Part II

Department of Housing and Urban Development

24 CFR Parts 35, 36 and 37
Requirements Notification, Evaluation, and Reduction of Lead-Based Paint Hazards in Federally Owned Residential Property and Housing Receiving Federal Assistance; Proposed Rule
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary
24 CFR Parts 35, 36 and 37
[Docket No. FR–3482–P–01]
RIN 2501–AB57

Office of Lead-Based Paint Abatement and Poisoning Prevention;
Requirements for Notification, Evaluation and Reduction of Lead-
Based Paint Hazards in FederallyOwned Residential Property and
Housing Receiving Federal Assistance

AGENCY: Office of the Secretary—Office of Lead-Based Paint Abatement and Poisoning Prevention, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule implements 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. This proposed rule constitutes a major revision of the Department’s lead-based paint regulations. For the first time, HUD’s lead-based paint requirements for all Federal programs will be consolidated in the Code of Federal Regulations. One part or subpart will set out programmatic requirements concerning lead-based paint hazard notification, evaluation and reduction for all covered HUD programs, as well as programs of other Federal agencies. One part or subpart will distill information concerning how to perform lead-based paint hazard evaluation and reduction activities, such as risk assessment and interim controls, based on the HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing. Another part or subpart will set out requirements concerning lead-based paint notification for all pre-1978 residential property sold or leased, including non-federally related privately owned residential property. (This last part or subpart was published jointly by HUD and the Environmental Protection Agency as a proposed rule, on November 2, 1994; a final rule is expected soon.)

DATES: Comments on this proposed rule must be received on or before September 5, 1996. The deadline for comments on the information collection requirements is August 6, 1996, although commenters are advised that a comment is best assured of having its full effect if it is received by the Office of Management and Budget (OMB) within 30 days of publication.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

Comments on the proposed information collection requirements must refer to FR–3482, Requirements for Notification, Evaluation and Reduction of Lead-Based Paint Hazards in Federally Owned Residential Property and Housing Receiving Federal Assistance, and must be sent to: Joseph F. Lackey, Jr., HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503

and

Reports Liaison Officer, Office of Lead-Based Paint Abatement and Poisoning Prevention, Department of Housing & Urban Development, 451 7th Street SW., Room 4244, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: For further information on part 36 in the proposed rule, contact Joan Catherine Tetrault, and for further information on part 37 of the proposed rule contact Conrad Arnolts. The address for both of these persons is: Office of Lead-Based Paint Abatement and Poisoning Prevention, Department of Housing and Urban Development, 451 7th Street SW., Room B–133, Washington, DC 20410–0500, Telephone: (202) 755–1805, E-mail: Joan.C.Tetrault@hud.gov, or Conrad.C.Arnolts@hud.gov. For legal questions, contact Kenneth A. Markison or John B. Shumway, Office of General Counsel, Room 9262, Department of Housing and Urban Development, Telephone: (202) 708–9988, E-mail: John.B.Shumway@hud.gov. For hearing- and speech-impaired persons, these numbers may be accessed via TTY (text telephone) by calling the Federal Information Relay Service at 1-800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act Statement

The information collection requirements contained in sections 36.63, 36.64, 36.70, 36.84, 36.144, 36.162, 36.164, 36.168, 36.170, 36.188, 36.208, 36.230, 36.232, 36.256, 36.274, 36.276, 36.284, 36.294, and 36.302 of this proposed rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Information on the estimated public reporting burden and where to send comments is provided under the preamble heading, Other Matters. OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the Federal Register. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the proposed rule.

II. Background

A. Lead Poisoning

Childhood lead poisoning is “the most common environmental disease of young children,” (“Strategic Plan for the Elimination of Lead Poisoning”, Centers for Disease Control (“CDC”), U.S. Department of Health and Human Services, Atlanta, Georgia, 1991) eclipsing all other environmental health hazards found in the residential environment (“The Nature and Extent of Lead Poisoning in Children in the United States: A Report to Congress”, Agency for Toxic Substances and Disease Registry, U.S. Department of Health and Human Services, Atlanta, Georgia, 1988) (hereafter “ATSDR, 1988”). Lead is highly toxic and affects virtually every system of the body. At high exposure levels, lead poisoning can cause coma, convulsions, and death. While adults can suffer from excessive lead exposures, the groups most at risk are fetuses, infants, and children under age six. At low levels, the neurotoxic effects of lead have the greatest impact on children’s developing brains and nervous systems, causing reductions in IQ and attention span, reading and learning disabilities, hyperactivity, and behavioral problems (Davis, J.M., R. Elias and L. Grant “Current Issues in Human Lead Exposure and Regulation of Behavior”, Journal of the American Medical Association, 1987).
of Lead”, Neurotoxicologist, 14(2-3):1528, 1993). These effects have been identified in many carefully controlled research studies (“Measuring Lead Exposure in Infants, Children and Other Sensitive Populations”, Committee on Measuring Lead in Critical Populations, Board on Environmental Studies and Toxicology, Commission on Life Sciences, National Academy of Sciences, 1993). However, the vast majority of childhood lead-poisoning cases go undiscovered and untreated, since most poisoned children have no obvious symptoms.

Although significant declines have been observed in the overall mean blood lead levels of children, which can be attributed to Federal Government actions resulting in the removal of lead from gasoline and soldered cans, approximately 1.7 million children are estimated to have blood lead levels high enough to be of a health concern. Lead poisoning affects children across all socioeconomic strata and in all regions of the country. However, because lead-based paint hazards are most severe in older housing in disrepair, the poor in inner cities are disproportionately affected. In some inner city communities, over half of all young children have lead levels exceeding the CDC threshold of concern (10 micrograms per deciliter). Nationwide, African-American children of low and middle income families are twice as likely to be lead poisoned as white children of similar income families (Phase I of the Third National Health and Nutrition Examination Survey, NHANES III, 1988-1992, as reported in the Journal of American Medical Association, July 27, 1994).

Today, children in the United States are lead poisoned primarily through ingestion by normal hand-to-mouth activity and, to a lesser extent, inhalation. Because lead is ubiquitous in industrial societies, there are many sources and pathways of lead exposure. The foremost source of childhood lead exposure in the United States today is lead-based paint and the accompanying lead-contaminated dust and soil found in and around older houses (“Preventing Lead Poisoning in Young Children”, CDC, U.S. Department of Health and Human Services, Atlanta, Georgia, 1991; Rabinowitz, M., J. Leviton, H. Needleman, D. Bellinger and C. Watenaux, “Environmental Correlates of Infant Blood Lead Levels in Boston”, Environmental Research 38:96–107, 1985). As early as 1897, lead-based paint was identified as a cause of childhood lead poisoning (Turner, 1897). Many countries prohibited the use of lead in residential paints as far back as 1922 (Rabin, R., “Warnings Unheeded: A History of Lead Poisoning”, American Journal of Public Health 79:1668–174, 1989). Lead was a major ingredient in most interior and exterior house oil-based paints prior to 1950, with some paints containing as much as 50 percent lead by dry weight. In the early 1950s, other ingredients became more popular, but some lead pigments, corrosion inhibitors, and drying agents were still used.

In the 1950’s and 1960’s, several large cities in the United States banned the use of lead-based paint (using varying definitions) on interior surfaces in residential structures. In 1955, the paint industry adopted a voluntary standard limiting the use of lead in interior paints to no more than 1 percent by weight of nonvolatile solids. In 1972, HUD prohibited the use of lead-based paint (at the 1 percent standard) in HUD-assisted housing. In 1972, the Consumer Product Safety Commission (“CPSC”) reduced the acceptable lead content in residential paint to 0.5 percent lead in 1978. Subsequently banned the sale of residential paint containing greater than 0.06 percent lead. CPSC also prohibited the use of such paint in residences and other areas where consumers have direct contact with painted surfaces.

HUD estimates that three-quarters of pre-1980 dwelling units contain some lead-based paint. The likelihood, extent, and concentration of lead-based paint all increase with the age of the building. Fully 90 percent of privately owned dwelling units constructed before 1940 contain some lead-based paint, 80 percent of dwelling units constructed between 1940 and 1959, and 62 percent of dwelling units constructed between 1960 and 1979 (“Comprehensive and Workable Plan for the Abatement of Lead-Based Paint in Privately-Owned Housing: A Report to Congress”, U.S. Department of Housing and Urban Development, Washington, D.C., December 7, 1990). Because the greatest risk is in residential property constructed before 1960, older property generally commands a higher priority for lead hazard controls. However, there is evidence that significant amounts of lead-based paint were sold as late as 1971, when New York City’s Health Department tested 78 “new” residential paints and found eight of them to have lead ranging from 2.6 percent to 10.8 percent (Bird, D., “High Lead Paints Listed by City”, NY Times, August 4, 1971.18).

For many years, the conventional belief was that in order to be poisoned children must eat lead paint chips. More recent medical research has determined that the most common cause of childhood lead exposure is the ingestion, through hand-to-mouth transmission, of lead-contaminated surface dust (Clark, C.S., R. Bornschein, P. Succop, S. Roda and B. Peace, “Urban Lead Exposures of Children in Cincinnati, Ohio”, Journal of Chemical Speciation and Bioavailability, 3(4): 163–171, 1991; Bellinger, D., J. Sloman, A. Leviton, M. Rabinowitz, H. Needleman and C. Watenaux, “Low Level Lead Exposure and Children’s Cognitive Function in the Preschool Years”, Pediatrics, 87:219–227, 1991). Lead-contaminated dust may be so fine that it cannot be seen by the naked eye. In addition, lead-contaminated dust is difficult to clean up. Lead dust is generated when lead-based paint is damaged by moisture, abraded on friction and impact surfaces, or is disturbed in the course of repainting, renovation, repair, or abatement. Lead can also be tracked into homes from exterior dust and soil.

Children can also be exposed to lead found in bare soil. High levels of lead in soil around the foundation of a house may come from the scraping and repainting of exterior lead-based paint or simply the deterioration of such paint (Ter Harr, G. and R. Arrow, “New Information on Lead in Dirt and Dust as Related to the Childhood Lead Problem”, Environmental Health Prospectives, May, 1974:83–89; Linton, R.W., D.F.S. Natrus, R.L. Solomon and C.A. Evans, “Physicochemical Characterization of Lead in Urban Dusts: A Microanalytical Technique to Lead Tracing”, Environmental Science Technology, 14:159–164, 1980). Soil is also contaminated with lead by the fallout of lead emissions from the combustion of leaded automobile gasoline and from industrial sources (ATSDR, 1988, supra). In some areas, high leaded soil levels result from factory and smelter emissions or deteriorating lead-based paint on steel structures, such as bridges. Bare soil that is contaminated with lead poses a hazard to children who play in it.

Based on the belief that children had to eat lead-based paint chips to be poisoned, the typical response to lead poisoning during the 1970s and early 1980s consisted of removing deteriorated and/or accessible lead-based paint by scraping, uncontrolled sanding, or open flame burning, all of which generated large amounts of lead dust. Approaches differed slightly from city to city. Some cities required removal of all lead-based paint to a certain height, such lead-based paint was required only that deteriorating paint be removed. However, these traditional
The Department's lead-based paint abatements had one common characteristic: little attention was paid to controlling, containing and cleaning up leaded dust. In many cases, these paint removal methods actually aggravated the problem, increasing lead exposures and poisoning workers and children in the process. Several studies found that uncontrolled abatement and inadequate cleanup caused increased blood lead levels (Farfel, M. and J.J. Chisolm, Jr., “Health and Environmental Outcomes of Traditional and Modified Practices for Abatement of Residential Lead-Based Paint”, American Journal of Public Health, 80:10,1240–1245, 1990; Rabinowitz, M., A. Leviton and D. Bellinger, “Home Refinishing, Lead Paint and Infant Blood Lead Levels”, American Journal of Public Health, 75(4):403–404, 1985; Amitai, Y., J.W. Graef, M.J. Brown, R.S. Gerstle, N. Kahn and P.E. Cochrane, “Hazards of Defending Homes of Children with Poisoning”, American Journal of Diseases of Children, 141:758–760, 1987). The Department's Lead-Based Paint: Guidelines for Hazard Identification and Abatement in Public and Indian Housing, (1990) (“Interim Guidelines”) properly emphasized the danger of lead-contaminated dust and the need for worker protection and thorough cleanup. Title X redefines the concept of “lead-based paint hazards.” Under prior Federal legislation, a lead-based paint hazard was defined as any paint greater than or equal to one milligram per square centimeter (mg/cm2) of lead, regardless of the condition or location. Title X states that a lead-based paint hazard is “any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil or lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects.” Thus, under this definition, intact lead-based paint on most walls and ceilings is not considered a “hazard,” although the condition of the paint should be monitored and maintained to ensure that it does not become deteriorated. While most efforts to address lead hazards in residential property will now be aimed at reducing lead-based paint hazards as defined by Title X, Federal law makes one notable exception: in public and Indian housing all lead-based paint and lead-based paint hazards must be abated during modernization.

Title X defines two methods of identifying or “evaluating” lead-based paint hazards or lead-based paint. One method, “risk assessment”, includes wipe sampling and other environmental sampling to identify lead-based paint hazards. The other, “inspection” (or “paint inspection”), determines the presence only of lead-based paint. Lead-based paint hazard evaluation may also be accomplished by a combination of the two methods. The combination approach results in an identification of all lead-based paint and lead-based paint hazards. Title X provides for three types of lead-based paint hazard control: interim controls, abatement of lead-based paint hazards, and complete abatement of all lead-based paint. Interim controls are “measures designed to temporarily human exposure or likely exposure to lead-based paint hazards.” Abatement means “a set of measures designed to permanently eliminate lead-based paint hazards” or lead-based paint. To ensure that lead-based paint hazard evaluation and reduction is carried out safely and effectively, Title X imposes new requirements for consistency and quality control.

B. Legislative and Regulatory History

The existing lead-based paint regulations pertaining to the Department’s programs, as well as to all federally owned residential property, were written pursuant to the passage of the Lead-Based Paint Act, as amended prior to 1992. This legislation required the Secretary to “establish procedures to eliminate as far as practicable the hazards of lead-based paint poisoning with respect to any existing housing which may present such hazards and which is covered by an application for mortgage insurance or housing assistance payments under a program administered by the Secretary.” HUD interpreted the phrase “housing assistance payments” broadly and therefore in 1976 the Department drafted regulations to eliminate the hazards of lead-based paint for virtually all of its programs. Part 35 of the Department’s regulations in Title 24 was promulgated setting forth general procedure for inspection and treatment of defective paint surfaces in all HUD-associated housing. Subsection 35.5(c), however, gave each Assistant Secretary the authority to develop regulations pertaining to their specific areas of responsibility, and varying program regulations concerning lead-based paint now exist throughout Title 24.

The Department’s lead-based paint regulations have been amended from time to time in response to changes in the law, increased knowledge about the hazards and treatment of lead-based paint. The most recent Department-wide regulatory revisions pertaining to lead-based paint were made in 1986, 1987 and 1988. Some additional revisions specific to the public and Indian housing programs were issued in 1991.

On May 12, 1994, at 59 FR 24850, the Department published a proposed rule for comment that was intended to be the first phase of a process to revise HUD’s lead-based paint regulations. In this first phase, HUD intended to remedy inaccuracies in existing regulations and respond to advancements in the state of knowledge in the field of lead-based paint testing and hazard reduction. The proposed rule did not reflect changes in the Title X amendment to the Lead-Based Paint Act. However, many of the public comments the Department received on this proposed rule reflected a misimpression that the proposed rule was intended to implement Title X. Other comments were impatient with HUD and felt strongly that the Department should devote its resources to implementing the new legislation, rather than making minor adjustments to the existing regulations. The Department agreed and consequently the May 12, 1994 proposed rule was withdrawn. The proposed changes to the regulations, where consistent with Title X, have been incorporated into this rulemaking.

Title X represents a new and sweeping approach to the problem of lead-based paint poisoning of children, necessitating a comprehensive revision of HUD’s lead-based paint regulations. Title X amends what had previously been general language contained in the Lead-Based Paint Act and sets out specific requirements for federally owned residential property and housing receiving Federal assistance. Title X stresses identification of hazards, notification to occupants of the existence of these hazards, and, in many cases, interim control and monitoring of lead-based paint hazards, although abatement of lead-based paint hazards is not precluded. This proposed rule also reflects current knowledge of the causes of lead poisoning and current lead-based paint hazard evaluation and reduction technologies and practices. The presence of lead-based paint will be more accurately identified, with fewer false negatives or false positives. Likewise, the existence, nature, severity and location of lead-based paint hazards (in dust, soil and deteriorated paint) will be more accurately identified and reported. By improving lead-based paint hazard evaluation, decisions about hazard reduction will be more fully informed and available resources will be better targeted to reduce
exposure to occupants and to the environment.

III. HUD Reinvention

In 1993 the Department launched a major restructuring, or reinvention, to meet the changing housing and development needs of communities across the country. HUD’s reinvention efforts took place in the context of a broader, government-wide reinvention process, the National Performance Review, initiated by President Clinton and Vice-President Gore. The Department’s proposed reinvention process will consolidate HUD programs by replacing numerous individual programs, each imposing its own prescriptive rules and requirements, with far fewer streamlined funds, which would stress performance-based objectives. These new funds will give State and local decision makers maximum flexibility to tailor Federal resources in response to local circumstances, needs and priorities. The Department’s proposal to phase out direct public housing subsidies to housing agencies, converting the funds to tenant-based rental assistance that will allow residents an expanded choice of housing. Finally, the Department’s reinvention will transform the Federal Housing Administration (FHA) into a business-like, government-owned corporation, enabling it to work more effectively and improve its efficiency.

In order to keep pace with the changes HUD is undertaking, the Department’s program regulations must also change. Although the proposed lead-based paint rule was developed to implement the statutory requirements of Title X for federally owned residential property and housing receiving Federal assistance, the Department saw this as an opportunity to revise all of its lead-based paint regulations to keep pace with changes in lead-based paint technology and in HUD service delivery.

The proposed rule consolidates numerous lead-based paint regulations found throughout HUD’s program regulations into two parts (parts 36 and 37) of title 24 of the Code of Federal Regulations. At the final rule stage, the Department will consider combining all of its lead-based paint regulations into one part of the Code of Federal Regulations.

The Department is seeking to eliminate redundant lead-based paint regulations and to achieve a measure of consistency among the lead-based paint requirements for different HUD programs, recognizing that HUD clients often receive funding from several HUD programs and must juggle separate and sometimes inconsistent sets of program regulations. Furthermore, the Department is engaged in a larger effort to streamline and eliminate unnecessary regulations, as part of the reinvention of HUD, and the extent to which this larger effort may impact our objective to eliminate unnecessary lead-based paint regulations is not yet clear. As a result, the Department has not included as part of this proposed rule the specific deletions of lengthy lead-based paint program regulations and new references and cross citations to parts 36 and 37. These deletions, as well as new references and cross citations also will be added during final rulemaking.

The proposed rule groups HUD programs by the type of assistance 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 instance, a client receiving HUD funds for rehabilitation will find only one rehabilitation subpart, rather than a rehabilitation subpart for multifamily property and a separate subpart on rehabilitation using HOME or CDBG funds. In addition, grouping HUD programs by type of assistance allows the Department greater flexibility as it consolidates many individual programs into the three performance-based funds. For example, the proposed rule has a subpart for public housing as it now exists and a subpart for tenant-based rental assistance. If a conversion of public housing subsidies to tenant-based rental assistance occurs, the appropriate lead-based paint requirements will already be in place.

Finally, the proposed rule reflects HUD’s efforts to balance the practical need for cost-effective, affordable lead-based paint hazard notification, evaluation and reduction measures with the statutory requirements of Title X as well as with HUD’s duty to protect children living in a residential property that is owned or assisted by the Federal government from lead-based paint poisoning. Where possible, the proposed rule provides opportunities for HUD clients to implement hazard reduction measures that will best meet the needs of their communities. For example, in subpart B of part 36, States, Indian tribes and insular areas that meet certain eligibility criteria have the opportunity to develop their own lead-based paint procedures and localities located in such a State have the option of adopting these State procedures (See Section VII.A.3 of the Preamble below).

IV. Public Input on Rulemaking

Consistent with Executive Order 12866, HUD has increased public participation in the regulatory development process. Because of the magnitude of the changes required in HUD’s lead-based paint proposed rule and the potential impact of these changes, public involvement was crucial to the rulemaking process. The three main avenues for public involvement in the development of the proposed rule were the HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing (June 1995) ("HUD Guidelines"), the recommendations from the Task Force on Lead-Based Paint Hazard Reduction and Financing, and three major meetings of HUD clients to seek input on the implementation of Title X.

A. HUD Guidelines

The HUD Guidelines were mandated by Section 1017 of Title X. They were developed by housing, public health and environmental professionals with broad experience in lead-based paint hazard identification and control. The HUD Guidelines form the basis for many of the lead-based paint hazard evaluation and reduction methods described in Part 37 of the proposed rule, and are intended to help property owners, government agencies and private contractors sharply reduce children’s exposure to lead-based paint, without adding unnecessarily to the cost of housing.

B. Title X Task Force

The creation of the Title X Task Force on Lead-Based Paint Hazard Reduction and Financing was also mandated by Section 1015 of Title X. The Task Force submitted its recommendations, Putting the Pieces Together: Controlling Lead Hazards in the Nation’s Housing, to HUD Secretary Henry Cisneros and EPA Administrator Carol Browner in July 1995. Members of the Task Force included representatives from Federal agencies, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the building and construction industry, landlords, tenants, primary lending institutions, private mortgage insurers, single family and multifamily real estate interests, nonprofit housing developers, property liability insurers, public housing agencies, low-income housing advocacy organizations, lead-poisoning prevention advocates and community-based organizations serving communities at high-risk for childhood lead poisoning. The mandate of the Task Force was to address sensitive issues related 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. The Department used the Task Force recommendations to guide the development of the lead-based paint requirements for Section 8 tenant-based rental assistance programs set forth in Part 36, subpart O, of the proposed rule.

C. Meetings with HUD Clients

Finally, the Department held three meetings with HUD clients on the potential implications of Title X on HUD programs. The meetings involved HUD constituents, tenants, and staff of the Offices of Public and Indian Housing (PIH), Community Planning and Development (CPD), and Housing, as well as advocacy and tenant representatives. Participants shared their thoughts on several Title X issues including: risk assessment and interim controls, hazard reduction activities during the course of rehabilitation, occupant notice of hazard evaluation and reduction activities, and children with elevated blood-lead levels.

Additional written comments were accepted from participants after the meetings. Participants' written comments, as well as meeting transcripts, are available for public review between 7:30 a.m. and 5:30 p.m. weekdays, in the Office of the Rules Docket Clerk, Office of General Council, U.S. Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410-0500.

V. Scope and Applicability

A. Sections 1012 and 1013 of Title X

This proposed rule implements the requirements of the Lead-Based Paint Act, as amended by Section 1012 and Section 1013 of Title X. Section 1012(a) of Title X amends the first sentence of the Lead-Based Paint Act to add the phrase "$5,000 in project-based assistance under a Federal housing program" so that 42 U.S.C. 4822(a) now reads as follows:

'...that the requirements of the Lead-Based Paint Act applied only to new applications for mortgage insurance or other types of housing assistance, under any program administered by the Secretary. The Department interprets the new phrase added by Section 1012(a), "more than $5,000 in project-based assistance under a Federal housing program", to cover any Federal housing program administered by any Federal agency which provides project-based assistance. Consequently, subpart I of Part 36 applies to both new and existing inventory receiving project-based assistance under a HUD program, and subpart D applies these requirements to other Federal agencies. Finally, although Title X only requires the Secretary to establish lead-based paint procedures for residential property receiving more than $5,000 in project-based assistance under a Federal housing program'..." so that 42 U.S.C. 4822(a) now reads as follows:

The Secretary of Housing and Urban Development ** shall establish procedures to eliminate as far as practicable the hazards of lead-based paint poisoning with respect to any existing housing which may present such hazards and which is covered by an application for mortgage insurance or housing assistance payments under a program administered by the Secretary or otherwise receives more than $5,000 in project-based assistance under a Federal housing program.

Section 1012 sets out minimum procedures for all "target housing" that falls within the three categories discussed above—mortgage insurance, housing assistance payments or more than $5,000 in project-based assistance. Target housing is defined in Title X as housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside) or any 0-bedroom dwelling unit. HUD has interpreted the exceptions for elderly and disabled housing (§ 36.2) to apply only to residential property which is designated exclusively for elderly or disabled use. After considerable discussion, HUD has determined that it would be unworkable and contrary to the intent of the statute to expand these exceptions to each particular dwelling unit occupied by an elderly or disabled person, regardless of its designation.

In the past, the Department has taken the position that the requirements of the Lead-Based Paint Act applied only to new applications for mortgage insurance or other types of housing assistance, under any program administered by the Secretary. The Department interprets the new phrase added by Section 1012(a), "more than $5,000 in project-based assistance under a Federal housing program", to cover any Federal housing program administered by any Federal agency which provides project-based assistance. Consequently, subpart I of Part 36 applies to both new and existing inventory receiving project-based assistance under a HUD program, and subpart D applies these requirements to other Federal agencies.

Finally, although Title X only requires the Secretary to establish lead-based paint procedures for residential property receiving more than $5,000 in project-based assistance under a Federal housing program, subpart D applies these requirements to other Federal agencies. Consequently, the Department used the Task Force recommendations to guide the development of the lead-based paint requirements for Section 8 tenant-based rental assistance programs set forth in Part 36, subpart O, of the proposed rule.

V. Scope and Applicability

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Consequently, the Department used the Task Force recommendations to guide the development of the lead-based paint requirements for Section 8 tenant-based rental assistance programs set forth in Part 36, subpart O, of the proposed rule.