation Firms shall be EPA-RRP certified. At least one certified renovator must be at the job site when work is being done and all individuals trained in the use of lead safe work practices.
2. HUD does not certify renovators or firms. All workers and supervisors must complete a HUD approved curriculum in lead safe work practices (EPA's RRP curriculum is HUD-approved). A current list of approved courses is available on the Internet at <http://www.hud.gov/offices/lead>
3. Please click on the following links: **Complying with the LSHR and RRP**; and **Frequently-asked Questions from Grantees on EPA's RRP Rule**.

Appropriate documentation of certifications must be in the contractor files. Rehabilitation specialists, specification writers, inspectors, or other staff of that regularly enter lead hazard control worksites or supervise rehab work involving lead hazard control activities, are encouraged to attend one of the above HUD approved curriculum courses. CDD recommends the "Abatement Supervisor" training course.

Clearance

HUD requires a clearance examination done by an independent party involving dust sampling and laboratory analysis of the dust. RRP clearance methods do not apply on HUD funded projects.

Clearance of abatement work must be done by a LBP Risk Assessors Inspector certified by MDHHS.

Clearance of interim control work may be done by certified Risk Assessors Inspectors, or by clearance technicians. Clearance technicians must have completed the EPA/HUD approved course and be certified. Their clearance reports must be reviewed by a certified Risk Assessor Inspector.

When interim control measures are required, contractors must certify that rehabilitation work to be undertaken on a property will be performed in compliance with 24 CFR 35 and that records will be maintained for five years to document compliance (see Attachment C, Contractor Certification of Compliance).

5. INSURANCE REQUIREMENTS

Abatement Contractors

Abatement contractors must meet applicable MDHHS requirements for insurance.

RRP Firms and Interim Control Contractors & Workers

Contractors involved in interim controls or paint maintenance of covered properties are strongly encouraged to have liability coverage for LBP hazard work, either in a general liability policy or individual project policies.

Rental Property Owners

Owners of rental property assisted with federal funds are strongly encouraged to investigate the availability of liability coverage for LBP hazards; however, no requirements are imposed on the individual owners. Owners should understand that they assume the risks of liability, and that MSHDA assumes no liability with respect to LBP hazards.

6. HOUSING REHABILITATION ON MSHDA, HOME OR CDBG ASSISTED UNITS

A recipient's funds need not be designated for the rehabilitation costs to trigger the applicability of 24 CFR Part 35, Subpart J. If a recipient utilizes MSHDA, HOME or CDBG funds to assist in the acquisition of a

project, and rehabilitation is part of the project and its overall financing, then Subpart J applies to housing built prior to 1978. The requirements of Subpart J are summarized in 6 key steps listed below.

LBP Requirements – Federally Assisted Projects

1. **Evaluation** – Activities are required to determine the presence of deteriorated paint, lead-based paint, or lead-based paint hazards.

Risk Assessments/Inspections shall be completed by MDHHS certified Risk Assessors/Inspectors and are required for any projects where the average per-unit federal rehabilitation assistance is over \$5,000. For projects below \$5,000 of federal assistance, only disturbed painted surfaces must be tested or presumed to have lead-based paint. All paint testing samples and risk assessment samples must be analyzed by an approved laboratory.

2. **Disclosure** – Information must be provided to owners/buyers and occupants regarding LBP. Lead Disclosure Rules are found at (24 CFR Part 35, subpart A and 40 CFR Part 745, Subpart F.)

In addition to the EPA Protect Your Family pamphlet, Notice to Tenant of Lead-Based Paint or Lead-Based Paint Hazards and Notice to Buyer of Lead-Based Paint or Lead-Based Paint Hazards, which can be downloaded from www.hud.gov/lea/leadhelp.html, MSHDA also requires that you provide the Pre-Evaluation Disclosure of Lead Based Paint Procedures to Property Owners (Attachment D).

Two additional notices may be required if hazards are identified by risk assessment/inspection and treated: (1) **Notice of Evaluation** and (2) **Notice of Lead Hazard Reduction** following the format in Appendix A-C of Part 35.

3. **Work Practices** – Procedures must be followed to conduct the work so as to protect the occupants and workers.

In all situations (above de minimis levels) where LBP (or presumed LBP) is to be disturbed by rehabilitation or addressed as a LBP hazard, Safe Work Practices must be followed. Interim Control methods must be used for the treatment of all lead hazards identified in a risk assessment/inspection of projects where the per unit average federal rehabilitation assistance is between \$5,000 and \$25,000. Abatement methods (and MDHHS-certified abatement contractors) must be used for the treatment of identified lead hazards when the federal rehabilitation assistance exceeds \$25,000.

An Occupant Protection Plan, MDHHS-1109 (see Attachment E, Occupant Protection Plan) is required for all rehabilitation activities undergoing lead paint remediation activities with tenants/occupants. It is not applicable for structures built after 1978 or if lead is remediated before occupancy.

4. **Clearance** – Steps must be taken to ensure any lead hazard control work has left no debris or dust and to determine the work site is ready to be re-entered by other non-certified lead workers or occupants. Please note this may require 2 or more clearances, once lead hazard control work is completed, the site/unit shall be cleared prior to subsequent on-site rehabilitation activities to protect un-certified workers completing non-lead paint reduction activities.

Clearance examinations are required for all projects following abatement, interim controls, paint stabilization, standard treatments, ongoing lead-based paint maintenance, or rehabilitation that disturbs more than the de minimis quantity (see 24 CFR 35.1350) of known or presumed lead-based paint. Work site only clearance may be performed on non-abatement projects provided containment is used to ensure that dust and debris generated by the work is kept within the worksite.

5. **Ongoing Maintenance** – When rental properties have ongoing compliance agreements that require compliance with property standards, certain actions must be taken to maintain, inspect, and repair painted surfaces throughout the compliance period.

For rental projects, annual visual assessment is required during the MSHDA and/or Federal compliance period.

6. **Relocation-** Occupants shall be temporarily relocated before and during hazard reduction activities to a suitable, decent, safe, and similarly accessible dwelling unit that does not have lead-based paint hazards, except if:

- Treatment will not disturb lead-based paint hazards or soil-lead hazards;
- Only the exterior of the dwelling unit is treated, and windows, doors, ventilation intakes and other openings in or near the worksite are sealed during hazard control work and cleaned afterward, and entry free of dust-lead hazards, soil-lead hazards, and debris is provided;
- Treatment of the interior will be completed within 1 period of 8 daytime hours, the worksite is contained so as to prevent the release of leaded dust and debris into other areas, and treatment does not create other safety, health or environmental hazards (e.g. exposed live electrical wiring, release of toxic fumes, or site-disposal of hazardous waste); or,
- Treatment of the interior will be completed within 5 calendar days, the worksite is contained so as to prevent the release of leaded dust and debris into other areas, treatment does not create other safety, health, or environmental hazards and, at the end of work on each day, the worksite and the area within at least ten (10) feet (3 meters) of the containment area is cleaned to remove any visible dust or debris, and occupants have safe access to sleeping areas, and bathroom and kitchen facilities.

Standard Treatments

While risk assessments/inspections are required for all rehabilitation projects using over \$5,000 in federal rehabilitation assistance per unit, the Rule at 35.120(a) provides the option of Standard Treatments. This presumes the presence of LBP in all deteriorated paint surfaces and all friction and impact surfaces. Therefore, all painted windows and doors would need to be treated to reduce friction or impact. While this method would avoid the requirement of a risk assessment, it may in fact result in the treatment of surfaces that are not LBP or LBP hazards. Administrators are urged to use this method only in cases where the presumption of LBP is cost-effective.

Window Replacement in an Interim Control Project

Replacement of windows are typically considered an abatement activity to be done by abatement workers however, many HRF funded MSHDA, CDBG and HOME rehabilitation projects fall below \$25,000 in Federal rehabilitation assistance, and thus could qualify as interim control projects. When the replacement of windows is done for rehabilitation purposes, such as energy conservation, the activity can be conducted as an interim control activity rather than an abatement activity. Following interim control procedures for the replacement of windows, specifically as a rehabilitation procedure, can be done even though the windows may have subsequently been identified as a LBP hazard by the risk assessment/inspection, and the activities may incidentally result in a reduction or elimination of lead-based paint hazards.

For housing rehabilitation projects where the federal assistance is less than \$25,000 and interim controls are permitted under 24 CFR 35.930, replacement of windows for rehabilitation purposes will be classified as an interim control activity assuming the windows are known or presumed to have lead-based paint.

For each such project, the MSHDA HRF recipient must maintain records (e.g., the rehab work write-up or scope) that establish window replacement as part of the basic rehabilitation scope, prior and independent of the risk assessment/inspection results. The recipient must document that window replacement is consistent with the agency's rehabilitation standards to address building component non-functionality, obsolescence, energy efficiency or useful life.

If window replacement is done solely or primarily for purposes of lead hazard control, and it is identified by a risk assessment/inspection post work write-up, and would not otherwise be part of the intended rehabilitation activity, then it shall be treated as an abatement activity regardless of the level of federal assistance. In these cases, HRF grantees shall give proper abatement activity notification to MDHHS prior to replacing windows per State of Michigan abatement protocol.

Please Note: **Interim Control** shall be done by persons with proper certifications as indicated under section 4. Training and Certification Requirements; and utilize the same set-up, clean-up, clearance protocols and methods as lead-based paint abatement contractors while conducting window replacement. The only difference between the two window replacement methods is abatement protocol requires MDHHS notification.

7. CALCULATION OF THE LEVEL OF FEDERAL REHABILITATION ASSISTANCE

Calculation of the amount of federal rehabilitation assistance (see Attachment F, Calculation of the Level of Federal Rehabilitation Assistance) shall follow the dual-threshold procedures described in HUD's "Interpretive Guidance" located at <https://portal.hud.gov/hudportal/documents/huddoc?id=leadbased-tax-guidance.pdf>

The calculation is the lower of the total Federal assistance per assisted unit or the total rehabilitation hard cost per assisted unit.

Rehabilitation hard costs are actual costs, regardless of source of funds, associated with the physical renovation of a unit.

Lead Hazard Evaluation and Lead Hazard Reduction Costs

Lead hazard evaluation and reduction costs are costs associated with complying with the LBP Rule that are not normally incurred as part of rehabilitation activity if the Lead Rule did not apply. This can include:

- Evaluation, risk assessments, visual assessments or inspections
- Worksite preparation
- Occupant protection, storage or protection of belongings
- LBPH activities that are being done only for purposes of lead hazard control
- Waste handling attributable to lead-based paint hazard reduction
- Specialized cleaning designed to remove LBP dust
- Clearance activities, visual assessments, dust wipes, and reports
- Soil treatments

Incremental lead hazard reduction costs are not the full cost of the rehab activity, but just those additional costs incurred because of LBP compliance.

- For example, a contractor could provide a standard quote for window replacement (installed) of \$300 per window without LBPH, while increasing the price to \$350 when addressing the incremental lead hazard reduction cost. In this case, the incremental cost of \$50 per window may be treated as an additional LBPH reduction cost and is excluded from the calculation of rehabilitation hard costs.

8. MSHDA, HOME OR CDBG-FUNDED ACQUISITION ASSISTANCE REQUIREMENTS

If MSHDA, HOME, CDBG, or other HUD funds covered by the Rule are used to assist with the acquisition of any residential facility (without rehabilitation) for homebuyer or rental use, the following standards apply.

Federally Assisted Acquisition

1. **Evaluation** – If no rehabilitation is included, the property must be subject to a visual assessment for deteriorated paint (interior and exterior).
2. **Disclosure** – The EPA Protect Your Family pamphlet and Notice (to tenant or buyer) of LBP or LBP Hazards can be downloaded from www.hud.gov/lea/leadhelp.html and must be provided by the seller to the buyer. No disclosure is triggered by visual assessment, but the notice of lead hazard reduction activity is required if paint stabilization and clearance is mandated by the visual assessment.
3. **Work Practices** – If defective paint surfaces are found in the visual assessment, repairs must be done using paint stabilization methods (performed by EPA certified RRP firm).
4. **Clearance** – If paint stabilization occurs, work shall be completed by EPA certified RRP firm.
5. **Ongoing Maintenance** – Annual visual assessment and ongoing paint stabilization maintenance is required during any MSHDA compliance period (for rental projects only).

9. ADMINISTRATIVE REQUIREMENTS

The following administrative requirements apply to CDD-funded projects that are subject to this policy.

Costs

Local program administrators may categorize most expenses related to the implementation of LBP requirements as project delivery expenses. This includes any evaluation, LBP hazard work supervision, and clearance activities associated with an actual project. MSHDA does not require these additional LBP costs to be included in the mortgage to individual property owners.

Risk Assessments/Inspections and Clearance are considered project costs. Where LBP evaluation costs are incurred for a project that does not go forward (e.g., a Risk Assessment/Inspection of a property that ultimately is not assisted), the evaluation costs shall be treated as program administrative costs.

Record Keeping

HRF funded CDBG and HOME regulations require maintenance of records for three and five years, respectively, after completion of a project. The LBP Rule requires retention of records for at least 3 years after completion of the LBP hazard evaluation or reduction activity. However, it is strongly recommended that recipients maintain documentation of appropriate LBP procedures (evaluation, disclosure, work practices, and clearance) in retrievable files indefinitely to address any legal or liability issues that may arise.

File Documentation

Required file documentation includes at a minimum:

- Lead Property Exemption form, if applicable
- LBP Checklist for MSHDA Federally Funded Rehabilitation Projects (Attachment G)

The following forms may be required if property or project is not exempt from the Regulation:

- Calculation of the level of federal rehabilitation assistance
- Pre-Evaluation Disclosure of Lead Based Paint Procedures To Property Owner
- Risk assessment report or visual assessment report (as applicable)
- Evidence of contractor/worker certifications (abatement) or training (interim control workers)
- Disclosure of evaluation (risk assessment) and hazard reduction activities (interim controls, abatement) to owner/occupants

- Relocation assistance or other occupant protection procedures
- Record of inspections; evidence of interim control/abatement practices being followed
- Clearance reports
- Occupant Protection Plan(s)

10. THE RENOVATION, REPAIR AND PAINTING RULE

On April 22, 2008, EPA issued the [Renovation, Repair and Painting Rule \(RRP\)](#) requiring the use of [lead-safe practices](#) and other actions aimed at preventing lead poisoning (EPA's RRP Rule). Under EPA's RRP Rule, beginning in April 2010, contractors performing renovation, repair and painting projects that disturb lead-based paint in homes, child care facilities, and schools built before 1978 must be certified and must follow specific work practices to prevent lead contamination.

There are some differences between EPA's RRP Rule and HUD's Lead Safe Housing Rule (LSHR). A major difference is LSHR requires clearance examinations. All housing receiving federal assistance must still comply with the LSHR. HUD's Office of Lead Hazard Control and Healthy Homes (OLHCHH) provides information on [complying with the LSHR and RRP](#), and [Frequently-asked Questions from Grantees](#). [Additional information for renovators](#) is available.

Exceptions

Exceptions to this Policy will be granted on a case-by-case basis by MSHDA upon receipt of a formal written request with full explanation of the reasons for the request and the actions that would be taken to ensure occupant safety from LBP hazards.

If you have questions, contact your CD Specialist at 517-373-1974.

Attachments

- A. Summary of Required LBP Hazard Control
- B. Lead Property Exemption
- C. Contractor Certification of Compliance
- D. Pre-Evaluation Disclosure of LBP Procedures to Property Owners
- E. Occupant Protection Plan
- F. Calculation of the Level of Federal Rehabilitation Assistance
- G. LBP Checklist for MSHDA Federally Funded Rehabilitation Projects
- H. The Lead-Safe Certified Guide to Renovate Right