

## **Minnesota Housing Lead-Based Paint Policy**

Before committing loan proceeds to a particular use, the Minnesota Housing Finance Agency (Minnesota Housing) may require the residential property undergo lead hazard evaluation and reduction.

On December 16, 2004, the Minnesota Housing Board adopted the following policy regarding lead hazards in housing:

*The Minnesota Housing Finance Agency recognizes that lead hazards in housing are a threat to occupant health and safety and is committed to meeting Minnesotans' need for safe housing.*

*It is the policy of the Minnesota Housing Finance Agency to generally comply with the requirements of 24 CFR part 35 when providing federal assistance. It is also the policy of the Minnesota Housing Finance Agency that programs funded with other than federal funds will address lead hazards when the program requires the treatment of other health hazards. Where lead identification and reduction are required by this policy, it will generally be conducted in accordance with the standards of 24 CFR part 35, except that lead hazard abatement shall not be required solely on the basis of the amount of assistance provided, and as the standards may otherwise be modified in procedural manuals and guidelines adopted by the Minnesota Housing. For buildings that receive both federal and non-federal funds for the same purpose, the agency shall defer to the federal requirements.*

### **Kinds of Properties and Rehabilitation exempted from HUD's "Lead Safe Housing Rule" (24 CFR part 35) and Minnesota Housing lead-based paint policy:**

- Housing built after January 1, 1978;
- Housing exclusively for the elderly or people with disabilities, unless a child under age 6 is expected to reside there;
- Zero-bedroom dwellings, including efficiency apartments, single-room occupancy housing, and emergency shelters (with max. stay - 100 days);
- Property that has been found to be free of lead-based paint by a certified lead-based paint inspector;
- Property where all lead-based paint has been removed;
- Any rehabilitation or housing improvement that does not disturb a painted surface; or
- Emergency repair actions needed to safeguard against imminent danger to human life, health, or to protect property from further structural damage.

### **Purpose:**

To reduce exposure to occupants of harmful lead-based paint chips and/or lead-dust hazards that may already exist in a dwelling unit or may inadvertently result from rehabilitation activities.

### **Requirements:**

Unless exempt, the following requirements for lead hazard evaluation and reduction shall apply to rental properties receiving Minnesota Housing assistance:

1. The lead hazard evaluation and lead hazard reduction methods used shall comply with all applicable regulations. When two or more standards govern the same condition or when a property will be assisted by more than one Minnesota Housing program, conformance to the most restrictive standard is required.
2. If residential property receives no funds that are subject to 24 CFR part 35 in conjunction with Minnesota Housing financing, the requirements of 24 CFR part 35 shall apply, except as modified below:

### **Minnesota Housing Capital Funding**

- **Rehabilitation:** Lead hazard evaluation and reduction shall comply with Subpart J-Rehabilitation as modified below:

- All references to “grantee, participating jurisdiction, or CILP recipient” shall be replaced with “Owner (Borrower/Developer)”;
- Throughout Subpart J, the term “Federal rehabilitation assistance” shall be replaced with “Minnesota Housing rehabilitation assistance”;
- §35.900. Delete in its entirety. Replace with “The purpose of this subpart J is to establish procedures to eliminate as far as practicable lead-based paint hazards in residential property that receives Minnesota Housing assistance for purpose of rehabilitation.”;
- §35.910(a). The word “federally” shall be changed to “Minnesota Housing”;
- §35.915, §35.920, §35.925, and §35.940 shall not apply;
- §35.930(c). The first sentence shall be modified to read: “Residential property receiving an average of more than \$5,000 per unit in Minnesota Housing rehabilitation assistance.”;
- §35.930(d) shall not apply;
- §35.935 shall be replaced with the following: “In the case of a rental property receiving Minnesota Housing rehabilitation assistance, the property owner shall incorporate ongoing lead-based paint maintenance activities into regular building operations, in accordance with §35.1355(a).”;
- §35.940 shall not apply.
- Note: Minnesota Housing reserves the right to require a risk assessment on any property regardless of what is dictated by level of rehabilitation assistance.
- **Acquisition:** Lead hazard evaluation and reduction shall comply with Subpart K-Acquisition, Leasing Support Services, or Operation, except as modified below:
  - Throughout Subpart K, the term “Federal assistance” shall mean “Minnesota Housing assistance”;
  - Replace §35.1000(a) with: “The purpose of this subpart K is to establish procedures to eliminate as far as practicable lead-based paint hazards in a residential property that receives Minnesota Housing assistance under one or more of its programs for acquisition, leasing, support services, or operation. Leasing, support services, or operation do not include project-based or tenant-based rental assistance.”;
  - Replace §35.1000(b) with: “The recipient remains responsible for ensuring compliance with this subpart, regardless of whether the recipient performs the required activities itself, or contracts with another entity to perform any of the required activities.”;
  - Delete §35.1000(c);
  - Delete §35.1020;
  - Throughout Subpart K, replace “grantee or participating jurisdiction” with “recipient”.

#### **Minnesota Housing Non-Capital Funding:**

- **Operating Subsidy:** Lead hazard evaluation and reduction shall comply with Subpart K-Acquisition, Leasing Support Services, or Operation as modified above. (See “Acquisition.”)
- **Project-Based Rental Assistance:** Minnesota Housing does not provide project-based assistance unless there is an expectation and plan that federal assistance will be provided within a short period of time to replace Minnesota Housing’s temporary assistance. The lead rules that apply in the situation of Minnesota Housing providing project-based temporary assistance are those that will apply when federal assistance becomes available, with appropriate edits to accommodate Minnesota Housing as the source of rental assistance rather than the federal government.

Subpart H is modified as described below:

- Section 35.700 is amended to read: “*Purpose.* The purpose of this subpart H is to establish procedures to eliminate as far as practicable lead-based paint hazards in housing units receiving project-based temporary rental assistance.”;
- Section 35.715(a) is amended to read: “*Risk Assessment.* Each owner shall complete a risk assessment in accordance with §35.1320(b).”;
- Section 35.715(d) is deleted;
- Section 35.720. The introductory paragraph is amended to read: “The requirements of this section shall apply to a multifamily residential property that is receiving an average of up to and including \$5,000 per assisted dwelling unit annually in project-based temporary assistance and to a single family residential property that is receiving project-based temporary assistance.”;

- Section 35.720(c) is deleted;
- Section 35.725 is deleted;
- Section 35.730 is amended to read: “If a child less than six years of age living in an assisted unit is found to have an environmental intervention blood lead level, the owner shall comply with all applicable Minnesota Department of Health regulations and orders and notify Minnesota Housing of same.”

- **Tenant-Based Rental Assistance:** Subpart M Tenant-Based Rental Assistance is modified as described below:

- Sections 35.1200(a) amend to read: “*Purpose.* The purpose of this subpart M is to establish procedures to eliminate as far as practicable lead-based paint hazards in housing occupied by families receiving tenant-based rental assistance. Tenant-based rental assistance means rental assistance that is not attached to a structure;”
- Delete § 35.1200(b)(2) through (6);
- Renumber §35.1200(b)(7) to §35.1200(b)(2) and modify it to read: “The grantee or recipient that will administer the tenant-based rental assistance shall function as the designated party. It may assign to another entity the activities of the designated party in this subpart, but remains responsible for their compliance with this subpart. The grantee or recipient shall ensure that the owner to whom it pays rent subsidy complies with the requirements in this subpart that are applicable to owners.”

3. If residential property receives Federal assistance that is subject to Code of Federal Regulations (24 CFR part 35) in conjunction with Minnesota Housing assistance for the same purpose (e.g.: rehabilitation; acquisition; rental assistance; etc.), the requirements of 24 CFR part 35 shall apply as required by level of Federal assistance.
4. If residential property receives assistance that is subject to Code of Federal Regulations (24 CFR part 35) for two or more purposes (e.g.: rehabilitation and acquisition, or rehabilitation and rental assistance; etc.), the requirements associated with each purpose shall apply.

**Other Resources:**

- “Lead-Safe Housing Rule” U.S. Department of HUD: <http://www.hud.gov/offices/lead/leadsaferule/index.cfm>
- Minnesota Department of Health: <http://www.health.state.mn.us/>
- Minnesota Pollution Control Agency: <http://www.pca.state.mn.us/>
- U.S. Environmental Protection Agency: <http://www.epa.gov/>
- OSHA: <http://www.osha.gov/>

*Disclosure: Owners are required to comply with all applicable disclosure requirements. This includes, but not limited to, providing Minnesota Housing and any Contractors, who are bidding or performing work on the property, with copies of all environmental assessment reports; and providing the Environmental Assessor with the scope of proposed work, such that the Environmental Assessor is aware of any materials that are likely to be disturbed during proposed site improvement activities.*