

Attachment 24-2:
Historic Properties and the Lead Safe Housing Rule
(24 CFR Part 35, Subparts B-R)

A. Introduction. This attachment explains the Lead Safe Housing Rule’s allowance for interim controls instead of abatement on historic properties. Based on recent discussions with various State Historic Preservation Offices (SHPO), it appears that some HUD grantees and sub-recipients are confused over the application of the Lead Safe Housing Rule (24 CFR Part 35, subparts B-R) to historic properties covered by the Rule because they are federally-assisted or being disposed of by a federal agency. The confusion focuses primarily on the level of treatment (lead abatement or lead interim controls [defined below]) required on properties receiving rehabilitation assistance from various HUD programs.

B. When Abatement Is Usually Required. As summarized by Table One of the Rule [in 24 CFR 35.100(c)]: “Full abatement of lead-based paint” (LBP) is required for:

- Subpart G, §35.630, Multifamily mortgage insurance for conversions and major rehabilitations.”
- Subpart L, Public Housing programs.

[Note that these programs covered by Subparts G and L are not CPD programs.)

“Abatement of lead-based paint hazards,” is required for:

- Subpart J, §35.930(d)(3), Properties receiving more than \$25,000 per unit in rehabilitation assistance, except that interim controls are allowed on exterior surfaces that are not disturbed by the rehabilitation.”

C. When Interim Controls Are Usually Required. As summarized by Table One of the Rule [in 24 CFR 35.100(c)], interim controls are required for:

- Subpart G, §35.620, Multifamily mortgage insurance for properties constructed before 1960, other than conversions and major rehabilitations;
- Subpart H, §35.715, Project-based assistance for multifamily properties receiving more than \$5,000 per unit;
- Subpart I, HUD-owned multifamily property;
- Subpart J, §35.930(c), Properties receiving more than \$5,000 and up to \$25,000 per unit in rehabilitation assistance.”

[Note that the programs covered by Subparts G, H and I are not CPD programs.)

Paint stabilization alone, a lesser level of protection, is required for other programs.

D. Exemption of Historic Properties from the Lead Abatement Requirement. While abatement must usually be conducted on LBP hazards in properties receiving over \$25,000 in Federal Rehabilitation Assistance, or on LBP itself under the multifamily insurance and

public housing programs identified above, the Rule also provides an exemption for historic properties. The exemption [at 24 CFR 35.115(a)(13)] says that:

- Where abatement of lead-based paint hazards or lead-based paint is required by this part and the property is listed or has been determined to be eligible for listing in the National Register of Historic Places or contributing to a National Register Historic District, the designated party may, if requested by the State Historic Preservation Office, conduct interim controls in accordance with 24 CFR 35.1330 instead of abatement. If interim controls are conducted, ongoing lead-based paint maintenance and reevaluation shall be conducted as required by the applicable subpart of this part in accordance with 24 CFR 35.1355.

[Note that, for this Rule, the "designated party" is the entity responsible for complying with applicable requirements, of the Rule, whether it be a Federal agency, grantee, subrecipient, participating jurisdiction, housing agency, Indian tribe, tribally designated housing entity, sponsor, or property owner [24 CFR 35.110)].

E. Technical Considerations of Abatement and Interim Controls Strategies. The Rule defines abatement (at §35.110) as:

- any set of measures designed to permanently eliminate lead-based paint or lead-based paint hazards (see definition of "permanent"). Abatement includes: (1) The removal of lead-based paint and dust-lead hazards, the permanent enclosure or encapsulation of lead-based paint, the replacement of components or fixtures painted with lead-based paint, and the removal or permanent covering of soil-lead hazards; and, (2) All preparation, cleanup, disposal, and post abatement clearance testing activities associated with such measures.

Abatement strategies include on- and off-site paint stripping, component replacement, enclosure and encapsulation. For the Lead Safe Housing Rule, "permanent" enclosure or encapsulation means that the activity must have "an expected design life of at least 20 years" to be considered to be abatement (24 CFR 35.110). These various abatement methods present a range of options. Thoughtful consideration should be given to the selection of an abatement method for each hazard identified.

In a historic property, preservation of the component is preferred so the anticipated impact of each lead hazard control method on the hazardous building component should be assessed before an approach is selected. The type and relative amount of damage caused by the different abatement methods depends on several factors. These factors include: the type of building component affected, number and thickness of paint layers, physical condition of the component, interior or exterior location on the property, skill level of abatement personnel, environmental conditions, etc.

The Rule defines **interim controls** (at 24 CFR 35.110) as:

- a set of measures designed to reduce temporarily human exposure or likely exposure to lead-based paint hazards. Interim controls include, but are not limited to, repairs, painting, temporary containment, specialized cleaning, clearance, ongoing lead-based

paint maintenance activities, and the establishment and operation of management and resident education programs.

(Note that the historic preservation exemption from abatement also requires ongoing LBP maintenance and reevaluation as specified in the Rule. Information on interim controls, ongoing LBP maintenance and reevaluation are available on the HUD web site: <http://www.hud.gov/offices/lead.>)

Interim control strategies are generally less aggressive than abatement techniques. They include paint stabilization with correction of substrate defects, specialized cleaning, temporary repairs, management and resident education programs, and ongoing LBP maintenance.

Because of its finality, some program participants consider component replacement (abatement) as the only acceptable approach to lead hazard reduction. Others view the cost-effectiveness of component replacement as justification for this approach. However, reviewers should note that at the SHPO's request, a program participant is allowed to use interim controls instead of abatement on interior and exterior surfaces. In these cases, the use of interim controls with ongoing lead-based paint maintenance rather than abatement should be given serious consideration.

- F. Monitoring.** During monitoring, reviewers should assess whether program participants are inappropriately insisting that abatement of lead hazards is the only acceptable approach for lead hazard control in historic properties. For historic properties, interim controls are preferred because they preserve the original structure and are usually less costly. In some cases, however, interim controls are not technically feasible or the condition of the affected building components is poor, making interim controls impractical. Program participants should justify and be able to document their position.

Reviewers should assess a program participant's position (failure to consult with the SHPO or the inappropriate insistence on abatement as a lead hazard control strategy) in light of two factors:

- 1) the generally higher costs of abatement relative to interim controls; and,
- 2) the irreparable damage to a historical property caused by building component removal or encapsulation.

- G. National Park Service Guidance.** In addition to the Rule's requirements and the guidance about the Rule listed above, the National Park Service has published specific guidance on historic housing and LBP. *Preservation Brief #37*, "Appropriate Methods for Reducing Lead-Paint Hazards in Historic Housing" contains recommended historic preservation approaches for lead hazard reduction planning, appropriate methods for controlling lead hazards, and accepted maintenance techniques after hazard control treatment. The brief is available on the Internet at: <http://www2.cr.nps.gov/tps/briefs/brief37.htm>.

Reviewers and program participants are encouraged to consult this Preservation Brief prior to monitoring any projects involving LBP in historic properties.

H. HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing.

The HUD *Guidelines* provide detailed, comprehensive, technical information on how to identify lead-based paint hazards in housing and how to control such hazards safely and efficiently. They can be downloaded from the Office of Healthy Homes and Lead Hazard Control website (see address above). The Environmental Protection Agency cites them as a source of "documented methodologies" for performing lead hazard evaluation and control activities by LBP inspectors, risk assessors and abatement contractors, and HUD cites them as a source of guidance for interim control work for work under its Lead Safe Housing Rule.

Chapter 18 of the HUD *Guidelines*, on Lead Hazard Control and Historic Preservation, describes, step-by-step, approaches for evaluating and controlling lead hazards in historic properties with the intent of retaining historic building materials and their historic appearance to the greatest extent possible. These steps include:

- Identifying the historic preservation issues that may be faced when conducting LBP hazard control work;
- Establishing priorities for intervention;
- Performing a combination risk assessment and paint inspection;
- Assessing the danger of lead exposure for each significant architectural item;
- Negotiating the hazard control strategy with the SHPO;
- Avoiding removal of significant historic materials, the use of harsh abrasive cleaners or chemicals that are too strong on historic materials, and covering over historic siding, whenever possible and financially feasible;
- Using technically preferred treatments if paint is to be removed, and
- Upon completion of the project, providing educational materials to the residents describing the health hazards of LBP and information on appropriate housekeeping methods to keep the property in a lead-safe condition once lead hazard control work is completed.

I. Contacts. For any questions or comments on LBP and historic properties, please contact the following HUD officials:

- Your Regional or Field Environmental Officer;
- the Environmental Clearance Officer, Office of Healthy Homes and Lead Hazard Control; or
- the Historic Preservation Officer, Community Planning and Development, Office of Community Viability.