

MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY
OFFICE OF COMMUNITY DEVELOPMENT

SUBJECT: Implementation of the HUD Lead-Based Paint Regulations @ 24 CFR Part 35 for OCD CDBG and HOME Recipients, and Applicability to MSHDA funded Grants

Policy Bulletin #26

EFFECTIVE DATE: July 29, 2009 (updated June 2, 2010)

The purpose of this Bulletin is to provide guidance to MSHDA, HOME, and CDBG recipients regarding the implementation of the new HUD Lead-Based Paint regulations at 24 CFR Part 35.

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.

HUD issued a Transition Assistance Notice permitting jurisdictions to make a Statement of Inadequate Capacity to Comply with the new Lead Safe Housing Regulation. MSHDA has submitted the required documentation to defer implementation to August 10, 2001.

This policy will cover the following topics as it applies to the new federal Regulation:

1. **Applicability of the Regulation**
2. **Covered Activities and Structures**
3. **Properties or Activities Exempt from the Federal Rule**
4. **Training and Certification Requirements**
5. **Insurance Requirements**
6. **Housing Rehabilitation on HOME or CDBG assisted units**
7. **Calculation of Federal Rehabilitation Assistance**
8. **HOME or CDBG Funded Acquisition Assistance Requirements**
9. **Administrative Requirements**

OCD policy as it relates to housing projects funded with MSHDA (state dollars) and no federal dollars is covered in the last section of this policy titled:

10. State-Assisted (not Federally-Assisted) Properties

NOTE: OCD Grantees that only have MSHDA funds and no federal funds must only comply with Section 10 of the policy.

1. APPLICABILITY OF THE REGULATION

The rules and policies discussed herein are applicable to:

- CDBG grant awards, made by MSHDA, to local units of government subsequent to 8/10/01;
- 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;
- HOME-assisted projects for which a project-specific written agreement is entered into with the property owner subsequent to 8/10/01; and
- Any projects or activities funded by **CDBG program income** for which the owner's written agreement is executed after 12/31/01.

The following are not subject to the policy outlined below and may be completed under the pre-existing LBP requirements of the CDBG or HOME program, as applicable:

- CDBG grant awards made prior to 8/10/01 – all individual projects or activities for which written agreements are executed with the owner or buyer on or before 12/31/01; and
- HOME-assisted projects for which a project-specific written agreement is executed with the property owner or buyer prior to 8/10/01.

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 new Rule, *provided such changes are minor in nature and do not alter the type of activity or the units covered by the agreement.*

Environmental Intervention Blood Lead Level (EIBLL) Child

If a unit or facility is to be occupied by a child under the age of six, who has been identified as having Environmental Intervention Blood Lead Levels (EIBLL), the Michigan Department of Community Health (MDCH), 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 memo. Nothing in this policy memo is intended to compromise MDCH's 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 new Rule amended the CDBG regulation at 24 CFR 570.487 to apply the new 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 new Rule.

The new 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 by MSHDA, but these other units are subject to guidance issued separately by MSHDA.

The following CDBG or HOME-assisted activities, in housing built prior to January 1, 1978, are covered by the Rule:

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

A summary matrix, describing the required level assistance based on project scope and amount of dollars used, is attached. However, recipients are cautioned to read the applicable sections of the Rule and other HUD guidance.

Structure and Building Requirements

The Rule pertains to housing for which construction was completed prior to 1/1/78, and is applicable to projects that receive Federal housing assistance (including, but not limited to HOME and CDBG). *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 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 of the Rule (35.115) exempts certain pre-78 units from the requirements of this rule. 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. ***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.***
- **Housing which has been tested and found not to contain LBP, or for which any LBP was removed or replaced and the housing cleared** – Abatement of hazards under this Rule is not sufficient to qualify for future exemption, unless all LBP in the housing is abated by method of removal or replacement.
- **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 are urged to 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 minimus levels for the application of safe work practices; however, it does not mean that projects where disturbed painted surfaces fall below the de minimus 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 MSHDA 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 State Historic Preservation Office (SHPO) of the Michigan Department of State requests interim controls in lieu of abatement activities (e.g., window repair versus replacement) on a property of historic significance, grantees can proceed on the assumption that MSHDA has approved such a waiver. The SHPO request should 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.*

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

4. TRAINING AND CERTIFICATION REQUIREMENTS

Risk Assessment

Only persons who have been certified as risk assessors by the Michigan Department of Community Health (MDCH) may conduct risk assessments. Certified lead-based paint inspectors are not authorized to conduct risk assessments. MDCH 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 at www.mdch.state.mi.us/dch/lead/ or at 517-335-9390.

Abatement

Any work subject to abatement standards (i.e., Federal rehabilitation assistance in excess of \$25,000 per unit) must meet all training and certification requirements of the MDCH. Recipients should require documentation of appropriate certifications from all contractors, and MDCH to verify compliance with certification requirements.

Interim Controls

Any interim control work, including standard treatments when LBP is presumed to be present, must be done either by:

- Workers who have attended any of the following courses:
 - The Remodeler's and Renovator's Lead-Based Paint Training Program
 - Work Smart, Work Wet, and Work Clean to Work Lead Safe
 - Abatement worker training approved by MDCH
 - Other courses approved by HUD
- Workers working under the direct supervision on-site of a supervisor who has been certified as an abatement supervisor by MDCH.

NOTE: Appropriate documentation of certifications must be in the contractor files. It is acceptable to MSHDA that the general contractor for each funded project certify that all workers performing interim control activities (or enter the "work-site") have been properly trained. A blank certification form is included in the appendix (page 20) of this policy.

Rehab specialists, inspectors, or other staff of MSHDA recipients that regularly enter lead hazard control worksites or supervise rehab work involving lead hazard control activities are encouraged to attend one of the above interim control courses or other courses outlining safe work practices.

Clearance

Clearance of abatement work must be done by LBP inspectors or risk assessors certified by MDCH.

Clearance of interim control work may be done by certified inspectors, risk assessors, or by clearance sampling technicians who have completed the EPA/HUD approved course and have been certified by MDCH when that certification becomes available. Clearance technicians who have completed the approved course but have not been certified may conduct clearances of interim control projects, but only if the clearance report is reviewed by a certified inspector or risk assessor.

5. INSURANCE REQUIREMENTS

The availability of lead-based paint liability insurance may be limited in the initial years of implementation. MSHDA will work with local administrators who have problems with obtaining insurance for themselves or their contractors. As LBP liability insurance becomes more readily available and reasonably priced, MSHDA reserves the right to extend insurance requirements to all participants. However, the following standards will be applied for all federally assisted MSHDA housing.

Local Administrators

Local administrators of MSHDA-funded rehabilitation and acquisition assistance programs are required to attempt to secure liability insurance for LBP hazards as part of their general liability coverage. Reasonable incremental insurance costs will be reimbursed as an additional program cost by MSHDA, without deduction from current administrative fees. MSHDA will provide information regarding the availability of lead liability insurance upon the request of the Grantee.

Abatement Contractors

Abatement contractors must meet applicable MDCH requirements for insurance.

Interim Control Contractors & Workers

Contractors involved in interim controls or paint maintenance of covered properties are strongly encouraged, but not required, to have liability coverage for LBP hazard work, either in a general liability policy or individual project policies. Local administrators are **required** to grant a preference to contractors who have LBP hazard liability insurance (unless the administrator can provide coverage to contractors through an umbrella policy). Local administrators should consider the cost of providing such coverage when evaluating bids.

Rental Property Owners

Owners of rental property assisted with federal funds are strongly encouraged to investigate the availability of liability coverage for LBP hazards. No requirements are imposed on the individual owners.

6. HOUSING REHABILITATION ON HOME OR CDBG ASSISTED UNITS

A Recipient's funds need not be designated for the rehabilitation costs to trigger the applicability of the Federal Rule's Subpart J. *If a Recipient only utilizes HOME or CDBG funds to assist in the acquisition of a project, but rehabilitation is part of the project and its overall financing, then Subpart J of the Federal Rule applies to housing built prior to 1978.* The requirements of Subpart J are summarized in five 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 by MDCH-certified risk assessors are required for any projects where the average per-unit Federal rehabilitation assistance is over \$5,000. (There is also a Standard Treatments option; see below.) Below \$5,000, only painted surfaces to be disturbed must be tested, or presumed to have lead-based paint.

2. **Disclosure** – Information must be provided to owners/buyers and occupants regarding LBP.

In addition to the standard EPA/HUD pamphlet (Protect Your Family) and notice of LBP or LBP hazards to buyers or tenants (both of these 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 Owner attached to this policy.

Two additional notices may be required if hazards are identified by risk assessment 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 minimus 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 of projects where the per unit average Federal rehabilitation assistance is between \$5,000 and \$25,000. **Abatement** methods (and DCH-certified abatement contractors) must be used for the treatment of identified lead hazards when the Federal rehabilitation assistance exceeds \$25,000.

4. **Clearance** – Steps must be taken to ensure that any lead hazard control work has left no debris or dust and to determine that the work site is ready to be re-entered by other workers or occupants.

Unit clearance is required for all projects with per unit Federal rehabilitation assistance in excess of \$5,000. In projects below \$5,000 per unit Federal rehabilitation assistance, **worksite clearance** is required (worksites are defined as the immediate vicinity of LBP hazard control work).

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 compliance period. Repairs of deteriorated paint must be done using **Safe Work Practices & Clearance**.

NOTE: The actions taken at each of these steps vary by type of activity and (in the case of rehabilitation) by the amount of Federal rehabilitation assistance. Rehabilitation administrators should use the form in the appendix (page 17) to determine the amount of assistance.

Standard Treatments

While risk assessments 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 is typically considered an abatement activity to be done by abatement workers. However, many MSHDA-funded CDBG and HOME rehab 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 a risk assessment and the activities may incidentally result in a reduction or elimination of lead-based paint hazards.

Consistent with the EPA /HUD memo issued 4/19/01, the following policy shall apply to all non-exempt MSHDA, HOME, and CDBG funded rehabilitation projects:

- For housing rehabilitation projects where the Federal rehabilitation 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). Interim control activities may be performed by workers that have completed one of the approved courses at 24 CFR 35.1330 (or workers working under a certified supervisor).

For each such project, the MSHDA recipient must maintain records (e.g., the rehab work write-up or scope) that establish window replacement as part of the basic rehabilitation scope independent of the risk assessment results. The recipient must document that window replacement is consistent with the agency's rehabilitation standards (e.g., 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 (i.e., it is recommended by a risk assessment and would otherwise not be part of the rehabilitation), then it shall be treated as an abatement activity, regardless of the level of Federal rehabilitation assistance.** In such cases, window replacement must be done by certified abatement contractors listed with the Michigan Department of Community Health.

7. CALCULATION OF FEDERAL REHABILITATION ASSISTANCE

Calculation of the amount of Federal rehabilitation assistance should follow the dual-threshold procedures described in HUD's "Interpretive Guidance" Questions J3, J3a and J5 (in both the 9/21/00 and 4/16/01 versions). The latest version of the Guidance can be found at HUD's web-site www.hud.gov/lea/1012qa_2001.pdf. This requires the calculation of the Federal assistance per unit and the rehabilitation cost as two separate calculations, and using the lower of the two calculations:

1. The Total Federal Assistance per assisted unit; and
2. The Rehabilitation Cost per assisted unit.

A **Threshold Calculation Form** is attached for use in all rehabilitation projects utilizing MSHDA, HOME and CDBG funds. (See Attachment') Additional guidance on the interpretation of lead hazard reduction costs is provided in a Q & A format below.

What are some examples of "Federal assistance?"

The following are examples of programs that are considered Federal assistance:

- HUD grant programs, including CDBG, HOME, HOPE
- Special Needs programs such as HOPWA, ESG, Supportive Housing, Shelter Plus Care and other McKinney programs
- Section 8 and other HUD rental assistance programs
- Dept. of Agriculture's Rural Development funds

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

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

If you are using Federal funds on a project and the program is not clearly identified as included or excluded by these lists, then contact MSHDA to determine the applicability of this Rule before proceeding with rehabilitation plans. *Please note that the requirements listed in Section 10 of this policy apply to projects that receive MSHDA non-federal assistance.*

What are rehabilitation hard costs?

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

The following are not hard costs:

- Soft costs, including financing fees, credit reports, title binders and insurance, recordation fees, transaction taxes, impact fees, legal and accounting, appraisals, architectural and engineering fees.
- Administrative costs.
- Relocation costs.
- Environmental review costs.

- Acquisition costs.
- Lead hazard evaluation and reduction costs

What are Lead Hazard Evaluation and Reduction Costs and how are they computed and documented?

Any costs that are associated with complying with the LBP Rule that are not normally incurred as part of rehabilitation if the Rule did not apply. This can include:

- Evaluation costs (risk assessments, visual assessments or inspections)
- Worksite preparation
- Occupant protection, including relocation, storage or protection of belongings
- Interim controls, standard treatments, or abatement activities that are being done only for purposes of lead hazard control and would not be done in the normal course of the rehabilitation except for the LBP requirements
- Waste handling attributable to lead-based paint hazard reduction.
- Specialized cleaning designed to remove LBP dust
- Clearance activities, including visual assessments, dust wipes, and reports

In addition to costs (e.g., risk assessments, clearances, soils treatment) that are conducted only because of the LBP rule, the LBP hazard reduction costs may also include the incremental costs of a rehab activity that are the result of safe work practice requirements. Incremental costs are not the full cost of the rehab activity, but just those additional costs incurred because of safe work practice compliance.

- For example, a contractor could provide a standard quote for window replacement (installed) of \$275 per window in a job without LBP, while increasing the price to \$310 when using safe work practices in an interim control job. In this case, the incremental cost of \$35 per window (created entirely for purposes of this illustration) may be treated as an additional LBPH reduction cost and excluded from the calculation of rehabilitation hard costs for this purpose.

However, if the full cost of replacement of windows is excluded from rehabilitation costs, then the window replacement activity must be classified as a LBPH reduction activity and not as a rehab activity. Therefore, the replacement activity is subject to MDCH abatement standards (regardless of the overall classification of the rest of the rehab job).

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

If LBP-associated costs are to be excluded from the calculation of rehabilitation hard costs as permitted, the local administrator must document those costs with:

- Actual cost documentation such as invoices (e.g., the cost of a third-party risk assessment)
- Standardized fee -- If the activity is performed in-house and no third party invoice is available, a standard charge may be established for the service that reflects average costs (e.g., for an in-house risk assessment, a standard fee is charged to every project that is based on hourly rates for an average assessment)
- Contractor breakdown – The contractor can provide an estimate of the incremental costs associated with LBP hazard reduction (e.g., safe work practices)
- Comparison of unit costs between LBPH and non-LBPH jobs

How are rehabilitation hard costs per unit calculated if not all of the dwelling units are federally-assisted?

The actual costs of the rehabilitation of the assisted units is combined with a pro rata share of the exterior, common area, and common systems costs. For multi-unit projects with both federally-assisted and non-assisted units, rehabilitation hard costs per unit are calculated using the following formula: $A/C + B/D$ where:

A = rehabilitation hard costs for all assisted units (excl. common areas & ext. surfaces)

B = rehabilitation hard costs for common areas and exterior surfaces

C = number of federally-assisted units in the project

D = total number of units in the project

8. HOME OR CDBG-FUNDED ACQUISITION ASSISTANCE REQUIREMENTS

If 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 standard EPA/HUD pamphlet (Protect Your Family) and notice of LBP or LBP hazards (both of these can be downloaded from www.hud.gov/lea/leadhelp.html) are required of 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 trained workers). ***Safe Work Practices*** apply above the de minimus levels.
4. **Clearance** – If Paint Stabilization occurs, ***worksite clearance*** by a qualified professional is required.
5. **Ongoing Maintenance** – ***Annual Visual Assessment*** is required during any MSHDA compliance period (for rental projects only).

9. ADMINISTRATIVE REQUIREMENTS

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

Costs

Local program administrators may incur most costs related to the implementation of projects 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 and Clearance are considered "Project Delivery Expenses" (see above) and are added as a project cost. While these costs may be considered "soft costs", they can be costs charged to the project over and above the normal limits established by OCD. These costs are not included in developer fees for development projects. Additionally, these costs can be over and above the 18% administrative/soft cost limits for CDBG or 8% soft cost limit for HOME relative to homeowner and rental rehabilitation projects.

Where LBP evaluation costs are incurred for a project that does not go forward (e.g., a risk assessment of a property that ultimately is not assisted), the evaluation costs must be treated as program administrative costs. MSHDA will consider requests for assistance with such LBP evaluation costs associated with projects that do not go forward, particularly when the project is rendered infeasible by the addition of LBP hazard control requirements. However, local administrators are urged to not incur such costs until there is a reasonable certainty of the project going forward.

Record Keeping

The CDBG and HOME regulations require maintenance of records for three and five years, respectively, after completion of a project activity. 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:

- LBP Checklist for MSHDA federally funded rehabilitation projects (see appendix)
- Property Exemption Form, if applicable (see blank form in appendix)

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

- Pre-Evaluation Disclosure of Lead Based Paint Procedures To Property Owner
- Risk assessment report or visual assessment report (as applicable)
- Calculation of Federal Rehab Assistance Form for rehab projects (see appendix)
- Disclosure of evaluation (risk assessment) and hazard reduction activities (interim controls, abatement) to owner/occupants

- Evidence of contractor/worker certifications (abatement) or training (interim control workers)
- Relocation assistance or other occupant protection procedures
- Record of inspections; evidence of interim control/abatement practices being followed
- Clearance reports

Some sample forms are provided in the Attachments.

10. STATE-ASSISTED (NOT FEDERALLY-ASSISTED) PROPERTIES

Some properties are assisted with MSHDA funds that are not Federal funds, and therefore not required to comply with 24 CFR Part 35 by Federal rule. Grantees that only have state funds (no federal funds) must only comply with this section of this policy (Section 10). Recipients should consult with their CD Specialist for clarification if they are not sure about the source of their OCD funds.

Nevertheless, it is MSHDA's policy to provide lead-safe housing to all assisted households. **If MSHDA provides assistance for the acquisition or rehabilitation of housing, and no Federal funds are included in the project financing, the following will apply as a matter of policy beginning with projects acquired and/or rehabilitated after January 1, 2002:**

1. All units in the project will be subject to visual assessment standards for identification of deteriorated or deteriorating paint surfaces.
2. All rehabilitation, maintenance or other physical work on the painted surfaces will be done using Safe Work Practices, to be certified by the owner of the property or recipient of grant funds.
3. Any such work will be subject to visual assessment standards upon completion to ensure that the work has been completed, an intact painted surface restored, and all debris and dust have been removed. Dust wipes are not a requirement, but are recommended where feasible to create documentation of safe work.
4. Rental property owners will be required to have a paint maintenance policy that ensures regular (at least annual) visual assessment and repair/maintenance of painted surfaces using Safe Work Practices.

Rental Property Owner and Grant Recipient Requirements

Any local administrators or rental property owners/managers that conduct visual assessments under this Section are **required to take the on-line visual assessment course provided by HUD**. This course can be found and taken at www.hud.gov/lea/lbptraining.html. Verification of completion of HUD's on-line course should be kept in the project file for monitoring purposes.

Maintenance workers, painters, rehab workers, or other workers involved in the disturbance or repair of painted surfaces are strongly encouraged, but not required to, take one of the approved courses in Safe Work Practices. Owners must provide copies of Lead Paint Safety: A Field Guide for Painting, Home Maintenance, and Renovation Work to all such workers that do not attend an approved course and monitor work for compliance with Safe Work Practices, including protection of the occupant and belongings. This document was republished in March, 2001, to reflect the most recent EPA standards. Copies of this document can be downloaded from <http://www.hud.gov/lea/LBPguide.html>, or ordered from 1-800-424-LEAD.

Records

Owners of state assisted rental units are encouraged, but not required, to maintain records of any work performed by qualified firms or workers and any clearance assessments conducted subsequent to hazard control work.

Liability Insurance

Rental property owners are encouraged, but not required to, obtain liability insurance for LBP hazards. Owners should understand that they assume the risks of liability, and that MSHDA assumes no liability with respect to LBP hazards.

Exceptions

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

Any questions regarding this Policy Bulletin should be addressed to your Community Development (CD) Specialist or CD staff at (517) 373-1974.

Attachments

A, Summary of Required LBP Hazard Control

B, Lead Property Exemption

C, Applicable Requirements, Rehabilitation Projects

D, Calculation of the Level of Federal Rehab Assistance

E, Contractor Certification of Compliance

F, LBP Checklist for MSHDA Federally Funded Rehab Projects

G, Pre-Evaluation Disclosure of LBP Procedures to Property Owner

H, Renovate Right: Important Lead Hazard Information for Families, Child Care Providers, and Schools, EPA-740-F-08-002, 03.08

Renovate Right: Important Lead Hazard Information for Families, Child Care Providers, and Schools, EPA-740-F-08-002, 03.08, Spanish