



NAHASDA GUIDANCE

National Office of Native American Programs

Tribe/TDHE

No. 01-05T

October 27, 2000

TO: All Tribal Government Leaders and Tribally Designated Housing Entities (TDHE)

FROM: Jacqueline Johnson, Deputy Assistant Secretary, P

TOPIC: Lead-Based Paint

SUBJECT: New HUD Regulations: Requirements for Notification, Evaluation and Reduction of Lead-Based Paint Hazards in Federally Owned Residential Property and Housing Receiving Federal Assistance; Final Rule

PURPOSE: The purpose of this Guidance is to bring to your attention the Department's new lead-based paint (LBP) regulations. The regulations, titled: "Requirements for Notification, Evaluation and Reduction of Lead-Based Paint Hazards in Federally Owned Residential Property and Housing Receiving Federal Assistance," took effect Friday, September 15, 2000. It appears within title 24 of the Code of Federal Regulations as part 35 (24 CFR 35).

The new regulation was issued under sections 1012 and 1013 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, which is Title X ("ten") of the Housing and Community Development Act of 1992. Sections 1012 and 1013 of Title X amended the Lead-Based Paint Poisoning Prevention Act of 1971, which is the basic law covering lead-based paint in federally associated housing.

This Guidance is intended to help assist you in implementing the new regulation. It includes information about the regulation and Internet addresses where you can obtain regulatory materials including a slide presentation, fact sheets, a summary of the requirements, and the regulation itself.

BACKGROUND: Lead poisoning can cause permanent damage to the brain and many other organs, and can result in reduced intelligence and behavioral problems. Elevated lead blood levels in pregnant women can also harm the fetus. The most current national survey conducted by the Centers for Disease Control and Prevention shows that nearly 1 million children are lead poisoned. The most common sources of childhood lead exposure are deteriorated lead-based paint and lead-contaminated dust and soil in the residential environment. While lead poisoning crosses all barriers of race, income and geography, the burden of the disease falls disproportionately on low-income families and families of color.

The President's Task Force on Environmental Health and Safety-Risks to Children released its federal strategy to eliminate childhood lead poisoning. The success of the strategy is largely dependent on the effective implementation of HUD's new regulation. This new regulation is based on scientific research and the practical experience of communities and others, throughout the country, that have been controlling lead-based paint hazards in low-income housing through HUD assistance.

For further information, contact your Area ONAP

The requirements apply to housing built before 1978, the year lead-based paint was banned nationwide for consumer use.

WHAT ARE THE REQUIREMENTS? The regulation sets hazard reduction requirements that give much greater emphasis than existing regulations to reducing lead in house dust. Scientific research has found that exposure to lead in dust is the most common way young children become lead poisoned. Therefore the new regulation requires dust testing after paint is disturbed to make sure the home is lead-safe. Specific requirements depend on whether the housing is being disposed of or assisted by the federal government, and also on the type and amount of financial assistance, the age of the structure, and whether the dwelling is rental or owner-occupied.

A summary of the requirements along with answers to frequently asked questions about the rule may be found on HUD's website at <http://www.hud.gov/lea/>.

Applicability to Indian Housing Programs: The Native American Housing Assistance and Self Determination Act of 1996 (NAHASDA) separated Indian housing from public housing and made funding for Indian housing under the United States Housing Act of 1937 unavailable. The primary program created by NAHASDA is the Indian Housing Block Grant Program (IHBG), which can be used for many different forms of housing assistance. During the period of negotiated rulemaking when the Department's final regulations implementing NAHASDA were being developed it was brought to the Rulemaking Committee's attention that HUD was in the process of developing new lead-based paint regulations that would supercede those that were in place at that time. The minutes of the meeting reflect that it was understood, and agreed upon, that the regulations written by the Committee, at that time, would be replaced with a simple cross-reference to the Department's new lead-based paint regulations (24 CFR 35) when they became available.

Therefore the following subparts have been made applicable to the IHBG program: Subpart H, Project-Based Rental Assistance; subpart J, Rehabilitation [also applicable to the Indian Community Development Block Grant (ICDBG) program]; subpart K, Acquisition, Leasing, Support Services, or Operation (also applicable to the ICDBG program); and subpart M, Tenant-Based Rental Assistance. Tribes and tribally designated housing entities receiving funds from the IHBG and ICDBG programs must determine which subpart of this final rule applies based on the type of activity being conducted or assistance being provided to a particular dwelling unit or residential property. If more than one type of assistance is being provided, the most protective requirements apply.

This new regulation makes revisions to specific regulations in 24 CFR Parts 1000 (Native American Housing Activities), 1003 (Community Development Block Grants for Indian Tribes and Alaskan Native Villages), and 1005 (Loan Guarantees for Indian Housing). The revisions are as follows:

24 CFR 1000.40 change to read:

§ 1000.40 Do lead-based paint poisoning prevention requirements apply to affordable housing activities under NAHASDA?

Yes, lead-based paint requirements apply to housing activities assisted under NAHASDA. The

applicable requirements for NAHASDA are HUD's regulations at part 35, subparts A, B, H, J, K, M and R of this title, which implement the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4822-4846) and the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856).

24 CFR 1003.202(b)(7)(iv) change to read:

§ 1003.202 Eligible rehabilitation and preservation activities.

* * * * *

(b) * * *

(7) * * *

(iv) Lead-based paint activities in part 35 of this title.

24 CFR 1003.607 change to read:

§ 1003.607 Lead-based paint.

The requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations part 35, subparts A, B, J, K, and R of this title apply to activities conducted under this program.

24 CFR 1005.111 change to read:

§ 1005.111 What safety and quality standards apply?

* * * * *

(b) The relevant requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations at part 35, subparts A, B, H, J, K, M, and R of this title apply to this part.

TRANSITION PERIOD:

To make certain that adequate service providers exist throughout the country to carry out lead-based paint hazard evaluation and reduction activities safely and effectively, and to target available resources to housing which places children most at risk, HUD has developed a transition assistance policy with three components.

First, HUD is authorizing a six-month transition period for program participants in jurisdictions which notify the Department by **November 15, 2000**, that they lack the capacity to implement one or more provisions of the Lead Safe Housing Regulation. Accompanying this guidance is a form letter that may be submitted as the necessary statement of inadequate capacity.

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Second, post-1960 properties occupied by children under six receiving only tenant-based rental assistance will be provided a twelve month transition period.

Third, properties receiving federal rehabilitation assistance greater than \$25,000 that are occupied by the elderly, where no child under six resides or is expected to reside, will be provided a twelve month transition period.

No submission by a jurisdiction is required in order for program participants to take advantage of the second and third transition assistance components.

Please see the Notice of Transition Assistance published on pages 54858 and 54859 of the Federal Register on Monday, September 11, 2000, for complete details.

FOR MORE INFORMATION:

Regulatory Information:

To download copies of the regulation (Please note that the document is 97 pages long.), two corrections to the regulation published in the Federal Register, the Transition Notice, and other information concerning the new regulation visit <http://www.hud.gov/lea/>.

A copy of this guidance and the statement of inadequate capacity to comply with the Lead Safe Housing regulation can be downloaded from the Internet at the NAHASDA Home Page: <http://www-domino.hud.gov/ihp/newhome.nsf?>. Click first on "Reference Documentation," then "Other Documents," then "NAHASDA Guidance 2001," and then choose "01-05." This will give you one PDF file that will contain both documents.

National Lead Information Center

For copies of the regulation or general questions, call (800) 424-LEAD, or TDD (800) 526-5456 for the hearing impaired.

Technical Information:

Office of Lead Hazard Control, Regulatory Team. For technical information, call (202) 755-1785, ext. 104, or send an email to: lead-regulations@hud.gov.

Training:

We encourage you to participate in one of several training sessions on the regulation being offered throughout the country. For more information, or to register for a course near you, visit

<http://www.icfconsulting.com/lbp/lead.html>

Should you have any questions regarding this Guidance, please contact your Area Office of Native American Programs.

**Statement of Inadequate Capacity to Comply with the Lead
Safe Housing Regulation [24 CFR Part 35]**

Organization: _____

Address: _____

Date: _____

David E. Jacobs, Deputy Director
Office of Healthy Homes and Lead Hazard Control
U.S. Department of Housing and Urban Development
451 Seventh Street, S.W., Room P-3206
Washington, DC 20410

Dear Mr. Jacobs:

Subject: New HUD Lead-Based Paint Regulations

The U.S. Department of Housing and Urban Development (HUD) promulgated a new regulation on September 15, 1999 (64 FR 50140) establishing requirements for notification, evaluation and reduction of lead-based paint hazards in federally owned residential property and housing receiving Federal assistance (Lead Safe Housing Regulation). The Lead Safe Housing Regulation, which is at 24 CFR Part 35, takes effect on September 15, 2000 at which time all affected parties must comply. A transition assistance process has been established to accommodate situations where trained contractors and licensed personnel, qualified to carry out required lead-based paint activities, are unavailable or not available at a reasonable cost in the jurisdiction. If the chief elected or appointed official of the local government, State or Indian Tribe, or a senior official designated to act on his or her behalf, such as the official who signs

the Annual Consolidated Action Plan submitted to HUD for the jurisdiction, makes a statement of inadequate capacity to HUD by November 15, 2000, HUD will conclude that the jurisdiction is not required to comply with the Lead Safe Housing Regulation during a transition assistance period which begins on September 15, 2000 and ends on March 15, 2001. If the claim is based on unreasonable cost, such request must be documented by an analysis of actual bids.

The _____ hereby
(jurisdiction of general local government, State or Indian Tribe)
states the following:

1. As of the date of this letter, the types of trained, licensed (certified) or accredited personnel or firms checked below are either not available in sufficient numbers or are not available at a reasonable cost in this jurisdiction to make it practicable to comply with the lead-based paint hazard evaluation and reduction requirements of the Lead Safe Housing Regulation.

(Check **services** that apply. If different designations are used in your State, please check those that most closely correspond.)

- Interim controls workers trained in accordance with the new HUD requirements at 24 CFR §35.1330(a)(4).
- Trained or certified lead paint sampling technicians or clearance technicians
- Certified lead-based paint inspectors or risk assessors.
- Certified lead-based paint abatement supervisors.
- Trained or certified lead-based paint abatement workers
- Other personnel or firms (specify)

It is recognized that there are a number of HUD assisted programs covered by 24 CFR Part 35 and the availability of trained or certified staff may affect one requirement in one program or type of assistance and not the requirements in another program or type of assistance. Capacity does not exist to comply with the following

requirements in the following programs or types of assistance:

2. The Local or State government or Indian Tribe acknowledges:

(a) that the cost of training staff and contractors in skills necessary to comply with the rule or to obtain certification to satisfy the requirements of Federal or State lead-based paint requirements is an eligible expense under the Community Development Block Grant (CDBG) program and the Home Investment Partnerships (HOME) program;

(b) that the Lead Listing, which is a State-by-State listing of firms providing certified lead-based paint personnel, including inspectors, risk assessors, abatement supervisors, and abatement workers, can be accessed via a toll-free telephone number (1-888-LEADLIST) or an Internet web site (www.leadlisting.org);

(c) that assistance in determining what lead-based paint personnel are required and in identifying trained and/or certified firms or personnel can be obtained from HUD lead-based paint hazard control grantees, the State agency responsible for certifying lead-based paint personnel, or (for States that do not have an EPA-authorized program) the U.S. Environmental Protection Agency (see attached listing of Lead-Based Paint Grantees and State and EPA offices).

(d) that a wide variety of training courses are available through the HUD website (www.hud.gov/lea), including: courses on lead-safe work practices for renovators, remodelers, and maintenance personnel developed in collaboration with the National Apartment Association, the National Association of the Remodeling Industry, the National Environmental Training Association and others; a course on clearance testing procedures, developed with the Environmental Protection Agency; a web-based training course on visual assessment of paint condition; and training programs on the Lead Safe Housing Regulation

for HUD assisted housing, such as Section 8 housing and housing receiving funds from the Community Development Block Grant program and others.

(e) that the transition period ends on March 15, 2001. And that if at the end of the Transition Period, there remains a lack of capacity by trained or licensed professionals to conduct activities required by the Lead Safe Housing Regulation, the jurisdiction will provide documentation, for HUD's consideration, to justify an extension of the transition period consistent with their Annual Consolidated Action Plan schedule.

3. The _____ [Local or State government or Indian Tribe] will take the necessary steps to ensure that an adequate supply of personnel or contractors will be available no later than March 15, 2001 so that the jurisdiction can comply with the requirements of the Lead Safe Housing Regulation at that time. These steps will be explained in the Transition Implementation Plan which will

be submitted to HUD by December 15, 2000 at the latest. The plan must include the following: (1) an assessment of actual existing capacity and the additional number and type of personnel that need to be trained and/or certified; (2) how training will be obtained; (3) how assisted housing with the greatest risks and greatest opportunity to control lead-based paint hazards will be prioritized using existing personnel or contractors; (4) how coordination with the State agency responsible for certification of lead hazard control personnel will be achieved; and (5) a schedule of activities that will enable the jurisdiction to obtain compliance as rapidly as possible, but no later than March 15, 2001. The jurisdiction agrees to make the plan publicly available.

4. A copy of this statement and the Transition Implementation Plan will be sent to the State agency responsible for the lead-based paint certification program or to the regional EPA office if EPA is operating the lead-based paint certification program directly at the same time it is sent to HUD.

5. The _____ [Local or State government or Indian Tribe] will take the necessary steps to ensure that this statement and the Transition Implementation

Plan will be circulated to and reviewed by local officials with responsibility for housing and public or environmental health in the State or locality.

6. Between September 15, 2000, and March 15, 2001, the local or State government or Indian Tribe will comply with the relevant requirements of the HUD lead-based paint regulations that were effective before September 15, 2000. It will also comply with the parts of the new Lead Safe Housing Regulation covering prohibited methods of paint removal (at 24 CFR 35.140) and occupant protection (at 24 CFR 35.1350).

I hereby state that trained, licensed (certified) or accredited personnel or firms are either not available in sufficient numbers or are not available at a reasonable cost in _____ [Local or State government or Indian Tribe] to make it practicable to comply with the lead-based paint hazard evaluation and reduction requirements of the Lead Safe Housing Regulation. between September 15, 2000 and March 15, 2001.

Sincerely,

(signature of chief elected or appointed official of the jurisdiction of general local government, State or Indian Tribe, or a senior official designated to act on his or her behalf)

typed name of official of the jurisdiction of general local government, State or Indian Tribe, or a senior official designated to act on his or her behalf)

(title)

(if the jurisdiction is a State or Indian Tribe, signature of individual responsible for the EPA-authorized lead-based paint certification)

program (if the State or Indian Tribe has such a
program)

(typed name of individual)

(title)