

New Proposed Regulations Regarding Lead-based Paint Requirements

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For CPD Newsbrief....

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NEW PROPOSED REGULATIONS REGARDING LEAD-BASED PAINT REQUIREMENTS

On June 7, 1996, HUD published in the Federal Register a proposed rule implementing Sections 1012 and 1013 of the Residential Lead-Based Paint Hazard Reduction Act (Title X of the 1992 Housing and Community Development Act), which mandates a comprehensive revision of requirements pertaining to lead-based paint hazards control in federally associated housing.

In the Code of Federal Regulations, HUD's lead-based paint requirements for all Federal programs will be consolidated into one area (24 CFR Parts 36 & 37). The proposed rule is divided into two parts. The first part provides requirements for all HUD's pre-1978 housing programs, as well as certain housing programs of other Federal agencies. The other part provides information on how to perform lead-based paint hazard evaluation and reduction activities, such as risk assessments and interim controls, based on the 1995 HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing.

Several staff persons from CPD worked in conjunction with the HUD Lead-Based Paint Office of finalize the proposed rule. Because this proposed rule sets forth major changes in lead-based paint requirements for all HUD programs, it has been determined that the CPD NEWSBRIEF would be a good forum to highlight it. In addition to discussions in the Preamble of the proposed rule, the HUD Lead-Based Paint Office has developed a number of questions and answers pertaining to the rule.

On Tuesday, June 25, 1996, the Office of Lead-Based Paint will give a satellite briefing to explain requirements of the proposed regulations. This broadcast will be from 1:30 p.m. to 3:30 p.m. (EDT). For information about the broadcast contact the Secretary's Representative, Area Coordinator or State Coordinator for your Field Office.

GENERAL QUESTIONS ABOUT THE PROPOSED RULE

Q: Why is the proposed rule needed?

A: HUD is proposing the rule to implement sections 1012 and 1013 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 (Title X of the Housing and Community Development Act of 1992). These sections set forth significant new requirements concerning lead-based paint hazard notification, evaluation, and reduction for federally owned residential property and housing receiving Federal assistance. The proposed rule is a major revision of HUD's lead-based paint regulations. The new requirements will significantly increase the protection of children against lead poisoning. The rule was also needed to update old requirements based on new scientific research and policy consensus. Despite significant progress, an estimated 1.7 million U.S. children still have blood lead levels above the

recommendation of the Centers for Disease Control and Prevention (CDC). Finally, the proposed rule also serves to consolidate HUD's lead-based paint requirements in one place in the Code of Federal Regulations.

Q: What type of housing will be affected by the proposed rule?

A: The proposed rule will affect (1) all residential property constructed before 1978 that receives Federal housing assistance including housing subject to an application for Federal mortgage insurance; and (2) the disposition (i.e. sale) of all federally-owned residential property constructed before 1978.

As with HUD's current lead-based paint regulations, there are also some types of pre-1978 housing that are NOT covered by the new regulations. They include (1) residential property constructed on or after Jan. 1, 1978; (2) single room occupancy dwelling units (defined as 0-bedroom units); and (3) housing designated exclusively for the elderly or handicapped, unless a child under age 6 resides or is expected to reside in the dwelling.

Q: How does this proposed rule differ from the recently published real estate notification and disclosure rule issued by HUD and EPA?

A: The recently issued final rule on notification and disclosure applies to new sales and new rentals of almost all pre-1978 housing in the United States (including federally-owned housing and housing receiving Federal assistance, as well as other privately owned housing). It does not require property owners to conduct any type of hazard evaluation or reduction activities. It is a final rule that takes effect on September 6, 1996 for owners of more than 4 dwellings, and on December 6, 1996 for owners of 4 or fewer dwellings.

The primary purpose of the proposed rule is to revise requirements for hazard evaluation and reduction activities in federally-owned housing and housing receiving Federal assistance. However, the proposed rule would add some notification and disclosure requirements for federally-owned housing and housing receiving Federal assistance. It would require that existing tenants receive a lead hazard information pamphlet and written notice of any lead-based paint evaluation, paint repair or hazard reduction activities that occur in their homes.

Q: What are the major changes proposed in this rule?

A: The proposed rule differs from current HUD regulations in many ways -- in concepts regarding what is and is not a "lead-based paint hazard", in the specificity of procedures for identifying and reducing those hazards, and in the level, extent, and frequency of actions required in specific housing programs. Major changes include the following:

' The proposed rule would require significant changes in the frequency and extent of treatment of lead-based paint hazards in some housing programs -- particularly in housing receiving Federal rehabilitation assistance, housing with project-based assistance, and HUD-owned housing (in the latter case, only if sufficient appropriations are available).

' The term "lead-based paint hazard" no longer means all lead-based paint inside or outside the residential structure. The term now means any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, or lead-contaminated paint that is deteriorated or present in chewable surfaces, friction surfaces, or impact surfaces. Therefore lead-based paint that is intact and not on a friction or impact surface or a chewable surface is not considered a hazard under the law.

' The proposed rule introduces a new method of testing for lead-based paint hazards called "risk assessment." This procedure is designed to identify lead-based paint hazards as defined above. Thus it does not test all painted surfaces, only those that may be hazards.

' The proposed rule defines two ways to reduce lead-based paint hazards: (1) interim controls and (2) abatement. "Interim controls" is a set of measures designed to reduce temporarily human exposure or likely exposure to lead-based paint hazards. "Abatement" means a set of measures designed to permanently eliminate lead-based paint or lead-based paint hazards.

' The proposed rule specifies certain procedures that must be conducted in conjunction with interim controls or abatement. They are: worksite preparation to contain dust and debris, occupant protection, cleanup, and clearance. Also, ongoing monitoring to detect any reappearance of hazards is required in some cases.

' New notification requirements are specified, as explained above.

' The proposed rule requires that all risk assessments, paint inspections, and abatements, as defined above, be conducted by personnel who are certified in accordance with regulations published by the Environmental Protection Agency (EPA).

Q: Is this regulation now in effect? Is the effective date the same for all Federal housing programs?

A: The regulation is not in effect yet. The Administrative Procedures Act requires Federal agencies to provide the public with an opportunity to comment on the regulation before it becomes effective. Interested parties will have 90 days from the date of the publication of the proposed rule to submit information and written comments. HUD will carefully review the comments it receives and use them to develop a final regulation. HUD has proposed that the final rule be effective one year from the date of its publication to allow all parties time to prepare for proper implementation of the new lead-based paint requirements. This delay is universal and applies to all parties covered under the regulation. In addition, certain programs (i.e. project-based assistance and public housing) will have phase-in schedules for completing hazard evaluation activities.

Q: What actions should I be taking now until the proposed regulation becomes final?

A: Until HUD's new lead-based paint regulation takes effect, the existing lead-based paint regulation found at 24 CFR Part 35 and the other applicable program regulations are still in effect. However, property owners and grantees may wish to take additional precautions to protect occupants from exposure to lead hazards and to assure that work is done in a safe manner, such as using misted scraping rather than dry scraping to remove paint, and cleaning worksites so that paint chips and fine lead dust particles are removed from the property. Methods for conducting lead-based paint hazard

evaluation and reduction work in a safe manner can be found in HUD's Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing (June 1995).

Q: How do the provisions of the proposed rule help ensure that its requirements do not discriminate against families with young children?

A: In most cases the proposed rule applies uniformly to all affected housing, regardless of whether a family with a young child is the current or prospective occupant. In this way, hazards in housing can be addressed before they poison children. This approach is required by statute. The only exception is with the Section 8 rental certificate and voucher program, for which the requirements are triggered by the presence of young children, as is the case in current regulations.

Q: Are the requirements under the proposed regulation consistent with the recommendations of the Title X (Section 1015) Lead-Based Paint Hazard Reduction and Financing Task Force?

A: The Task Force on Lead-Based Paint Hazard Reduction and Financing was appointed by HUD Secretary Henry Cisneros pursuant to Section 1015 of the Residential Lead-Based Paint Hazard Reduction Act of 1992. Its membership included representatives from both public and private sectors. The mandate of the Task Force was to address issues relating primarily to lead-based paint hazards in private housing, including standards of hazard evaluation and control, financing hazard control activities and liability and insurance for rental property owners and hazard control contractors.

Where Section 1012 of Title X allowed HUD some flexibility in determining the most appropriate evaluation and hazard reduction activities, the Department attempted to incorporate portions of the Task Force recommendations into the proposed rule. For example, HUD incorporated the components of essential maintenance practices and the recommended response when an EBL child is identified into the requirements for the Section 8 tenant-based rental assistance programs (Part 36 Subpart O). In addition, the concept of a Lead Hazard Control Plan for housing receiving project-based assistance was also derived from the Task Force report. Finally, the proposed rule also allows property owners and grantees to forego a paint inspection or risk assessment by assuming the presence of lead-based paint and lead-based paint hazards and proceeding directly to hazard reduction activities.

Q: How is the proposed rule structured?

A: The proposed rule consolidates the numerous lead-based paint regulations found throughout HUD's program regulations into two parts of the Code of Federal Regulations (24 CFR Parts 36 & 37). Part 36 describes what lead-based paint hazard evaluation and reduction activities must take place and presents schedules for completing these activities. Part 37 describes how the hazard evaluation and reduction work must be conducted and how to ensure that occupants and their belongings are protected from potential lead hazards while the work is being done.

QUESTIONS ABOUT PART 36 OF THE PROPOSED RULE

Q: Why is the Department establishing different levels of treatment for lead-based paint hazard evaluation and reduction, based on different types of housing assistance?

A: Sections 1012 and 1013 of Title X establish different lead-based paint notice, evaluation and reduction requirements for various types of Federal assistance, and for federally-owned property. For the most part, the requirements tend to be more stringent when the Federal assistance involves major rehabilitation activity or when the Federal financial involvement is ongoing. Also, the stringency of the requirements is associated with the amount of Federal financial assistance. Part 36 of the proposed rule is designed to reflect this Congressional intent. When implemented, this rule will greatly reduce childhood exposure to lead.

Q: Why does the regulation group requirements by the type of assistance received and not by program area?

A: The lead-based paint proposed rule reflects HUD's reinvention efforts to streamline its lead-based paint regulations and group HUD programs according to the type of assistance that is provided. This was done to ease the burden on HUD clients in locating the lead-based paint requirements that correspond to the type of assistance they receive. For example, a client receiving HUD funds for rehabilitation will find only one rehabilitation subpart, rather than a rehabilitation subpart for HUD's Office of Housing programs and one for its Office of Community Planning and Development programs.

Q: Which lead-based paint requirements apply if a property receives assistance from more than one funding source (i.e. Federal, State and local funds)?

A: If more than one source of housing assistance is provided, the most stringent lead-based paint requirements would apply.

Q: Are Subparts C and D in Part 36 the only lead-based paint requirements that must be followed by other Federal agencies?

A: Title X required HUD to issue regulations for the disposition of federally-owned housing and for housing receiving Federal assistance. HUD interpreted this language to include housing owned and to be sold by a Federal agency other than HUD, and housing that receives project-based assistance from a Federal agency other than HUD. Although Subparts C and D are the only subparts in Part 36 that affect other Federal agencies, each agency is expected to take this regulatory language and integrate it into their existing lead-based paint requirements.

Q: Why are there four sets of requirements for the disposition of HUD-owned residential properties (Subparts F, G, J & K)? Why don't other Federal agencies have several options for addressing lead-based paint hazards in the residential properties that they own?

A: Subparts F and J of Part 36 set out the requirements for the disposition of single family and multifamily (HUD-owned) housing when Congress has appropriated sufficient funds to fulfill the requirements set out in Section 1013 of Title X. The Act does not, however, indicate what action, if any, a Federal agency should take when sufficient appropriations are not made by the Congress for evaluating and reducing lead-based paint hazards prior to the sale of federally-owned housing. In HUD's view, it is important to make some effort to evaluate and treat deteriorated paint in HUD-owned properties even if separate funding is not provided by the Congress to carry out more extensive hazard evaluation and reduction

activities. Therefore, the Department has included alternative requirements for visual evaluation and repair of deteriorated paint in HUD-owned single family (Subpart G) and multifamily (Subpart K) properties when sufficient appropriations are not available to conduct full-scale hazard evaluation and reduction activities. Other agencies may adopt their own alternative procedures if they decide that appropriated funds are not sufficient.

Q: What is the minimum requirement for pre-1978 housing receiving project-based assistance? What is a hazard reduction plan?

A: Section 1012 of Title X requires, at a minimum, risk assessments and interim controls in all housing constructed before 1978 that receives project-based assistance. HUD defines the term "project-based assistance" in the rule as Federal assistance that is tied to a residential property with a specific location and not to the tenant. If a risk assessment report identifies lead-based paint hazards, the residential property owner is required to develop a hazard reduction plan that indicates how and when the hazards will be addressed. The owner is given a certain amount of latitude to develop a hazard reduction plan that is most cost-effective and workable. If the risk assessment report identifies lead-based paint hazards and the owner wants to apply for a rent increase to help pay for the hazard reduction work, then the plan must be submitted to HUD as a supplement to the application for a rent adjustment increase. The hazard reduction activities proposed in the plan must be consistent with the recommendations of the risk assessment report. If no rent adjustment is needed, the property owner does not need to submit the hazard reduction plan to HUD. However, the property owner must certify to HUD that the methods used to reduce the lead-based paint hazards identified in the risk assessment report will be conducted pursuant to Part 37.

Q: Will HUD field office staff be trained to administer these new requirements?

A: Yes. The Department is currently developing training curricula for each of HUD's major program areas.

Q: How are the various dollar thresholds in Federal rehabilitation assistance calculated in order to determine which requirements apply?

A: Property owners and grantees must use only the costs needed to make improvements such as energy-related repairs, accessibility for handicapped persons, repair or replacements of major housing systems, or smaller additions or alterations to a structure. They do not include program administrative costs. The regulation also sets out a formula for determining the costs of rehabilitation using funds from the Office of Housing's Flexible Subsidy-Capital Improvement Loan Program (CILP) and from the CPD grant programs. For purposes of this rule, additional funding from State and local governments or private sources are excluded from consideration when determining the amount of Federal funds used in a rehabilitation project.

Once a grantee or property owner has determined the costs of rehabilitation, the following examples would apply. If the Federal investment of a rehabilitation project is \$5,500, the lead-based paint requirements would fall within the \$5,000 - \$25,000 category, requiring paint inspection, risk assessment, and hazard reduction. If the Federal investment of a rehabilitation project is \$26,500, the lead-based paint requirements would be above the \$25,000 threshold, therefore requiring paint inspection, risk

assessment, abatement of lead-based paint hazards within the worksite, and interim controls when lead hazards are identified outside of the immediate rehabilitation worksite (Subpart L).

Q: Is the definition of a child with an elevated blood lead level (EBL) the same as in the current HUD regulations?

A: No. In 1991, the Centers for Disease Control and Prevention (CDC) issued new levels of concern for children with elevated blood lead levels. To be consistent with the 1991 CDC recommendations, the proposed rule establishes new EBL levels at which environmental intervention (i.e. risk assessment and hazard reduction) must occur. The new level in the proposed rule is defined as an excessive absorption of lead that is a confirmed concentration of lead in whole blood of 20 ug/dl (micrograms of lead per deciliter of whole blood) for a single test or of 15-19 ug/dl in two consecutive tests taken 3 to 4 months apart (Subpart A). Also, the proposed rule changes the age of concern from less than seven to less than six years. This change derives from Title X.

QUESTIONS ABOUT PART 37 OF THE PROPOSED RULE

Q: Why didn't HUD simply reference its 1995 Guidelines rather than create a separate Part 37?

A: HUD did not reference the Guidelines for two reasons. First, the Guidelines were written as an advisory document and were never published for regulatory review and public comment as is required for regulations, although the Guidelines were peer-reviewed. Second, the content of the Guidelines includes explanatory and reference material, advice, examples, options and recommendations that would not be appropriate to be included in regulations verbatim.

Q: Why is HUD establishing such specific hazard evaluation and reduction requirements in Part 37 when EPA and OSHA also have regulations addressing lead-based paint hazard evaluation and reduction?

A: HUD's proposed rule references the OSHA regulation on lead in construction and has no additional requirements on worker protection. The proposed rule also references forthcoming EPA regulations on training and certification (implementing sections 402 and 404 of the Toxic Substances Control Act (TSCA)) and dangerous levels of lead in paint, dust and soil (implementing section 403 of TSCA). However, when the HUD proposed rule was being written EPA's 402-404 rule had not been published in final form and the 403 rule had not been proposed. The Department has coordinated its regulatory activities with those of other agencies to the extent possible given that the regulations required of various agencies by Title X have different schedules for completion. Any remaining differences will be resolved in the final rule.

Q: How did HUD derive the standards for paint, dust, and soil it is using in the proposed regulation?

A: The standards for lead in paint, dust, and soil included in the regulation were derived from EPA guidance and the HUD Guidelines.

Q: Why are chemical spot test kits not mentioned in the proposed regulation? Can they be used?

A: HUD does not permit the use of chemical spot test kits as an evaluation method in the proposed rule. Although they have promise for the future, chemical spot test kits have not yet been found to be sufficiently reliable for the analysis of lead in paint, dust, and soil.

Q: Why has the number of dwelling units in a multifamily building requiring a paint inspection increased so significantly from the existing regulations (see Subpart C)?

A: The sample size in the proposed regulation is based on the HUD Guidelines. It is designed to provide 95 percent confidence that no more than five percent of the units have lead-based paint based on the assumption that lead-based paint is randomly distributed in a housing development.

Q: What is the difference between "paint repair" and "paint stabilization" (see Subpart E)?

A: Paint repair differs from paint stabilization primarily in that it does not require repair of the substrate material, as does paint stabilization.

Q: Which is less expensive in the long run, abatement or interim control of lead-based paint hazards?

A: The answer to this varies from property to property depending on conditions. Interim controls often have a lower initial cost than abatement methods. However, interim controls require regular monitoring, reevaluation, and repair because they are not permanent treatments. The cost of monitoring should be considered when deciding whether to use interim controls or to abate a lead-based paint hazard. For some hazards, abatement methods will be more cost effective than interim controls when the long-term cost is considered.

Q: The HUD Guidelines provide for a lead hazard screen instead of a full risk assessment. Why don't the proposed regulations do the same?

A: The screen was not included in the proposed regulation because the cost of a complete risk assessment as specified in Part 37 is not much more expensive than the cost of the lead hazard screen as specified in the HUD Guidelines.

Q: Why did HUD delete the requirement for testing window troughs for lead contaminated dust as contained in the HUD Guidelines?

A: A window trough (often referred to as a window "well") is that area between the interior window sill and the storm window frame. The dust in window troughs is strongly correlated with that on interior window sills, which are required to be sampled. HUD does not believe additional sampling is necessary. However, the proposed rule does call for the cleaning of window troughs if interior window sills are being cleaned.