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seq.), the Toxic Substances Control Act, Title IV (15 U.S.C. 2860 *et seq.*), and other environmental laws and authorities (see, e.g., laws and authorities listed in § 50.4 of this title).

§ 35.150 Compliance with other State, tribal, and local laws.

(a) *HUD responsibility.* If HUD determines that a State, tribal or local law, ordinance, code or regulation provides for evaluation or hazard reduction in a manner that provides a comparable level of protection from the hazards of lead-based paint poisoning to that provided by the requirements of subparts B, C, D, F through M and R of this part and that adherence to the requirements of subparts B, C, D, F through M, and R of this part, would be duplicative or otherwise cause inefficiencies, HUD may modify or waive some or all of the requirements of the subparts in a manner that will promote efficiency while ensuring a comparable level of protection.

(b) *Participant responsibility.* Nothing in this part is intended to relieve any participant in a program covered by this subpart of any responsibility for compliance with State, tribal or local laws, ordinances, codes or regulations governing evaluation and hazard reduction. If a State, tribal or local law, ordinance, code or regulation defines lead-based paint differently than the Federal definition, the more protective definition (i.e., the lower level) shall be followed in that State, tribal or local jurisdiction.

§ 35.155 Minimum requirements.

(a) Nothing in subparts B, C, D, F through M, and R of this part is intended to preclude a designated party or occupant from conducting additional evaluation or hazard reduction measures beyond the minimum requirements established for each program in this regulation. For example, if the applicable subpart requires visual assessment, the designated party may choose to perform a risk assessment in accordance with § 35.1320. Similarly, if the applicable subpart requires interim controls, a designated party or occupant may choose to implement abatement in accordance with § 35.1325.

(b) To the extent that assistance from any of the programs covered by subparts B, C, D, and F through M of this part is used in conjunction with other HUD program assistance, the most protective requirements prevail.

§ 35.160 Waivers.

In accordance with § 5.110 of this title, on a case-by-case basis and upon determination of good cause, HUD may, subject to statutory limitations, waive any provision of subparts B, C, D, F through M, and R of this part.

§ 35.165 Prior evaluation or hazard reduction.

If an evaluation or hazard reduction was conducted at a residential property or dwelling unit before the property or dwelling unit became subject to the requirements of subparts B, C, D, F through M, and R of this part, such an evaluation, hazard reduction or abatement meets the requirements of subparts B, C, D, F through M, and R of this part and need not be repeated under the following conditions:

(a) *Lead-based paint inspection.* (1) A lead-based paint inspection conducted before March 1, 2000, meets the requirements of this part if:

(i) At the time of the inspection the lead-based paint inspector was approved by a State or Indian tribe to perform lead-based paint inspections. It is not necessary that the State or tribal approval program had EPA authorization at the time of the inspection.

(ii) Notwithstanding paragraph (a)(1)(i) of this section, the inspection was conducted and accepted as valid by a housing agency in fulfillment of the lead-based paint inspection requirement of the public and Indian housing program.

(2) A lead-based paint inspection conducted on or after March 1, 2000, must have been conducted by a certified lead-based paint inspector.

(b) *Risk assessment.* (1) A risk assessment must be no more than 12 months old to be considered current.

(2) A risk assessment conducted before March 1, 2000, meets the requirements of this part if, at the time of the risk assessment, the risk assessor was approved by a state or Indian Tribe to

perform risk assessments. It is not necessary that the state or tribal approval program had EPA authorization at the time of the risk assessment.

(3) A risk assessment conducted on or after March 1, 2000, must have been conducted by a certified risk assessor.

(4) Paragraph (b) of this section does not apply in a case where a risk assessment is required in response to the identification of a child with an environmental intervention blood lead level. In such a case, the requirements in the applicable subpart for responding to a child with an environmental intervention blood lead level shall apply.

(c) *Interim controls.* If a residential property is under a program of interim controls and ongoing lead-based paint maintenance and reevaluation activities established pursuant to a risk assessment conducted in accordance with paragraph (b) of this section, the interim controls that have been conducted meet the requirements of this part if clearance was achieved after such controls were implemented. In such a case, the program of interim controls and ongoing activities shall be continued in accordance with the requirements of this part.

(d) *Abatement.* (1) An abatement conducted before March 1, 2000, meets the requirements of this part if:

(i) At the time of the abatement the abatement supervisor was approved by a State or Indian tribe to perform lead-based paint abatement. It is not necessary that the State or tribal approval program had EPA authorization at the time of the abatement.

(ii) Notwithstanding paragraph (d)(1)(i) of this section, it was conducted and accepted by a housing agency in fulfillment of the lead-based paint abatement requirement of the public housing program or by an Indian housing authority (as formerly defined under the U.S. Housing Act of 1937) in fulfillment of the lead-based paint requirement of the Indian housing program formerly funded under the U.S. Housing Act of 1937.

(2) An abatement conducted on or after March 1, 2000, must have been conducted under the supervision of a certified lead-based paint abatement supervisor.

[64 FR 50202, Sept. 15, 1999; 65 FR 3387, Jan. 21, 2000, as amended at 69 FR 34272, June 21, 2004]

§ 35.170 Noncompliance with the requirements of subparts B through R of this part.

(a) *Monitoring and enforcement.* A designated party who fails to comply with any requirement of subparts B, C, D, F through M, and R of this part shall be subject to the sanctions available under the relevant Federal housing assistance or ownership program and may be subject to other penalties authorized by law.

(b) A property owner who informs a potential purchaser or occupant of lead-based paint or possible lead-based paint hazards in a residential property or dwelling unit, in accordance with subpart A of this part, is not relieved of the requirements to evaluate and reduce lead-based paint hazards in accordance with subparts B through R of this part as applicable.

§ 35.175 Records.

The designated party, as specified in subparts C, D, and F through M of this part, shall keep a copy of each notice, evaluation, and clearance or abatement report required by subparts C, D, and F through M of this part for at least three years. Those records applicable to a portion of a residential property for which ongoing lead-based paint maintenance and/or reevaluation activities are required shall be kept and made available for the Department's review, until at least three years after such activities are no longer required.

Subpart C—Disposition of Residential Property Owned by a Federal Agency Other Than HUD

SOURCE: 64 FR 50208, Sept. 15, 1999, unless otherwise noted.

§ 35.200 Purpose and applicability.

The purpose of this subpart C is to establish procedures to eliminate as far as practicable lead-based paint hazards prior to the sale of a residential property that is owned by a Federal agency