

Subpart J—Rehabilitation

Source: 64 FR 50212, Sept. 15, 1999, unless otherwise noted.

§ 35.900 Purpose and applicability.

(a) *Purpose and applicability.* (1) The purpose of this subpart J is to establish procedures to eliminate as far as practicable lead-based paint hazards in a residential property that receives Federal rehabilitation assistance under a program administered by HUD. Rehabilitation assistance does not include project-based rental assistance, rehabilitation mortgage insurance or assistance to public housing.

(2) The requirements of this subpart shall not apply to HOME funds which are committed to a specific project in accordance with §92.2 of this title before September 15, 2000. Such projects shall be subject to the requirements of §92.355 of this title that were in effect at the time of project commitment or the requirements of this subpart.

(3) For the purposes of the Indian Housing Block Grant program and the CDBG Entitlement program, the requirements of this subpart shall apply to all residential rehabilitation activities (except those otherwise exempted) for which funds are first obligated on or after September 15, 2000. For the purposes of the State, HUD-Administered Small Cities, and Insular Areas CDBG programs, the requirements of this subpart shall apply to all covered activities (except those otherwise exempted) for which grant funding is awarded to the unit of local government by the State or HUD, as applicable, on or after September 15, 2000. For the purposes of the Emergency Shelter Grant Program (42 U.S.C. 11371–11378) and the formula grants awarded under the Housing Opportunities for Persons with AIDS Program (HOPWA) (42 U.S.C. 12901 et. seq.), the requirements of this subpart shall apply to activities for which program funds are first obligated on or after September 15, 2000.

(4) For the purposes of competitively awarded grants under the HOPWA Program and the Supportive Housing Program (42 U.S.C. 11481–11389), the requirements of this subpart shall apply to grants awarded under Notices of Funding Availability published on or after September 15, 2000.

(5) For the purposes of the Indian CDBG program (§1003.607 of this title), the requirements of this subpart shall not apply to funds whose notice of funding availability is announced or funding letter is sent before September 15, 2000. Such project grantees shall be subject to the regulations in effect at the time of announcement or funding letter.

(b) The grantee or participating jurisdiction may assign to a subrecipient or other entity the responsibilities set forth in this subpart.

§ 35.905 Definitions and other general requirements.

Definitions and other general requirements that apply to this subpart are found in subpart B of this part.

§ 35.910 Notices and pamphlet.

(a) *Notices.* In cases where evaluation or hazard reduction or both are undertaken as part of federally funded rehabilitation, the grantee or participating jurisdiction shall provide a notice to occupants in accordance with §35.125. A visual assessment alone is not considered an evaluation for the purposes of this part.

(b) *Lead hazard information pamphlet.* The grantee or participating jurisdiction shall provide the lead hazard information pamphlet in accordance with §35.130.

[69 FR 34272, June 21, 2004]

§ 35.915 Calculating Federal rehabilitation assistance.

(a) *Applicability.* This section applies to recipients of Federal rehabilitation assistance.

(b) *Rehabilitation assistance.* (1) Lead-based paint requirements for rehabilitation fall into three categories that depend on the amount of Federal rehabilitation assistance provided. The three categories are:

(i) Assistance of up to and including \$5,000 per unit;

(ii) Assistance of more than \$5,000 per unit up to and including \$25,000 per unit; and

(iii) Assistance of more than \$25,000 per unit.

(2) For purposes of implementing §§35.930 and 35.935, the amount of rehabilitation assistance is the lesser of two amounts: the average Federal assistance per assisted dwelling unit and the average per unit hard costs of rehabilitation. Federal assistance includes all Federal funds assisting the project, regardless of the use of the funds. Federal funds being used for acquisition of the property are to be included as well as funds for construction, permits, fees, and other project costs. The hard costs of rehabilitation include all hard costs, regardless of source, except that the costs of lead-based paint hazard evaluation and hazard reduction activities are not to be included. Costs of site preparation, occupant protection, relocation, interim controls, abatement, clearance, and waste handling attributable to compliance with the requirements of this part are not to be included in the hard costs of rehabilitation. All other hard costs are to be included, regardless of whether the source of funds is Federal or non-Federal, public or private.

(c) *Calculating rehabilitation assistance in properties with both assisted and unassisted dwelling units.* For a residential property that includes both federally assisted and non-assisted units, the rehabilitation costs and Federal assistance associated with non-assisted units are not included in the calculations of the average per unit hard costs of rehabilitation and the average Federal assistance per unit.

(1) The average per unit hard costs of rehabilitation for the assisted units is calculated using the following formula:

$$\text{Per Unit Hard Costs of Rehabilitation } \$ = (a/c) + (b/d)$$

Where:

a = Rehabilitation hard costs for all assisted units (not including common areas and exterior surfaces)

b = Rehabilitation hard costs for common areas and exterior painted surfaces

c = Number of federally assisted units

d = Total number of units

(2) The average Federal assistance per assisted dwelling unit is calculated using the following formula:

$$\text{Per unit Federal assistance} = e/c$$

Where:

e = Total Federal assistance for the project

c = Number of federally assisted units

[69 FR 34272, June 21, 2004]

§ 35.920 [Reserved]

§ 35.925 Examples of determining applicable requirements.

The following examples illustrate how to determine whether the requirements of §§35.930(b), (c), or (d) apply to a dwelling unit receiving Federal rehabilitation assistance (dollar amounts are on a per unit basis):

(a) If the total amount of Federal assistance for a dwelling is \$2,000, and the hard costs of rehabilitation are \$10,000, the lead-based paint requirements would be

those described in §35.930(b), because Federal rehabilitation assistance is up to and including \$5,000.

(b) If the total amount of Federal assistance for a dwelling unit is \$6,000, and the hard costs of rehabilitation are \$2,000, the lead-based paint requirements would be those described in §35.930(b). Although the total amount of Federal dollars is more than \$5,000, only the \$2,000 of that total can be applied to rehabilitation. Therefore, the Federal rehabilitation assistance is \$2,000 which is not more than \$5,000.

(c) If the total amount of Federal assistance for a unit is \$6,000, and the hard costs of rehabilitation are \$6,000, the lead-based paint requirements are those described in §35.930(c), because the amount of Federal rehabilitation assistance is more than \$5,000 but not more than \$25,000.

(d) If eight dwelling units in a residential property receive Federal rehabilitation assistance [symbol c in §35.915(c)(2)] out of a total of 10 dwelling units [d], the total Federal assistance for the rehabilitation project is \$300,000 [e], the total hard costs of rehabilitation for the dwelling units are \$160,000 [a], and the total hard costs of rehabilitation for the common areas and exterior surfaces are \$20,000 [b], then the lead-based paint requirements would be those described in §35.930(c), because the level of Federal rehabilitation assistance is \$22,000, which is not greater than \$25,000. This is calculated as follows: The total Federal assistance per assisted unit is \$37,500 ($e/c = \$300,000/8$), the per unit hard costs of rehabilitation is \$22,000 ($a/c + b/d = \$160,000/8 + \$20,000/10$), and the level of Federal rehabilitation assistance is the lesser of \$37,500 and \$22,000.

[64 FR 50212, Sept. 15, 1999, as amended at 69 FR 34272, June 21, 2004]

§ 35.930 Evaluation and hazard reduction requirements.

(a) *Paint testing.* The grantee or participating jurisdiction shall either perform paint testing on the painted surfaces to be disturbed or replaced during rehabilitation activities, or presume that all these painted surfaces are coated with lead-based paint.

(b) *Residential property receiving an average of up to and including \$5,000 per unit in Federal rehabilitation assistance.* Each grantee or participating jurisdiction shall:

(1) Conduct paint testing or presume the presence of lead-based paint, in accordance with paragraph (a) of this section. If paint testing indicates that the painted surfaces are not coated with lead-based paint, safe work practices and clearance are not required.

(2) Implement safe work practices during rehabilitation work in accordance with §35.1350 and repair any paint that is disturbed.

(3) After completion of any rehabilitation disturbing painted surfaces, perform a clearance examination of the worksite(s) in accordance with §35.1340. Clearance is not required if rehabilitation did not disturb painted surfaces of a total area more than that set forth in §35.1350(d).

(c) *Residential property receiving an average of more than \$5,000 and up to and including \$25,000 per unit in Federal rehabilitation assistance.* Each grantee or participating jurisdiction shall:

(1) Conduct paint testing or presume the presence of lead-based paint, in accordance with paragraph (a) of this section.

(2) Perform a risk assessment in the dwelling units receiving Federal assistance, in common areas servicing those units, and exterior painted surfaces, in accordance with §35.1320(b), before rehabilitation begins.

(3) Perform interim controls in accordance with §35.1330 of all lead-based paint hazards identified pursuant to paragraphs (c)(1) and (c)(2) of this section.

(4) Implement safe work practices during rehabilitation work in accordance with §35.1350 and repair any paint that is disturbed and is known or presumed to be lead-based paint.

(d) *Residential property receiving an average of more than \$25,000 per unit in Federal rehabilitation assistance.* Each grantee or participating jurisdiction shall:

(1) Conduct paint testing or presume the presence of lead-based paint in accordance with paragraph (a) of this section.

(2) Perform a risk assessment in the dwelling units receiving Federal assistance and in associated common areas and exterior painted surfaces in accordance with §35.1320(b) before rehabilitation begins.

(3) Abate all lead-based paint hazards identified by the paint testing or risk assessment conducted pursuant to paragraphs (d)(1) and (d)(2) of this section, in accordance with §35.1325, except that interim controls are acceptable on exterior surfaces that are not disturbed by rehabilitation and on paint-lead hazards that have an area smaller than the *de minimis* limits of §35.1350(d). If abatement of a paint-lead hazard is required, it is necessary to abate only the surface area with hazardous conditions.

(4) Implement safe work practices during rehabilitation work in accordance with §35.1350 and repair any paint that is disturbed and is known or presumed to be lead-based paint.

[64 FR 50214, Sept. 15, 1999; 65 FR 3387, Jan. 21, 2000, as amended at 69 FR 34273, June 21, 2004]

§ 35.935 Ongoing lead-based paint maintenance activities.

In the case of a rental property receiving Federal rehabilitation assistance under the HOME program, the grantee or participating jurisdiction shall require the property owner to incorporate ongoing lead-based paint maintenance activities in regular building operations, in accordance with §35.1355(a).

[69 FR 34273, June 21, 2004]

§ 35.940 Special requirements for insular areas.

If a dwelling unit receiving Federal assistance under a program covered by this subpart is located in an insular area, the requirements of this section shall apply and the requirements of §35.930 shall not apply. All other sections of this subpart J shall apply. The insular area shall conduct the following activities for the dwelling unit, common areas servicing the dwelling unit, and the exterior surfaces of the building in which the dwelling unit is located:

(a) Residential property receiving an average of up to and including \$5,000 per unit in Federal rehabilitation assistance. (1) Implement safe work practices during rehabilitation work in accordance with §35.1350 and repair any paint that is disturbed by rehabilitation.

(2) After completion of any rehabilitation disturbing painted surfaces, perform a clearance examination of the worksite(s) in accordance with §35.1340. Clearance shall be achieved before residents are allowed to occupy the worksite(s). Clearance is not required if rehabilitation did not disturb painted surfaces of a total area more than that set forth in §35.1350(b).

(b) Residential property receiving an average of more than \$5,000 per unit in Federal rehabilitation assistance. (1) Before beginning rehabilitation, perform a visual assessment of all painted surfaces in order to identify deteriorated paint.

(2) Perform paint stabilization of each deteriorated paint surface and each painted surface being disturbed by rehabilitation, in accordance with §§35.1330(a) and (b).

(3) After completion of all paint stabilization, perform a clearance examination of the affected dwelling units and common areas in accordance with §35.1340. Clearance shall be achieved before residents are allowed to occupy rooms or spaces in which paint stabilization has been performed.