

within 2 miles each side of the 270° bearing from the airport extending from the 6.4-mile radius to 10.2 miles west of the airport.

\* \* \* \* \*

**AGL WI E5 Eagle River, WI [Amended]**

Eagle River Union Airport, WI  
(Lat. 45°55'56" N., long. 89°16'06" W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Eagle River Union Airport, and within 2 miles each side of the 225° bearing from the airport extending from the 6.5-mile radius to 9.2 miles southwest of the airport.

\* \* \* \* \*

**AGL WI E5 Hayward, WI [Amended]**

Sawyer County Airport, WI  
(Lat. 46°01'31" N., long. 91°26'39" W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Sawyer County Airport, and within 2 miles each side of the 025° bearing from the airport extending from the 6.6-mile radius to 8.5 miles northeast of the airport.

\* \* \* \* \*

**AGL WI E5 Wausau, WI [Amended]**

Wausau Downtown Airport, WI  
(Lat. 44°55'35" N., long. 89°37'37" W.)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of Wausau Downtown Airport.

Issued in Fort Worth, Texas, on December 28, 2016.

**Thomas L. Lattimer,**  
*Acting Manager, Operations Support Group,  
ATO Central Service Center.*

[FR Doc. 2017-00287 Filed 1-12-17; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**21 CFR Part 870**

**Cardiovascular Devices**

*CFR Correction*

■ In Title 21 of the Code of Federal Regulations, Parts 800 to 1299, revised as of April 1, 2016, on page 371, § 870.5800 is reinstated to read as follows:

**§ 870.5800 Compressible limb sleeve.**

(a) *Identification.* A compressible limb sleeve is a device that is used to prevent pooling of blood in a limb by inflating periodically a sleeve around the limb.

(b) *Classification.* Class I (performance standards).

[FR Doc. 2017-00796 Filed 1-12-17; 8:45 am]

**BILLING CODE 1301-00-D**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**24 CFR Part 35**

[Docket No. FR-5816-F-02]

**RIN 2501-AD77**

**Requirements for Notification, Evaluation and Reduction of Lead-Based Paint Hazards in Federally Owned Residential Property and Housing Receiving Federal Assistance; Response to Elevated Blood Lead Levels**

**AGENCY:** Office of the Secretary, HUD.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends HUD's lead-based paint regulations to reduce blood lead levels in children under age six (6) who reside in federally-owned or -assisted pre-1978 housing, formally adopting a revised definition of "elevated blood lead level" (EBLL) in children under the age of six (6), in accordance with Centers for Disease Control and Prevention (CDC) guidance. It also establishes more comprehensive testing and evaluation procedures for the housing where such children reside. This final rule also addresses certain additional elements of the CDC guidance pertaining to assisted housing and makes technical corrections and clarifications. This final rule, which follows HUD's September 1, 2016, proposed rule, takes into consideration public comments submitted in response to the proposed rule.

**DATES:** *Effective Date:* February 13, 2017.

*Compliance Date:* July 13, 2017.

**FOR FURTHER INFORMATION CONTACT:** Warren Friedman, Office of Lead Hazard Control and Healthy Homes, Department of Housing and Urban Development, 451 7th Street SW., Room 8236, Washington, DC 20410; telephone number 202-402-7698 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the Federal Relay Service, toll-free at 800-877-8339.

**SUPPLEMENTARY INFORMATION:**

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**I. Background**

*A. HUD's Long-Term and Ongoing Efforts To Reduce Lead Poisoning in Children*

Childhood lead poisoning has long been documented as causing reduced intelligence, low attention span, and reading and learning disabilities; it has additionally been linked to juvenile delinquency, behavioral problems, and many other adverse health effects.<sup>1</sup> Despite public health efforts successfully reducing toxic lead exposure in children nationwide, blood lead monitoring continues to reveal children with elevated blood lead levels due to exposure in their specific housing environments. The Centers for Disease Control and Prevention (CDC) has consistently affirmed its position that lead-based paint and lead-contaminated dust are the most hazardous sources of lead for U.S. children.<sup>2</sup> Over the past decade, HUD has dramatically reduced housing-based lead exposure among children through lead paint abatement and interim controls.<sup>3</sup> Nevertheless, a considerable number of children under age six (6) currently reside in HUD-assisted housing units that contain lead-based paint.

<sup>1</sup> See HUD's proposed rule and the accompanying regulatory impact assessment, available at [www.regulations.gov/document?D=HUD-2016-0096](http://www.regulations.gov/document?D=HUD-2016-0096).

<sup>2</sup> See CDC, *Lead: Prevention Tips*, <http://www.cdc.gov/nceh/lead/tips.htm>.

<sup>3</sup> See, e.g., HUD's lead hazard control grant programs and the lead hazard control work required of landlords under settlements HUD has reached in enforcing the Lead Disclosure Statute and related regulations at 42 U.S.C. 4852d and 24 CFR part 35, subpart A.

To address this issue, HUD issued a proposed rule on September 1, 2016, at 81 FR 60304, to revise HUD's Lead Safe Housing Rule (LSHR) by adopting the CDC's guidance on when an environmental intervention should be conducted in response to a child's blood lead level, thereby establishing HUD's definition of elevated blood lead level (EBLL) as the level for which environmental intervention is required in certain federally-owned and federally-assisted housing, among other changes. This final rule considers public comments submitted on the September 1, 2016, proposed rule and defines "elevated blood lead level" (EBLL) as the level at which the CDC recommends environmental intervention.

### *B. Authority for HUD's Lead-Based Paint Regulation*

HUD's LSHR is codified in Title 24 of the Code of Federal Regulations (CFR) part 35, subparts B through R. The LSHR implements sections 1012 and 1013 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, which is Title X of the Housing and Community Development Act of 1992 (Pub. L. 102-550, approved October 28, 1992); sections 1012 and 1013 are codified at 42 U.S.C. 4822.

Under Title X, HUD has specific authority to control lead-based paint and lead-based paint hazards in HUD-assisted housing that may have lead-based paint, called "target housing."<sup>4</sup> The LSHR aims in part to ensure that

<sup>4</sup> HUD's regulation at 24 CFR 35.110, based on the Title X definition at 42 U.S.C. 4851b(27), defines "target housing" as any housing constructed prior to 1978, but not including housing for the elderly or persons with disabilities where no child less than 6 years of age resides or is expected to reside, or any zero-bedroom dwelling.

federally-owned or federally-assisted target housing is free of lead-based paint hazards. Lead-based paint hazards are lead-based paint and all residential lead-containing dusts and soils, regardless of the source of the lead, which, due to their condition and location, would result in adverse human health effects.

HUD recognizes that there is no safe level of lead exposure. Consistent with Title X and the LSHR, HUD's primary focus is on minimizing childhood lead exposures, rather than on waiting until children have elevated blood lead levels to undertake actions to eliminate lead-based paint hazards. HUD's Office of Lead Hazard Control and Healthy Homes (OLHCHH) has spearheaded major efforts to that end by taking actions feasible and authorized by law to reduce lead exposure in children.<sup>5</sup>

## **II. Regulatory Approach**

### *A. Overview*

This final rule revises HUD's criteria under the LSHR for responding to the identification of children under age six (6) with high blood lead levels residing in covered federally-assisted and federally-owned target housing. The final rule also addresses lead hazard evaluation and control for additional

<sup>5</sup> These actions include administering a successful Lead Hazard Control program of grants, enforcement, research, and outreach, and providing conditions of funding through the office's notices of funding availability, updating guidelines and best practices, and working collaboratively with other Federal agencies such as the U.S. Department of Health and Human Services (HHS), particularly its CDC, and the U.S. Environmental Protection Agency (EPA). See *Advancing Healthy Housing, a Strategy for Action*, [http://portal.hud.gov/hudportal/documents/huddoc?id=stratplan\\_final\\_11\\_13.pdf](http://portal.hud.gov/hudportal/documents/huddoc?id=stratplan_final_11_13.pdf).

assisted housing units in the same properties as those in which children under age six (6) with high blood lead levels have been discovered. The final rule adopts an approach based on the previously codified LSHR, the CDC's reference range value for blood lead levels in children under age six (6),<sup>6</sup> the HUD *Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing* (HUD Guidelines), HUD's experience implementing the LSHR since its 1999 promulgation, and public comments received on the September 1, 2016, proposed rule.

Specifically, under this final rule, when a child under age six (6) with an EBLL is identified, the "designated party" and/or the housing owner shall undertake certain actions.<sup>7</sup> This protocol is the same for each of the four applicable HUD subparts (H, I, L, M), and slightly narrower for the subpart covering other agencies (D), under which those agencies must decide how to treat housing units in multi-unit properties other than the unit in which the child with an EBLL resides. Figure 1 provides an overview of the protocol for addressing EBLL cases in housing covered by the LSHR.

<sup>6</sup> CDC's "reference range value" method for defining EBLLs is based on the blood lead level equaled or exceeded by 2.5 percent of U.S. children aged 1-5 years as determined by CDC's most recent National Health and Nutritional Examination Survey. Currently, CDC's reference range value is 5 µg/dL (5 micrograms of lead per deciliter of blood).

<sup>7</sup> The designated party is the owner or other entity (e.g., federal agency, state, local government, public housing agency, tribally designated housing entity, sponsor, etc.) designated under the LSHR as responsible for complying with applicable requirements of the LSHR for the residential property or dwelling unit, as applicable. See 24 CFR 35.110.



methods and standards established either by a state or tribal program authorized by the EPA, or by the EPA at 40 CFR 745.227(d) with procedures defined by the EPA—rather than a visual assessment—of the other units for which the household receives tenant-based rental assistance in the property, and interim controls of the lead-based paint hazards identified by the risk assessment, using the proposed rule's schedule for completion of lead-based paint hazard reduction activities.

3. In § 35.730(f)(2), HUD replaces the provision regarding paint stabilization following a visual assessment with a provision regarding interim controls following a risk assessment.

4. HUD is not including in this final rule proposed §§ 35.730(g), 35.1130(g) and 35.1225(g), which contained language encouraging owners to evaluate and control for sources of lead exposure other than those covered by this subpart.

5. In § 35.1225(f)(1), HUD changes the reference to a “visual assessment” to “risk assessment” and changes the cross-reference to the section that describes procedures for such an assessment.

6. In § 35.1225(f)(2), HUD clarifies that the discussion concerns “lead-based paint hazards” rather than “deteriorated paint” to emphasize reduction of lead-based paint hazards rather than paint stabilization.

7. In § 35.1225(f)(3), HUD removes reference to visual assessment and amends and adds language to clarify that the discussion is of “interim controls” of “lead-based paint” rather than “deteriorated paint” and to emphasize reduction of lead-based paint hazards rather than paint stabilization.

Additionally, HUD takes this opportunity to make the following technical corrections and conforming changes.

1. In § 35.105, HUD removes past effective dates and reserves the section.

2. In § 35.110, HUD makes a technical correction to indicate the correct section number for the Definitions section, and revises the definition of “Certified”.

3. In § 35.155(a), on minimum requirements for lead-based paint hazard evaluation or reduction, HUD makes a technical correction by changing both instances of “designated party or occupant” to “designated party or owner,” in order to identify correctly who may be required to conduct additional lead-based paint hazard

evaluation or reduction, beyond the minimum under the LSHR.

4. In §§ 35.325(b)(1), 35.830(f)(3)(i), 35.1225(f)(1), and 35.1225(f)(3)(i), HUD makes a technical correction to grammar by replacing the verb “serving” with the verb “servicing” in the first sentence.

5. In § 35.325(b)(1), HUD replaces the auxiliary verb “would” with the auxiliary verb “shall,” in the second sentence.

6. In § 35.325(b)(1), HUD adds language to clarify that the hazards referenced in the third sentence are those identified in accordance with § 35.1325 or § 35.1330. In § 35.325(d), HUD clarifies that the timetable referenced therein shall include provision of documentation on the lead hazard evaluation and control activities to the agency.

7. In §§ 35.730(a), 35.830(a), 35.1130(a), and 35.1225(a), the rule discusses the requirements that apply if a public health department has already conducted an evaluation of the dwelling unit. HUD revises the proposed rule to state explicitly that in order to exempt the designated party from conducting an environmental investigation, the public health department's evaluation must have been conducted in response to the current case.

8. In §§ 35.730(f)(2), 35.830(f)(2), 35.1130(f)(2), and 35.1225(f)(2), HUD clarifies when lead-based paint hazard reduction is considered complete.

9. In § 35.730(f)(4), HUD clarifies when the requirements of paragraph (f) do not apply.

10. In § 35.830(h), HUD clarifies that “clearance” is among the deadline-driven activities covered by this section.

11. In § 35.1330(a)(4)(iii) on training requirements for interim control workers and supervisors, which are applicable to some of the work conducted under this rule, HUD makes a technical correction by replacing all references to the defunct HUD course approval process, with references to the current EPA and EPA-authorized state renovator course accreditation process.

### C. Applicability of Civil Rights Laws

HUD notes that housing-based lead exposure has a disproportionate impact on children of some racial and ethnic groups and those living in older housing.<sup>10</sup> Lead hazard evaluation and control activities in federally-assisted and federally-owned target housing are

subject to the requirements of the applicable civil rights laws, including the Fair Housing Act, as amended (and its prohibition of discrimination on several bases, including, but not limited to, race, disability, and familial status, including the presence of a child under age of 18, or of a pregnant woman), Title VI of the Civil Rights Act of 1964 (prohibiting discrimination on the basis of race, color, and national origin), Title IX of the Education Amendments of 1972 (prohibiting discrimination on the basis of sex), and section 504 of the Rehabilitation Act of 1973 (prohibiting discrimination on the basis of disability). Under this final rule, these and other applicable Federal laws, and their associated HUD regulations and guidance, which were incorporated into the current LSHR, continue to apply to these activities without change.

### III. Public Comments Submitted on Proposed Rule and HUD's Responses

#### A. Overview of Public Comments

The public comment period for the September 1, 2016, proposed rule closed on October 31, 2016. As of the close of the comment period, HUD received 62 public comments, including one mass mailing. Comments and HUD's responses are summarized below. All comments can be accessed at <http://www.regulations.gov>.

The overwhelming majority of comments were supportive of the rule. Some commenters, while supporting the rule, suggested ways that it could be improved. In the comments received, the Department identified 378 distinct recommendations. The Department thanks the commenters for their thoughtful insights, and their efforts to improve the current LSHR. The commenters' recommendations fell into 11 broad categories, discussed below. Many comments addressed the four specific questions for comments HUD requested. Most commenters (53) also had concerns about one or more technical issues in applying and administering the LSHR.

Although they presented a range of foci and approaches, commenters were nearly unanimous in expressing their support for increasing the protection of America's children from lead hazards, and the importance of aligning HUD's regulations with the current science from the CDC. These sentiments are best summed up by a comment submitted on behalf of the 13,765 individuals who signed a letter circulated by the commenter that stated that they, “fully support [HUD's] proposal to update the Lead Safe Housing Rule by lowering the threshold of lead exposure to align with

Environmental Response, Compensation, and Liability Act of 1980 (CERCLA)), or other statutes, regulations or policies. See, e.g., <https://www.epa.gov/risk/risk-assessment-guidelines>.

<sup>10</sup> See CDC, *Lead: Prevention Tips*, <http://www.cdc.gov/nceh/lead/tips.htm>; CDC, *Recommendations for Blood Lead Screening of Medicaid-Eligible Children Aged 1–5 Years: an Updated Approach to Targeting a Group at High Risk* (Aug. 2009), available at <http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5809a1.htm>.

the Centers for Disease Control and Prevention's recommendations and allow for HUD to move more quickly to protect children's health. Given the risks, anything your agency can do to reduce lead exposure is appreciated."

### B. Significant Public Comments and HUD's Responses

#### 1. Primary Prevention

*Comment:* Almost half of the commenters (32) identified the importance of primary prevention. Many recommended conducting a risk assessment in a unit before a family with a child occupied the unit. Other commenters noted that recent CDC-HUD research shows children in HUD-assisted housing already have lower blood lead levels than children in comparable low-income housing.<sup>11</sup> However, as the article notes, while the result provides a favorable assessment of the benefits of HUD's assistance requirements and assistance monitoring programs, the size of the study's filtered sample was not sufficiently large to identify patterns within particular types of housing assistance.

*HUD Response:* HUD has adopted the position of CDC and other federal agencies that no amount of lead in a child's blood can be considered safe,<sup>12</sup> and that primary prevention is critical to protecting America's children. However, it must be noted that the primary purposes of this rulemaking are adopting the revised definition of "elevated blood lead level" (EBLL) in children under the age of six (6), and strengthening designated parties' or owners' responses in cases where children with high blood lead levels reside in federally-assisted and federally-owned target housing. Therefore, the currently codified LSHR's primary prevention requirements associated with pre-occupancy activities and ongoing lead-based maintenance programs not associated with EBLL cases in federally-assisted and federally-owned target housing are outside the scope of this rulemaking. The Department will consider addressing

<sup>11</sup> See Ahrens KA, Haley BA, Rossen LM, Lloyd PC, Aoki Y, *Housing Assistance and Blood Lead Levels: Children in the United States, 2005–2012*, American Journal of Public Health: November 2016, Vol. 106, No. 11: 2049–2056, abstract available at <https://www.regulations.gov/document?D=HUD-2016-0096-0027> (as part of comment docket for this final rule); full text available with subscription at <http://ajph.aphapublications.org/doi/abs/10.2105/AJPH.2016.303432>.

<sup>12</sup> See President's Task Force on Environmental Health Risks and Safety Risks to Children, *Key Federal Programs to Reduce Childhood Lead Exposures and Eliminate Associated Health Impacts*, 2 (Nov. 30, 2016), <https://ptfceph.niehs.nih.gov/>.

pre-occupancy activities and ongoing lead-based maintenance programs in future rulemaking.

#### 2. Resources Available

*Comment:* Almost half of the commenters (30) expressed a need for appropriate resources for grantees to implement this rule correctly. Resources mentioned included additional funding for environmental investigation and appropriate training and technical assistance. Some commenters stated that, without these additional resources, the rule could not be properly implemented, and encouraged HUD to wait until such resources were available before implementing the rule.

*HUD Response:* HUD is sensitive to the cost of implementation, especially in an era of tightened budgets among grantees, state, local, and tribal governments, and other federal assistance recipients—and in the face of competing priorities, including those related to health of vulnerable populations, such as young children. However, a delay in implementation to wait for potential additionally appropriated resources could result in avoidable long-term harm to children in federally-assisted and federally-owned target housing. Furthermore, as calculated in the Regulatory Impact Assessment accompanying this rule, the benefits of the rule outweigh the costs. One commenter said, regarding, "the Regulatory Impact Assessment [that they] believe that it is a reasonable estimate. If anything, we believe (as discussed in the RIA) that the benefits of the proposed regulation are underestimated, because some benefits cannot be quantified or monetized, such as avoided stress on parents and children. We also believe that some costs are likely to be lower than those estimated by HUD," because, for example, HUD assumes the presence of only one child with EBLL in each unit, when some units may have more.

HUD will work with grantees and owners to identify ways in which this rule can be implemented with as little burden as feasible, and how existing resources can be directed to implementation, particularly in rural and underserved areas. HUD will also provide training opportunities to assist in implementing the rule.

*Comment:* Two commenters requested that public housing agencies be allowed to compete for lead hazard control grants from HUD's Office of Healthy Homes and Lead Hazard Control.

*HUD Response:* Eligibility for that grant program is outside the scope of this rulemaking. However, HUD wishes to advise that public housing agencies,

per Title X, are eligible for those grants only if they are an agency of a unit of state or local government. Similarly, housing units are eligible for enrollment under a grant (and, thus for lead-based paint inspection and risk assessment, and, if lead-based paint hazards are found, lead hazard control) only if they are target housing and meet certain other qualifications, e.g., the housing does not receive any federal housing assistance, or the family is receiving tenant-based rental assistance, such as a housing choice voucher. The housing is ineligible for enrollment in a lead hazard control grant if it is "federally assisted housing, federally owned housing, or public housing."<sup>13</sup> The first of these includes housing receiving project-based rental assistance, the second, housing for which the mortgagee has defaulted on a federally-insured mortgage, and the third, housing owned by a public housing agency.

HUD has been reaching out to public housing agencies to encourage owners of housing units in which the families receive a Housing Choice Voucher to enroll those units in the lead hazard control grant (funded by the OLCCHH), whose target area includes the location of the units. Because most families eligible for this type of voucher have incomes which make them eligible for enrolling in a lead hazard control grant, HUD has expedited the process for the grantees to enroll them. HUD will continue to promote lead hazard control grantee-public housing agency partnerships.

#### 3. Tenant Protections

##### a. Anti-Retaliation Protections

*Comment:* Many commenters (36) remarked on the need for protections for tenants. Generally, these commenters were worried about possible "retaliation" or "reprisal" against tenants and "blame shifting." Retaliation or reprisal meant, as described by one commenter, the "loss of benefits, lease violations, termination of assistance, or reporting to a child-welfare agency." Several of these commenters suggested specifying in the rule that this type of retaliation would be prohibited. They also suggested that HUD revise the rule to include an anti-retaliation clause that would prohibit penalties if a child with an EBLL is identified who is not included on the occupant list of the rental or assistance agreement or contract. In addition, commenters proposed several family

<sup>13</sup> 42 U.S.C. 4852(a), regarding housing unit eligibility, and (b), regarding grant applicant eligibility.

interview methods to provide further protection to households.

*HUD Response:* HUD already has regulations and policies in place that protect families against retaliation by landlords and has determined that these policies should be sufficient to protect tenants from discrimination and retaliation. Under existing fair housing regulations, interviewers will be required to abide by policies about limited English proficiency, which require HUD, its grantees, and sub-grantees to make reasonable efforts to provide language assistance to ensure meaningful access for persons with limited English proficiency to the recipient's programs and activities.

However, HUD cannot establish a policy that would negate regulations requiring that every individual living in the household be listed on the lease. These regulations are in place to prevent overcrowding, which is associated with its own negative effects on children's well-being, including their health.<sup>14</sup> They are also in place to ensure proper subsidy calculations and enforce lease provisions. Ensuring these regulations and policies are appropriately integrated with the implementation of the LSHR amendments will be addressed through program management. Thus, in this rulemaking, HUD declines to adopt a provision specifically prohibiting penalties if a child with an EBLL is identified who is not included on the occupant list of the rental or assistance agreement or contract.

#### b. Relocation Protections

*Comment:* Many commenters (18) offered recommendations about tenant relocation, either permanently or while work was being done in their unit.

*HUD Response:* HUD understands that relocation may be necessary in some circumstances but it can also be very expensive for the designated party or owner. Existing HUD regulations, policies and guidance on when relocation is appropriate, including those in the currently codified LSHR, have already considered these issues, and HUD was not presented with any evidence that requires reopening those discussions. Thus, in this rulemaking, HUD declines to adopt a provision specifically pertaining to tenant relocation.

#### 4. Coordination Between the Involved Parties

##### a. Coordination Between HUD and Grantees

*Comment:* Many commenters (36) addressed the proposed rule's reporting requirements for property owners—specifically their requirements for reporting EBLL discovery and responsive activities to their HUD field office and the OLHCHH—from a variety of viewpoints. Some expressed concerns that reporting would impose difficult burdens on public housing agencies and assisted private owners. Many of these commenters provided helpful suggestions on methods to reduce that burden. Some asked for increases in reporting. Others provided helpful suggestions on mandates, penalties for noncompliance, and the importance of public data profiles. One commenter asked HUD to clarify why public housing authorities must contact both the field office and OLHCHH, instead of having the field office contact OLHCHH.

*HUD Response:* HUD is mindful of the need to minimize burdens on owners and public housing authorities, the necessity of having appropriate information received timely in order to ensure efficient and effective program administration and monitoring, and the public's interest in open and transparent government information and operation. HUD is also mindful that public health authorities, HUD Field Offices, and the OLHCHH each have distinct roles in addressing an EBLL case, and that time is often of the essence in fulfilling those roles.

The concurrent notification is necessary to ensure that the OLHCHH is aware of the EBLL case timely and knows, upon receiving the notification, the same information that has been provided to the Field Office without having to conduct a verification, which would delay its ability to respond effectively to requests for assistance from the Field Office and monitor the case. HUD also notes that the concurrent notification was proposed for all LSHR subparts in the proposed rule, a scope retained in this final rule, so that public housing authorities are not being subjected to a different requirement than are owners who have this case notification responsibility under certain LSHR subparts.

Considering the necessary balancing of interests, potential future changes in federal and local laws, and the rapid pace of technological advances in sharing and reporting on data, HUD does not believe it is appropriate to be prescriptive in codifying a particular notification process in regulation.

Instead, HUD retains the requirement as drafted in the proposed rule. Specific processes for reporting EBLLs and actions taken will be developed, including an electronic submission pathway. In developing pathways for reporting, HUD will continue to carefully balance these interests.

##### b. Coordination With Parents, Guardians, and Other Non-Medical Professional Sources

*Comment:* Several commenters (5) recommended that designated parties and owners accept notification of EBLLs from parents, guardians, and other non-professional sources when notification is accompanied by sufficient documentation such as a doctor's letter.

*HUD Response:* A letter or report from a medical health care provider, such as a physician or nurse, or the public health department, has always been acceptable notification under the LSHR (because HUD has never required or expected that the provider would come to the office of the designated party personally to deliver the notification). This will continue to be the case under this final rule. Similarly, in the absence of a medically reliable notification that a child under age six (6) has an EBLL, it would be imprudent for HUD to require the designated party and/or the owner to undertake an environmental intervention. When presented with notification of an EBLL from a non-medical-professional source, the designated party is required to contact the local health department or another medical health care provider to verify the notification. This rule details the procedure (including contacting HUD) to be used when a public health department or provider declines to verify a report from a non-medical professional source.

##### c. Coordination With HIPAA and Local Data Privacy Laws

*Comment:* Several commenters (8) requested clarification of the protocols for reporting, including the interaction with other federal laws such as the Health Insurance Portability and Accountability Act of 1996 (HIPAA) (Pub. L. 104–191), and state and local privacy laws.

*HUD Response:* For the purpose of preventing or controlling childhood lead poisoning, in regard to lead hazard evaluation and control activities, the OLHCHH and its lead hazard control grantees acting on its behalf, are considered public health authorities under HIPAA; thus, they may receive related private health information that is minimally necessary to accomplish the intended purpose of the disclosure,

<sup>14</sup> See Solari CD, Mare RD, *Housing Crowding Effects on Children's Wellbeing*, Social Science Research (Mar. 2012), 41(2): 464–476, available at [www.sciencedirect.com/science/article/pii/S0049089X11001694](http://www.sciencedirect.com/science/article/pii/S0049089X11001694).

including the addresses of housing units and vital information about the children and their families, and must protect that information.

#### 5. Technical Concerns

##### a. Environmental Investigations of Lead Hazards That Are Not Lead-Based Paint Hazards

*Comment:* Many comments (18) expressed concerns about whether federally-assisted housing providers should look for sources of lead exposure that are not lead-based paint hazards, or would be responsible for such sources of lead exposure if they were identified in the environmental investigation. Some commenters raised concerns about the responsibility for controlling lead exposure if the source of lead was a non-lead-based paint hazard or at another property outside of the control of the designated party or owner, as applicable. Additionally, some commenters requested that HUD add safeguards to ensure that owners are not penalized for missing other sources of exposure if a public health department decides not to, or is unable to work with a designated party or owner on the child's case.

*HUD Response:* This final rule requires that the owner or designated party, as applicable, ensure that an environmental investigation of the child's lead exposure is completed, which includes investigating sources that are or are not lead-based paint hazards. Environmental investigations must be performed by EPA, state, or tribally certified risk assessors, and the contents of their report must meet EPA, state or tribal requirements, as applicable. The rule also provides that, if a public health department has already conducted an evaluation of the dwelling unit in response to the case, the owner or designated party does not need to conduct another one. HUD has clarified applicable sections of the proposed rule<sup>15</sup> to provide that the evaluation be in response to the current case. This clarification eliminates the potential confusion that a previous case in the same housing unit, whether for an EBLL or other reason, that had prompted a public health department evaluation, however long before the current EBLL case, might allow an environmental investigation or public health department evaluation not to be conducted for the current case. HUD is

<sup>15</sup> 24 CFR 35.730(a), 35.830(a), 35.1130(a), and 35.1225(a) have been revised to read: "If a public health department has already conducted an evaluation of the dwelling unit *in regard to the child's elevated blood lead level case*, the requirements of this paragraph shall not apply" (emphasis added).

not aware of this having occurred, but the technical clarification provides transparency on this issue.

Because children can be exposed to lead by toys, dishes, homeopathic remedies, certain cultural practices, and other non-paint-related sources, the family interview portion of the environmental investigation will include questions on these sources. The designated party or owner is responsible for ensuring that an environmental investigation in accordance with federal, state, and local requirements is conducted timely, regardless of whether it is done by staff or through contract, or that the public health department has conducted an evaluation in response to the case.

In some areas of the country, the public health department will perform the environmental investigation or a comparable evaluation, as may be required by a public health department initiative or state, tribal, or local law, the latter of which may also specify how the environmental investigation is performed and what follow-up actions must be taken by the designated party. In these cases, the most stringent of the federal, State, tribal, or local requirements must be followed.

Regardless of who performs the environmental investigation, HUD is not establishing a requirement that the designated party or owner address sources of exposure that are not lead-based paint hazards, or sources from housing not controlled by the designated party or owner, such as a relative's home, because HUD does not have authority to require that those sources be addressed. As discussed elsewhere in this preamble, risk assessments of certain other housing units in the property may be conducted; as with the environmental investigation of the index unit,<sup>16</sup> these risk assessments may identify non-paint-related sources of lead exposure. Indeed, the HUD Guidelines encourage risk assessors to note other obvious sources of lead exposure, and many risk assessors routinely test items other than paint for lead. The Guidelines also explicitly include such testing as a part of environmental investigations. Nevertheless, HUD does not believe that such activities would subject property owners to expanded legal vulnerability

<sup>16</sup> Here, this refers to the housing unit in which the child who has an EBLL resides, with the terminology adapted from the traditional epidemiology term, "index case, the case that is first reported to public health authorities." CDC, Guidelines for the Control of Pertussis Outbreaks. Centers for Disease Control and Prevention: Atlanta, GA, 2000. Chapter 11, Definitions. [www.cdc.gov/pertussis/outbreaks/guide/downloads/chapter-11.pdf](http://www.cdc.gov/pertussis/outbreaks/guide/downloads/chapter-11.pdf).

under this rule. In both the index unit and other units, the designated party or owner is not responsible for controlling these sources. In the 22 years since the Guidelines were first published, this has not created a legal liability problem for risk assessors or building owners and managers.

HUD, such as through its OLHCHH, will continue to encourage designated parties and owners to address such lead hazards as part of its broader effort to ensure the safety and health of residents of its assisted housing, but, for regulatory clarity, not do so through this rulemaking.

Additionally, the EPA regulations at 40 CFR 745.235, 745.237, and 745.327 (or the equivalent regulations of an EPA authorized state or tribal lead-based paint program as applicable) prescribe the training and certification requirements for risk assessors as well as the work practice standards for conduct of a risk assessment and the reporting of the assessment results. This rule does not hold the designated party or owner responsible for a certified risk assessor performing the environmental investigation missing a source of exposure (except, of course, in the case of collusion).

##### b. Lead in Water

*Comment:* Several comments (7) specifically addressed the issue of lead-contaminated water, the desirability of testing and controlling lead levels in water, and the responsibilities of owners if high lead levels are found in the water supply.

*HUD Response:* Controlling exposures to lead from water is outside of HUD's authority for this rulemaking, because Title X, which the LSHR implements, does not authorize HUD to regulate lead in water. The HUD Guidelines' chapter 16 on environmental investigations, discussed in the preamble to the proposed rule, indicates when water testing as part of the investigation is appropriate and provides guidance on how to conduct such testing. Further information on lead in water testing is available from EPA.<sup>17</sup> Requiring control of drinking water lead levels is outside the scope of this rule. Thus, HUD declines to specifically address the issue of lead-contaminated water in this rulemaking.

<sup>17</sup> See, e.g., EPA, *Protect Your Family from Exposures to Lead (Drinking Water)*, [www.epa.gov/lead/protect-your-family-exposures-lead#testdw](http://www.epa.gov/lead/protect-your-family-exposures-lead#testdw); EPA, *Basic Information about Lead in Drinking Water*, <https://www.epa.gov/ground-water-and-drinking-water/basic-information-about-lead-drinking-water>.



c. Visual Assessment of Housing Units in the Tenant-Based Rental Assistance Program

*Comment:* Many commenters (28) claimed that the visual assessment protocol in the Housing Choice Voucher (HCV) Program, which provides tenant-based rental assistance, was insufficient to protect children from lead, and that a more rigorous assessment protocol was needed when children under age six (6) will be moving into a unit of target housing with the family receiving assistance through an HCV. Several commenters also recommended that evaluations should be conducted on every unit in a building, regardless of subsidy.

*HUD Response:* As noted in this preamble, the primary purpose of this rule is adopting the revised definition of “elevated blood lead level” in children under the age of six (6), and the response in cases of children with such a level who reside in federally-assisted target housing. Therefore, pre-occupancy activities are outside the scope of this rule, as are activities in non-federally-assisted units.

*Comment:* Many commenters (20) addressed the need for assessment of other assisted units in the same property as that of a child under age six (6) with an EBLL in which a child under age six (6) resides or is expected to reside (“other units”), which is within the scope of this rule, as part of the response to the child with an EBLL. Most commenters (18) recommended that HUD strengthen the assessment in the units of other households receiving tenant-based rental assistance to a risk assessment, or, in the alternative, a lead hazard screen.<sup>18</sup> Commenters noted both that the CDC strongly recommends a more stringent risk assessment, and that lead hazards do not discriminate among victims by the type of subsidy they receive.

*HUD Response:* Under this final rule, risk assessments will be required in other HUD-assisted units in which a child under age six (6) resides or is expected to reside, and the common areas servicing those units. HUD has always distinguished between pre-occupancy and post-occupancy activities in assisted housing. Prior to this final rule, the LSHR distinguished between general, pre-occupancy activities in tenant-based rental assistance housing units and specific

responses to the identification of a child under age six (6) with an environmental intervention blood lead level (EBLL)<sup>19</sup> who had a housing-related lead exposure. It did so by going beyond the visual assessment and paint stabilization requirement of pre-occupancy activities to requiring risk assessments and interim controls for EIBLL cases.<sup>20</sup> These measures are being extended by this final rule to the other housing choice voucher units in properties where children under age six (6) reside or are expected to reside.

HUD is basing this approach on the CDC guidance that other housing units should receive the same evaluation and controls as the index unit, while narrowing the application of that guidance by not requiring action where statutory authority clearly does not support HUD require action (e.g., in unassisted units), and reducing the overall costs and increasing the effectiveness of the controls by requiring a risk assessment to identify with specificity the lead-based paint hazards in the other units before the controls are undertaken.

The increased burden on a landlord of a family receiving tenant-based rental assistance is expected to be modest, because a certified risk assessor will already be at the property to conduct the environmental investigation in the index unit, and the cost of the risk assessment will be borne by the designated party, i.e., the public housing agency, or the HOME or HOPWA grantee, as applicable. Giving that risk assessor an expanded scope of work to conduct a risk assessment in other units will be an additional cost to the designated party, as will the cost to the owner for control of any lead-based paint hazards that would not have been detected by visual assessments conducted as part of the initial and periodic inspections of the units, but were detected by the risk assessment. These other units of an owner who has been properly implementing the required ongoing lead-based paint maintenance program are more likely not to have hazards and, if they are present, for them to be fewer in number and less extensive. This risk assessment, and the interim control of any lead-based paint hazards found will provide substantial additional protection to the other children under age six (6) residing or expected to reside in the property, and increased liability protection for the

owner as a result of the more comprehensive evaluation of the housing and resulting lead hazard control, in comparison to the otherwise routine use of the visual assessment and paint stabilization process.

Similarly to how HUD considered commenters’ arguments related to other tenant-based rental assisted units and is responding by requiring risk assessments and interim controls for such units in this final rule—instead of visual assessment and paint stabilization, as proposed—HUD is applying the commenters’ logic to housing receiving project-based assistance of up to \$5,000 per unit per year by requiring risk assessments and interim controls in this final rule, instead of visual assessment and paint stabilization, as proposed.

The Regulatory Impact Assessment has been revised accordingly and continues to show that the benefits of this regulation substantially outweigh the costs.

d. Sampling of Other Units in Large Properties

*Comment:* Two commenters inquired if the sampling protocols for larger properties (with over 20 housing units in properties built before 1960, or over 10 units in properties built between 1960–1977) in the existing HUD Guidelines’ Chapter 7 would apply to buildings where a child under age six (6) has developed an EBLL, and the child’s unit was found to have lead-based paint hazards, so that examinations of other housing units in the property were required.

*HUD Response:* As noted in the preamble to the proposed rule, the existing housing unit random sampling protocols for multi-family housing would apply, because, procedurally, they are not being amended by this rule, and substantively, because the statistical foundation for the protocols applies to the EBLL situation just as it does to lead-based paint inspections and risk assessments in general.

e. Interim Controls

*Comment:* Four commenters recommended that, for at least the types of housing affected under this rule, if not all housing under the LSHR, HUD require abatement, as opposed to mere interim controls, in a unit in which lead-based paint hazards (or, for a visual assessment, deteriorated painted surfaces) were found.

*HUD Response:* HUD is aware from its experience with its lead hazard control grant program that there can be a substantial cost difference between interim controls of lead-based paint

<sup>18</sup> The EPA’s work practice standards for conducting lead hazard screens and lead risk assessments are provided at 40 CFR 745.227(c) and (d), respectively; both may be conducted only by a person certified by EPA or an EPA-authorized state or tribal lead-based activities program as a risk assessor.

<sup>19</sup> A confirmed concentration of lead in whole blood equal to or greater than 20 µg/dL (micrograms of lead per deciliter) for a single test or 15–19 µg/dL in two tests taken at least 3 months apart, per 24 CFR 35.110.

<sup>20</sup> See 24 CFR 35.730(a).



hazards and abatement of them. As noted in the RIA for the proposed rule, the interim controls used under HUD's lead hazard control grant programs were found to be effective for at least 6 years following the intervention, with window replacement and lead hazard control effective after 12 years. Thus, even if an owner did not implement an ongoing lead-based paint management program after the interim control work (such a program is not required under the grants), the duration of the protection of the children's environment regarding lead in the housing would extend beyond the child's sixth birthday. If the owner did implement the management program, as the LSHR requires, the duration of the protection would be at least as long as the period found for protection resulting from work under the grants, and, HUD believes, longer.

HUD also notes that, as described above, the evaluation activity in the other assisted units with a child under age six (6) is being changed from a visual assessment, as proposed, to a risk assessment.

Therefore, HUD declines to modify the proposed rule. However, the designated party or owner may choose to require abatement in circumstances when they do not believe interim controls will sufficiently protect their resident children under age six (6).

f. Update the Standards for Lead Based Paint, Lead Based Paint Hazards and Various Lead Hazard Control Protocols

*Comment:* Eight commenters requested that HUD, either alone or in partnership with EPA, update various other lead regulations, standards and protocols.

*HUD Response:* Such changes are beyond the scope of this rulemaking. HUD will collaborate with EPA, as it considers any updates to revise those standards. In the interim, HUD will continue to use existing protocols, including paint-testing requirements,<sup>21</sup> and lead-safe work practices requirements that were of specific interest to some commenters.

HUD declines a commenter's request to further define the responsibilities of particular owners of a building with multiple owners as related to notices of lead-based paint hazard evaluation and reduction, because its interest is in having the designated party provide

notices to occupants as required, not in establishing criteria for which of the ownership partners within the designated party, which is as a whole, responsible for complying with applicable requirements (see § 35.110), should carry out that responsibility. That is an internal matter for the partners to decide.

g. Pregnant Women Under the LSHR

*Comment:* Two commenters requested that HUD extend the protections of the LSHR in child-occupied units to units where a pregnant woman resides.

*HUD Response:* The LSHR has always defined units occupied by pregnant women as units where a child is expected to reside. The Title X and LSHR definitions of "target housing" encompass units where a child under age six (6) "resides or is expected to reside," and, in the LSHR, HUD further clarified the phrase "expected to reside" to mean that "there is actual knowledge that a child will reside in a dwelling unit . . . . If a resident is known to be pregnant, there is actual knowledge that a child will reside in the dwelling unit." (See, § 35.110) That definition remains unchanged by the current rule.

h. Landlord Exemptions

*Comment:* Multiple commenters (16) made recommendations about the provisions that would exempt landlords in certain cases from performing additional risk assessments in their building once a child with an EBLL had been identified. Some of these commenters (5) felt the exemptions were too broad and would not sufficiently protect the other residents of a building that had exposed at least one child to a lead hazard. Most of these commenters (11) felt that the exemptions should be expanded, either for work done in the last 24 months, for work done while the same family occupied the unit, or until such time as the CDC updated its EBLL guidance, or if a unit is scheduled to undergo redevelopment.

*HUD Response:* HUD's rule provides that a lead risk assessment remains applicable for 12 months. HUD will continue to use this period (vs. the longer 24 months, or the indefinite period of a family's continued occupancy in a unit, for which there is no reason to believe that hazards would not form) in the exemption criteria for when the owner has documentation, "throughout the 12 months preceding the date the owner received the environmental investigation report, of compliance with evaluation, notification, lead disclosure, ongoing lead-based paint maintenance, and lead-

based paint management requirements." Given that the LSHR requires retention of documentation of the owner's compliance with these operational LSHR requirements for the period when ongoing lead-based paint maintenance is required, and for at least 3 years beyond that period, the absence of such documentation for just the past 12 months allows for a reasonable inference that the owner has not complied with the operational requirements of the LSHR, so that a risk assessment is required in the other units. Thus, HUD declines to change this implementation period.

HUD also declines to exempt units that are scheduled for redevelopment. Redevelopment timelines are often uncertain by many months, and it would violate the intent of the LSHR to leave a child exposed to potential lead hazards for such an uncertain length of time. If preliminary work on the redevelopment is sufficiently far advanced that building occupant vacating and/or relocating is under way with completion of vacating and/or relocating and the start of construction both scheduled to be within 45 days (*i.e.*, the sum of the 15-day period for conducting the environmental investigation of the index child's unit and common areas servicing that unit and the 30-day period for conducting lead hazard control there) after the designated party was notified of a child under age six (6) with EBLL, the lead activities need not be conducted in one or more of the other assisted units with a child under age six (6) by that due date if the family in each of those unassessed or uncontrolled units is relocated within 15 days after the designated party received the environmental investigation report, with the lead safety of the family's destination housing meeting the criteria of the preface to § 35.1345(a)(2), and with the family continuing to receive housing assistance without interruption and having their relocation costs covered. Making the original housing lead safe is required by the LSHR (subparts H, J, and/or L, as applicable) to be part of the redevelopment.

At the same time, HUD understands that evaluating additional units poses a burden for owners, and there are some circumstances where documented past performance makes the possibility of future lead hazards substantially less likely. Therefore, HUD also declines to make the exemptions more stringent.

6. Time Available To Complete Work

*Comment:* Multiple commenters (15) made recommendations about timelines for investigating lead hazards,

<sup>21</sup> *E.g.*, by requiring the paint testing before interim controls involving RRP work in assisted target housing covered by the LSHR be conducted by a certified lead-based paint inspector or risk assessor (24 CFR 35.110), versus a renovation contractor's using a spot-test kit (40 CFR 745.82(a)(2)).

completing hazard control work, and relocating families if necessary. Most of these commenters (11) felt that the timelines were aggressive and may be unrealistic for owners, particularly owners who operate under complex procurement rules, or owners in communities without adequate numbers of certified risk assessors, lead hazard control workers, and firms who employ them. Other commenters (4) felt that the timelines were too lax, and left families exposed to lead hazards in their home longer than necessary.

*HUD Response:* None of the commenters provided data on lead hazard control activity durations, temporary relocation costs, or the health effects of lead exposure for the number of days they recommended versus the number of days proposed to support their recommendations. Accordingly, HUD determined that it would retain the timelines in the currently codified LSHR, as proposed. If a designated party or owner believes they will be unable to meet the timelines in a specific circumstance, they should discuss their concerns with HUD when they report the EBLL.

HUD also declines to apply a business day schedule instead of a calendar day schedule to these evaluation and hazard control timelines. The primary victims of lead poisoning are children, who are most likely to be exposed to hazards in their home on non-business days, and many risk assessors and lead hazard control contractors are available to work on weekends for high priority projects, such as responding to the case of a child under age six (6) with an EBLL. With respect to providing notifications to HUD, for which the rule uses business day schedules, HUD will adopt the practice already used by HUD for hearings before hearing officers, that when the due date is a Saturday, Sunday, national holiday, or other day on which the relevant HUD office is closed, the due date is extended until the end of the next following business day. (See, 24 CFR 26.11(a).)

#### 7. Penalties for Noncompliance

*Comment:* Several commenters (11) recommended that this rule include enforcement remedies and civil money penalties for non-compliance.

*HUD Response:* The Lead Disclosure Rule, also issued under Title X, allows for violators to be subject to civil money penalties. (See, 24 CFR 35.96, implementing 42 U.S.C. 4852d(b)(1).) In contrast, as the preamble to the original LSHR states (at 64 FR 50168), “The Lead-Based Paint Poisoning Prevention Act does not provide any independent enforcement provisions. Remedies will

vary based on which [assistance] program’s requirements have been violated.” For example, a designated party or owner not in compliance with the LSHR, including this rule, may be considered in default of its regulatory agreement or annual contributions contract, as applicable, with the Department. Noncompliance may also result in the designated party or owner being debarred from receiving assistance from the Department or denied future participation in HUD or federal programs. A designated party or owner in noncompliance may be forced to surrender grant funds, or may be otherwise subject to civil money penalties or other sanctions. HUD plans to enhance its monitoring for LSHR compliance, but does not have the authority to create penalties under this rule or the currently codified LSHR.

#### 8. Future Changes in CDC Recommendations

*Comment:* Multiple commenters (20) recommended keeping the LSHR synchronized with expected future CDC guidance that may further change the blood lead level that triggers an investigation. A majority (10) of these commenters recommended that future updates to CDC guidance automatically cause HUD’s guidance to change. The remainder recommended variations on using CDC’s current definition, including allowing the level to decrease, but not increase; creating local levels based on the data from a given geography; changing the terminology from CDC’s current usage; or simply waiting for the CDC to update their guidance again before amending the LSHR.

*HUD Response:* The purpose of this rulemaking is to bring HUD’s requirements into alignment with CDC guidance in regard to environmental investigations for cases of elevated blood lead levels in children under age six (6), while placing the minimum necessary burden on assisted property owners and other designated parties. To do so, while also maximizing the effectiveness of environmental investigations and remedial actions taken as a result of those investigations, HUD proposed that the EBLL under this rule would be a confirmed blood lead level at least that for which U.S. Department of Health and Human Services recommends that an environmental intervention be conducted. This level may be the CDC’s reference range value, as it is at the publication of this rule, or it could be higher, if CDC found recommending environmental interventions to be appropriate only at a higher level than

the reference range value. Accordingly, HUD declines to apply any of the recommended variations.

To respect the potential burden placed on assisted property owners before adjusting its EBLL standard in the LSHR, and to provide transparency in its decision-making, HUD will provide for public notice and comment as described in the proposed rule so that potentially affected parties, including designated parties, their property management firms, risk assessment firms, renovation firms, and tenants, and advocates for all of these parties will have the opportunity to provide comments on proposed EBLL changes. Therefore, HUD declines to modify the proposed process for revising the blood lead level in children under age six (6).

#### 9. Timing of Implementation

*Comment:* Half of the commenters (29) addressed the issue of the rule’s effective date or implementation date. Of these, some recommended a longer implementation time to adequately prepare, and some recommended a shorter implementation time to begin increasing the protection of children’s health more rapidly. A few commenters felt that the initially proposed 6 months was appropriate.

*HUD Response:* HUD is mindful of the need to update policies and procedures for planning purposes, and that, as one commenter noted, “it is doubly important that the rule is implemented in such a way that Housing Authorities will be able to comply.” That commenter, and others, noted that CDC has not yet revised its 2012 reference range value, and recommended waiting until some period after CDC’s update. HUD believes it likely that CDC will issue its update in 2017, but it does not want to delay for an indeterminate period the additional protections for children with blood lead levels in the range between the currently codified LSHR’s EBLL threshold and this rule’s proposed EBLL threshold. Therefore, HUD cannot agree with either the majority or minority of commenters and declines to implement the rule faster than 6 months, nor after a longer period. Instead, the compliance date of the rule will be 6 months from publication, as proposed.

#### 10. Other Issues

##### a. Low Income Communities, Communities of Color, and Affirmatively Furthering Fair Housing

*Comment:* Five commenters requested that HUD consider that lead poisoning occurs more frequently in low-income communities and communities of color,

and that, furthermore, this may have implications under its fair housing rules.

*HUD Response:* HUD agrees that research clearly shows higher incidence of EBLLs in low-income communities and in communities of color.<sup>22</sup> However, the fair housing implications of this information are governed by fair housing statutes and regulations, and are therefore beyond the scope of this rulemaking; this rule needs to be issued with nationwide applicability. Nevertheless, such comments will be considered as HUD develops future outreach and enforcement strategies for implementing this rule.

#### b. EPA's Renovation, Repair, and Painting Rule

*Comment:* Five commenters recommended clarifying and making more explicit the relationship between the LSHR and the EPA's Renovation, Repair and Painting Rule (RRP Rule, 40 CFR part 745, especially subparts E and Q; implementing 15 U.S.C. 2682(c), Renovation and remodeling).

*HUD Response:* The original LSHR predated the RRP Rule, and therefore could not reference it explicitly. The RRP Rule defines "renovation" broadly in the context of lead-based paint, saying in essence that the term "means the modification of any existing structure, or portion thereof, that results in the disturbance of painted surfaces, unless that activity is performed as part of an abatement . . . [but not] minor repair and maintenance activities," (40 CFR 745.83) where "abatement" and "minor repair and maintenance activities" are defined for purposes of that rule at 40 CFR 745.223 and 745.83, respectively. Accordingly, most of the lead-based paint hazard reduction activities to be conducted as a result of the environmental investigation of the index unit and the risk assessment in other units, will be renovations covered by the RRP Rule, and must be conducted by contractors and individual renovators who are certified renovation firms or certified renovators. The relationship between this rule and the RRP Rule needs to be made explicit for the sake of transparency; doing so will have the additional benefit of making the other portions of the LSHR that require the use of certified renovation firms and certified renovators more transparent. Because

this requirement has been operationally in effect for the LSHR since the RRP Rule went into full effect, clarifying this creates no change in the burden or benefits of implementing the LSHR.

Accordingly, the relationship between the RRP rule and the LSHR is being made explicit through this rulemaking.

First, for the sake of transparency, HUD is adding "renovation" to the list of "activities" within the scope of the definition of "certified" in 24 CFR 35.110, along with the current listing of "risk assessment, lead-based paint inspection, or abatement supervision." HUD notes that the scope of activities in its definition of "certified" is broader than EPA's scope of "Lead-based paint activities," which they define at 40 CFR 745.223, because HUD's definition uses the unmodified term "activities" and includes, in the definition, the phrase "such as" the listed activities of "risk assessment, lead-based paint inspection, or abatement supervision," while the EPA definition is limited to the specific listed activities of "inspection, risk assessment, and abatement." Because HUD's definition is broader, this clarification in the definition will have no effect on the operations of HUD, owners, contractors or employees.

Second, the current LSHR language on interim controls training requirements in § 35.1330(a)(4)(iii), which allowed for approval of certain lead-safe work practices courses by HUD after consultation with the EPA, will be replaced with wording that recognizes renovator courses accredited under the EPA's or by an EPA-authorized state or tribe's renovation program.

HUD also notes that "abatement" of lead-based paint or lead-based paint hazards as defined by EPA at 40 CFR 745.223, and by HUD in the LSHR at 24 CFR 35.110, may be conducted under the LSHR when interim controls are required, because the LSHR already allows conducting additional lead-based paint hazard evaluation or reduction beyond the minimum under the rule. Abatement must be conducted, in accordance with the work practice standards developed by EPA at 40 CFR 745.227(e) or by an EPA authorized state or tribal lead-based paint activities program by certified abatement supervisors and certified abatement workers. HUD encourages the use of abatement as a permanent (at least 20-year-long, or eternally, in the case of paint removal abatement) method of addressing exposures from lead-based paint, dust, and soil in a home, particularly where it may be cost-effective, such as during a major rehabilitation (e.g., a "gut rehab").

#### c. Other Partnerships

*Comment:* Five commenters suggested partnerships, or approaches to partnerships that would aid in the implementation of the LSHR.

*HUD Response:* HUD welcomes these suggestions and fully expects to engage in numerous partnerships to fully implement the LSHR and protect America's children from lead poisoning. However, codifying these partnerships in regulation is unnecessary, so HUD declines to do so.

#### d. Other Sections of the LSHR Not Amended

*Comment:* Two commenters recommended that HUD amend the LSHR's subparts C (Disposition of Residential Property Owned by a Federal Agency Other Than HUD), E (which had been proposed in the original LSHR to cover Single Family Insured Property,<sup>23</sup> but was reserved in the final LSHR rulemaking, with 24 CFR part 200, subpart O, being revised at that time) and F (HUD-Owned Single Family Property).

*HUD Response:* HUD appreciates these suggestions and, while noting that they are outside of the scope of the current rulemaking, will consider future rulemaking to amend these subparts.

#### e. Accessibility of Inspection Reports

*Comment:* One commenter recommended protecting a renter's ability to access inspection reports.

*HUD Response:* This issue is governed by the Lead Disclosure Rule (24 CFR part 35, subpart A) and is therefore outside the scope of this rule.

#### f. Uniform Physical Condition Standards for the Voucher Program (UPCS-V) Demonstration

*Comment:* One commenter requested clarifying language on the relationship between the LSHR and the UPCS-V pilot program.

*HUD Response:* As noted on HUD's Web site ([http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/public\\_indian\\_housing/react/oed/upcs-v](http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/react/oed/upcs-v)), to help improve tenant safety and HUD's oversight of the HCV program, HUD is introducing the UPCS-V inspection protocol with new measures to enhance the consistency and objectivity of the inspection process, and provide more information about the condition of individual housing units. The UPCS-V Demonstration is HUD's formal mechanism to test the protocol with up to 250 public housing agencies

<sup>22</sup> See, e.g., CDC, *Lead: Prevention Tips*, <http://www.cdc.gov/nceh/lead/tips.htm>; CDC, *Recommendations for Blood Lead Screening of Medicaid-Eligible Children Aged 1-5 Years: an Updated Approach to Targeting a Group at High Risk* (Aug. 2009), available at <http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5809a1.htm>.

<sup>23</sup> Proposed 24 CFR part 36, subpart E; 61 FR 29170-29232, at 29210 (see also 29180), June 7, 1996.

([www.regulations.gov/document?D=HUD-2016-0044-0001](http://www.regulations.gov/document?D=HUD-2016-0044-0001)).

Participation in the UPCS-V pilot program does not affect whether or how a housing unit or property is covered under the LSHR or this rule amending the LSHR, nor an owner's or designated party's responsibilities under the LSHR. Questions on specific interactions between the LSHR and the UPCS-V pilot, such as one commenter's question, "If a PHA does not complete the hazard reduction on a voucher unit, would that dwelling be in violation of UPCS-V?", are outside the scope of this rulemaking, and should be directed to HUD's Office of Public and Indian Housing.

#### g. Liability Safeguards

*Comment:* One commenter expressed concern that because of the lapse in time between CDC issuing guidance and HUD issuing a proposed rule on EBLLs, tenants of HUD-assisted housing may decide to take legal action against PHAs once they learn that the PHA was not in compliance with CDC guidelines. The commenter requested that the LSHR include, "Safeguards that protect PHAs from any litigious behavior that may result from HUD's delayed rulemaking process."

*HUD Response:* HUD cannot speculate on the merits or costs of any potential litigation, nor to address PHAs' compliance with other federal agencies' guidance, as both are outside the scope of this rulemaking.

#### h. Determining the Responsible Party

*Comment:* One commenter requested that, "HUD clarify that there is a single responsible party in areas of the proposed rule where there is an option for one of two entities to assume responsibility. As currently written, sections of the rule would assign responsibility to either the PHA (the designated party) or the property owner."

*HUD Response:* As defined by the LSHR, a designated party is an entity responsible for complying with applicable requirements of the rule.

This commenter does not identify which LSHR subparts are of concern to it, but an examination of subpart H, L, and M, with which public housing agencies may be involved, shows that subparts H and L each specify only one such entity; so the concern must be for subpart M (Tenant-Based Rental Assistance). Within that subpart, §§ 35.1200(b)(2) through (6) identify the designated party for the assistance programs covered by each of those regulatory paragraphs. In the example of the HCV program, paragraph (2) has

identified the public housing agency as the designated party, with responsibilities under certain provisions of that subpart (e.g., engaging an inspector on its behalf to conduct the pre-occupancy visual assessment (see, § 35.1215(a)(1))) and the owner has had certain responsibilities under other provisions of that subpart (e.g., stabilizing the deteriorated paint surfaces identified by the visual assessment (see, § 35.1215(b))). Regarding EBLL cases under the HCV program, this rule as proposed and made final here uses the same approach: The designated party, i.e., the PHA, is responsible for the environmental investigation and, if needed, verification of the case (see, §§ 35.1225(a) and (b)), while the owner is, for the lead-based paint hazard reduction (see, § 35.1225(c)).

Similarly, in the example of tenant-based rental assistance under the HOME Investment Partnerships Program (HOME) (see, § 92.209), under which HUD's Office of Community Planning and Development (CPD) awards grants to state and local governments ("participating jurisdictions") that provide rental assistance to households and contract with owners of the units they rent, the designated party for the unit occupied by a household receiving tenant-based rental assistance is the participating jurisdiction, or if the tenant-based rental assistance program is administered by a subrecipient, that entity.

Also, the Housing Opportunities for Persons with AIDS (HOPWA) Program provides tenant-based rental assistance to households as an eligible activity (see, § 574.300(b)(5)). HUD's CPD office awards HOPWA entitlement formula grant funds to state and local government grantees ("eligible states and qualifying cities") and HOPWA competitive grant funds to state, local government and non-profit grantees. In this example, if a grantee provides rental assistance to households and contracts directly with owners of the units they rent, the designated party for a unit in which the assisted household occupies is the grantee. In another example, if the tenant-based rental assistance program is administered by a project sponsor, the designated party for a unit in which the assisted household occupies is the project sponsor.

#### i. Ongoing Lead-Based Paint Maintenance Program

*Comment:* One commenter recommended that the written notice provided to each dwelling unit asking occupants to report deteriorated paint and, if applicable, failure of

encapsulation or enclosure, along with contact information, be provided to each individual tenant (see, § 35.1355(a)(7)). The same commenter recommended adding "and reporting deteriorated paint" to the heading of § 35.130, Lead hazard information pamphlet, because the reporting notification required by § 35.1355(a)(7) as discussed above, goes to the recipients of the lead hazard information pamphlet provided under § 35.130. The same commenter suggested adding a paragraph (8) to § 35.1355(a), to require that each property covered by the ongoing lead-based paint maintenance requirement must have a written maintenance plan on how to address lead-based activities and who will be able to conduct the activities.

*HUD Response:* As to the first suggestion, typical notification practice is to provide one notification on a housing operations topic to the dwelling unit, rather than multiple copies for each adult in the unit. HUD will consider the effectiveness and burden of a change for this notification as it develops future rulemaking. As to the second suggestion, while § 35.130 pertains to providing a pamphlet rather than property-specific information, this comment raises the idea of having the Lead Disclosure Rule disclosure form, for at least housing covered by the LSHR, include a confirmation that the reporting notification was provided. HUD will consider the feasibility of such an addition in its implementation of the LSHR.

As to the third suggestion, this would implement the HUD Guidelines Chapter 6, Ongoing Lead-Based Paint Maintenance, Step-by-Step Summary, item 1, that "owners should develop a written program [regarding] lead-safe maintenance that apply to each pre-1978 property and should assign responsibilities," and similarly at unit III.B, Assignment of Responsibilities, of that chapter. HUD will consider this suggestion in further rulemaking.

#### j. Technical Corrections

*Comment:* One commenter noted that the grammar of subpart D might be incorrect.

*HUD Response:* The commenter's insight was accurate, and a technical correction is necessary. The second sentence of proposed § 35.325, Child with an elevated blood lead level, paragraph (b), begins by stating that, "The risk assessments would be conducted within" a certain period, while the other requirements of the paragraph are specified by using "shall" instead of the conditional "would;" in addition, "shall" is used in the

corresponding provisions of other sections. HUD is replacing “would” in this instance with “shall.”

*Comment:* One commenter noted that § 35.155 implies that occupants would conduct lead-based paint hazard evaluation or reduction, a requirement which would not be supported by Title X.

*HUD Response:* HUD is also making a technical correction to § 35.155 by changing both instances of “designated party or occupant” to “designated party or owner,” to correct the language regarding who may be required to conduct additional lead-based paint hazard evaluation or reduction beyond the minimum under the LSHR. While occupants are mentioned in the LSHR many times, the LSHR does not establish any requirements for them to conduct lead-based paint hazard evaluations or reductions. (An assisted-property owner who resides in one of the units of a property covered by the LSHR is subject to that rule’s requirements as the owner, not as an occupant.) This correction is particularly timely because of the requirements being amended by this rule for owners who are not designated parties.

### C. Public Comments in Response to HUD’s Questions

HUD is particularly grateful for the comments responding to specific questions:

1. *To facilitate effective HUD monitoring of responses to a case of an elevated blood lead level, the proposed rule would have designated parties provide documentation to HUD that the response actions have been conducted in the child’s unit and in all other assisted units with a child under age six (6), or if there are such other units, that the designated party has been complying with the LSHR for the past 12 months, and need not evaluate those other units.*

a. *Is this approach sufficient for HUD to effectively monitor response actions in these cases, and why? Are there areas in which reporting and oversight could be strengthened?*

b. *Can the approach to monitoring response actions in these cases be streamlined while maintaining its effectiveness, and if so, how?*

*Comment:* Many commenters provided input regarding the information that needed to be shared to effectively monitor the responses to a case of an elevated blood lead level.

*HUD Response:* Commenters took a wide variety of positions, which are primarily summarized under comments section III.B.4 of this preamble entitled,

Coordination Between the Involved Parties. The sub-issue of when a designated party need not evaluate other units was discussed in comments and responses in section III.B.6 of this preamble entitled, Landlord Exemptions.

2. *Regarding the definition of elevated blood lead level in the proposed rule, is the definition appropriately protective of the health of children in assisted housing covered by the rule? Too protective? Not protective enough? Why?*

*Comment:* Commenters were nearly unanimous in expressing their support for aligning HUD’s regulations with the current definition of elevated blood lead level from the CDC. Commenters did have concerns that the LSHR as proposed was not protective enough, as discussed in comments and responses provided in section III.B.1, Primary Prevention, and section III.B.5, Technical Concerns. No commenters felt that the rule was too protective of America’s children, however, some commenters worried that they would not have sufficient resources available to meet their obligations under the rule.

*HUD Response:* HUD responds to these concerns in section III.B.2, Resources Available.

3. *Regarding the set of types of housing assistance covered by the proposed rule (i.e., in the covered subparts D, H, I, L, and M), is this set appropriately protective of the health of children in assisted housing?*

a. *If it is too protective, why, and which types of housing assistance should be removed from the proposed rule?*

b. *If it is not protective enough, why, which additional type or types of housing assistance should be included, and how would sufficient resources be provided to ensure implementation and monitoring of the rule in that additional assisted housing?*

*Comment:* No commenters felt that certain types of housing assistance should be removed from the proposed rule, although several commenters recommended that Public Housing’s history of superior performance entitled it to a lower standard of monitoring. (As discussed in commenting subsection 1, Primary Prevention, the study did not have the capacity to address the performance of particular housing assistance programs.) A few commenters felt that additional HUD programs should be included in the rule.

*HUD Response:* HUD response to these comments are provided in section III.B.11.d of this preamble entitled, Other Sections of the LSHR Not Amended.

*Comment:* Two commenters also suggested the LSHR should be extended to the Low-Income Housing Credit program administered by the United States Treasury.

*HUD Response:* According to the Low Income Housing Credit regulations, 26 CFR 1.42–5(d), the state allocating agency may opt to use HUD’s Uniform Physical Condition Standards as the compliance standard, in which case the LSHR applies.

4. *If interim controls or abatement in a housing unit takes longer than 5 calendar days, or if other occupant protection requirements of 24 CFR 35.1345(a)(2) are not met, the occupants of the unit shall be temporarily relocated before and during lead-based paint hazard reduction activities.*

a. *HUD is seeking data on the fraction of lead hazard control activities that take longer than 5 calendar days, including the type of activity (e.g., interim control or abatement; the hazard control method used (e.g., if abatement, component removal, paint stripping, enclosure, encapsulation, etc.), the extent of the work, the reason that the activities cannot be completed within 5 calendar days, whether the housing is a single family, duplex, triplex, quad, or multifamily housing, whether it is located in an urban, suburban, or rural area, whether the EPA has authorized the state to administer the applicable lead certification program (i.e., renovation or abatement), and other factors that are causing temporary relocation to be required under the rule.*

b. *HUD is seeking information on the costs of temporary relocation, on a per day basis (average amount or day-specific amounts, as is available), including breakouts of expenses for such categories as lodging, transportation, meals, and incidental expense amounts, if the information is available that way, or as lump sum per day or per relocation period amounts.*

*Comment:* HUD did not receive any data (let alone data supported by robust quality assurance) on either the time work took, or the costs of relocation. A few anecdotal comments were provided, e.g., that it can be hard to find good lead professionals and contractors in rural portions of the country, and that the costs of temporary stays in Manhattan can be quite high.

*HUD Response:* In the absence of actionable data, HUD left the current standards unchanged. As HUD stated in responding to comments in subsection 2, Resources Available, of this preamble, HUD is encouraging designated parties and owners in remote rural areas to contact HUD if they encounter difficulty

in finding lead professionals and contractors, to see if the Department can help find them, and will keep these comments in mind as it implements this rule.

### III. Findings and Certifications

#### A. Regulatory Review—Executive Orders 12866 and 13563

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and, therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are “outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned. Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. OMB reviewed this final rule under Executive Order 12866 (entitled “Regulatory Planning and Review”). This rule was determined to be a “significant regulatory action,” (but not economically significant) as defined in 3(f) of the order. The docket file is available for public inspection electronically at Federal eRulemaking Portal at <http://www.regulations.gov> under the title and docket number of this rule, HUD–2016–0096.

#### B. Regulatory Impact Assessment

HUD is publishing, concurrently with this final rule, its final Regulatory Impact Analysis (RIA) that examines the costs and benefits of the final regulatory action in conjunction with this final rule, organized into three sections: Cost-Benefit Analysis; Sensitivity Analysis; and Economic Impacts. The RIA is available on-line at: <http://www.regulations.gov>. The major findings in the RIA are presented in this summary.

The analysis of net benefits reflects costs and benefits associated with the first year of hazard evaluation and reduction activities under the final rule. These costs and benefits, however, include the present value of future costs and benefits associated with first year lead-based paint hazard reduction activities. Similarly, the benefits of first year activities include the present value of lifetime earnings benefits for children

living in the affected unit during that first year, and for children living in that unit during the second and subsequent years after lead-based paint hazard reduction activities.

In regard to the discount rate used for this regulatory analysis, HUD is using both the 3 percent, and the 7 percent discount rates in accordance with OMB guidance in OMB Circulars A–4, Regulatory Analysis ([https://www.whitehouse.gov/omb/circulars\\_a004\\_a-4/](https://www.whitehouse.gov/omb/circulars_a004_a-4/)), and A–94, Guidelines and Discount Rates for Benefit-Cost Analysis of Federal Programs ([https://www.whitehouse.gov/omb/circulars\\_a094](https://www.whitehouse.gov/omb/circulars_a094)). By presenting results using both 3 and 7 percent discount rates, HUD is providing a broad view of costs and benefits.

Employing a 3 percent discount rate of the lifetime earnings estimates, the RIA concludes that monetized benefits of activities have a present value of \$98.96 million; while first-year costs are \$29.04 million. Thus the estimated net benefit is \$69.92 million using a 3 percent discount rate. If a 7 percent discount rate is used for lifetime earnings benefits, the monetized present value of the benefits of the final rule are estimated to be \$32.15 million, with estimated first year costs remaining at \$29.04 million. The final rule would therefore be seen as having a net benefit of \$3.11 million using the 7 percent discount rate.

Further, the monetized benefit estimates represent a lower bound on benefits, as they only account for lifetime earnings resulting from cognitive impacts on children under age six. Reductions in lead exposure would be expected to result in additional health benefits for these children, as well as older children and adults living in or visiting the housing units addressed by the rule. Such additional benefits include avoidance of harmful symptoms of lead poisoning such as: Decreased attention, increased impulsivity, hyperactivity, impaired hearing, slowed growth, and delayed menarche.<sup>24</sup>

Costs are overestimated, such as by assuming that only one environmental investigation is conducted in a property

<sup>24</sup> See, e.g., CDC, *Educational Interventions for Children Affected by Lead* (Apr. 2015), available at [https://www.cdc.gov/nceh/lead/publications/educational\\_interventions\\_children\\_affected\\_by\\_lead.pdf](https://www.cdc.gov/nceh/lead/publications/educational_interventions_children_affected_by_lead.pdf); Selevan SG, Rice DC, Hogan KA, Euling SY, Pfahles-Hutchens A, Bethel J, *Blood lead concentration and delayed puberty in girls*, *N Engl J Med*. 17;348(16):1527–36, (Apr. 17, 2003), available at [www.nejm.org/doi/full/10.1056/NEJMoa020880](http://www.nejm.org/doi/full/10.1056/NEJMoa020880); Mayo Clinic, *Lead Poisoning: Symptoms and Causes*, <http://www.mayoclinic.org/diseases-conditions/lead-poisoning/symptoms-causes/dxc-20275054>.

at a time, that that each housing unit has at most one child with an EBLL. The analysis also assumes that no designated parties are eligible for (nor take, if they are eligible) the exemptions from conducting a risk assessment of other housing units covered by this rule, and that each index unit has lead-based paint hazards, whether or not the environmental investigation identifies non-lead-based paint lead hazards. These assumptions would tend to overestimate both the costs and benefits of the regulation.

That the benefit-cost calculation giving lower weight to future generations shows a smaller net benefit is not surprising, given that the monetized benefits of the rule pertain to the future earnings of children under age six (6), while the costs pertain to the designated parties of the housing in which the young children currently reside. As noted above, the calculation included monetized benefits but not non-monetized quality of life factors associated with children’s lower intelligence, fewer skills, and reduced education and job potential, and adults’ cognitive function decrements, psychopathological effects (self-reported symptoms of depression and anxiety), hypertension, coronary heart disease, blood system effects (decreased red blood cell survival and function, and altered heme synthesis), male reproductive function decrements, among other effects.<sup>25</sup>

#### C. Paperwork Reduction Act Statement

The information collection requirements contained in this rule have been approved by or are pending with the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control number 2539–0009. In accordance with the Paperwork Reduction Act of 1995, 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 currently valid OMB control number.

#### D. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), HUD has reviewed this final rule before publication and by approving it for publication, certifies that the regulatory

<sup>25</sup> See, e.g., CDC, *Educational Interventions for Children Affected by Lead* (Apr. 2015), available at [https://www.cdc.gov/nceh/lead/publications/educational\\_interventions\\_children\\_affected\\_by\\_lead.pdf](https://www.cdc.gov/nceh/lead/publications/educational_interventions_children_affected_by_lead.pdf); Mayo Clinic, *Lead Poisoning: Symptoms and Causes*, <http://www.mayoclinic.org/diseases-conditions/lead-poisoning/symptoms-causes/dxc-20275054>.

requirements would not have a significant economic impact on a substantial number of small entities, other than those impacts specifically required to be applied universally by the statute. As discussed below, the requirements of the final rule are applicable only to a limited and specifically defined portion of the nation's housing stock. To the extent that the requirements affect small entities, the impact is generally discussed in the economic analysis that accompanies this final rule. Specifically, the economic analysis estimated the number of small entities and voucher owners that would be impacted by the rule, as well as the number of index units and other assisted units to be evaluated and, possibly, based on the evaluation, having lead hazard control work done. HUD has estimated that this final rule affects two types of small entities, Public Housing Agencies (PHAs) and private lessors and owners. There are 2,334 small PHAs, defined as PHAs with fewer than 250 units, which make up for 75 percent of the public housing

stock across the country. HUD has estimated that there are approximately 42,618 private landlords/lessors of residential real estate, or approximately 99 percent of the 42,911 lessors of residential real estate counted in the 2012 Economic Census, where SBA defines a "small" business as one that earns annual revenues (sales receipts) of less than \$27.5 million. Finally, HUD has estimated the number of owners who participate in the housing choice voucher program. It is noted that based on HUD data, the overwhelming proportion of owners rent to very few voucher tenants. Approximately two-thirds of owners who rent to voucher tenants rent to only one voucher tenant household. Many of these are likely owners of single-family homes for whom the rental income is not the primary source of income. Approximately 90 percent rent to no more than 4 voucher tenant households, which could be housed in a large two-story building. Very few owners rent to enough voucher tenants to occupy multiple buildings. Fewer than 0.6 percent of voucher tenant owners will

be affected by this rule (out of the 647,956 owners with voucher tenant households, at most, an estimated 3,383 such owners, assuming that each EBLL case occurs in a housing unit owned by an owner none of whose other properties with voucher tenant households have children with an EBLL. HUD has determined, for each type of assistance and for all types of assistance together, the economic analysis also estimated:

- The cost per unit of the evaluation (environmental investigation for index units, and risk assessments for other units that are assisted and have a child under age six (6) residing, as per the current LSHR);
- The total cost of the evaluation and hazard control (for index units, other units, and both); and
- The percentage of units evaluated and possibly, based on the evaluation results, hazard controlled (again, for index units, other units, and both).

The annual estimates are summarized in the table below.

TABLE 1—REGULATORY FLEXIBILITY ANALYSIS

Unit cost activity	Public housing	HUD project-based assistance	Tenant-based assistance	USDA project-based assistance	Total
Unit cost of evaluation, and weighted hazard control and temporary relocation for index units .....	\$2,890.33	\$2,890.33	\$2,890.33	\$2,890.33	.....
Est. no. buildings/complexes with child having EBLL .....	1,899	1,494	3,383	112	6,887
Presume LBP hazard prevalence in index units .....	100%	100%	100%	100%	.....
Cost of evaluation, hazard control and temporary relocation in index units .....	\$5,488,724	\$4,318,158	\$9,776,541	\$323,720	\$19,907,143
Unit cost of evaluation, and weighted hazard control and temporary relocation for other units .....	\$611.37	\$611.37	\$611.37	\$611.37	.....
Est. no. other units with assisted rental units having child under age 6 .....	8,014	3,783	2,855	284	14,936
Total number of units evaluated .....	9,913	5,277	6,238	396	21,823
Estimated LBP hazard prevalence in other units, per the American Healthy Homes Survey .....	12.30%	12.30%	12.30%	12.30%	.....
Estimated no. other units with LBP hazards identified and controlled .....	986	465	351	35	1,837
Cost for other assisted rental units having child under age 6 .....	\$4,899,521	\$2,312,806	\$1,745,456	\$173,629	\$9,131,412
<b>Total cost .....</b>	<b>\$10,388,245</b>	<b>\$6,630,964</b>	<b>\$11,521,998</b>	<b>\$497,349</b>	<b>\$29,038,556</b>
Total number of units evaluated and having hazards controlled .....	2,885	1,959	3,734	147	8,725
Program assistance per unit .....	\$5,849.09	\$9,013.33	\$9,329.09	\$4,911.00	.....
Total number of assisted units .....	1,100,000	1,200,000	2,200,000	286,108	\$4,786,108
Percent of assisted units evaluated .....	0.90%	0.44%	0.28%	0.14%	0.46%
Percent of assisted units evaluated and having hazards controlled .....	0.26%	0.16%	0.17%	0.05%	0.18%
# assisted units that would be forgone if funding were from funding agency with no appropriation increase .....	1,776	736	1,235	101	3,848
% assisted units that would be forgone if funding were from funding agency with no appropriation increase .....	0.161%	0.061%	0.056%	0.035%	0.080%

Among the key results are that, in each year:

- About 6,887 housing units are estimated to have a child under age six

(6) with a blood lead level that is elevated but not an environmental intervention blood lead level; these units would be required to have an

environmental investigation and have any lead-based paint hazards controlled. An additional 152 housing units would have a child under age six (6) with a



blood lead level that is an environmental intervention blood lead level; these units would be required to have an environmental investigation, rather than a risk assessment, as under the current rule, and have any lead-based paint hazards controlled.

- About 14,936 other housing units would have a risk assessment, of which about 1,837 are estimated to have lead-based paint hazards, and to have these hazards controlled by certified firms and workers using lead-safe work practices and clearance (*i.e.*, conservatively, all of the lead-based paint hazards are assumed to be significant, that is, above the de minimis levels of § 35.1350(d)).

- About 0.46 percent of the assisted housing stock covered by this rulemaking would be evaluated (*i.e.*, have an environmental investigation or a risk assessment), specifically, 0.90 percent of the public housing stock, 0.44 percent of the HUD project-based rental assisted housing stock, 0.28 percent of the tenant-based rental assisted housing stock, and 0.14 percent of the U.S. Department of Agriculture (USDA) project-based rental assisted housing stock.

- About 0.18 percent of the assisted housing stock covered by this rulemaking would have lead-based paint hazards controlled, specifically, 0.26 percent of the public housing stock, 0.16 percent of the HUD project-based rental assisted housing stock, 0.17 percent of the tenant-based rental assisted housing stock, and 0.05 percent of the USDA project-based rental assisted housing stock.

- The total cost of evaluation and control (and the small amount of temporary relocation of occupants) would be \$29.04 million, including \$10.39 million for public housing, \$6.63 million for HUD project-based rental assisted housing, \$11.52 million for tenant-based rental assisted housing, and \$497 thousand for USDA project-based rental assisted housing.

- Using the 3 percent discount rate, benefits are estimated at \$98.96 million, with net benefits (*i.e.*, benefits less the \$29.04 million in costs) estimated at \$69.92 million. Using the OMB's 7 percent discount rate, benefits are estimated at \$32.15 million, with costs remaining at \$29.04 million, so the net benefits would be \$3.11 million.

- Regarding index units, for FY 2017, an estimated 1,899 units of public housing, 1,494 units of HUD project-based rental assisted housing, 3,383 units of tenant-based rental assisted housing, and 112 units of USDA project-based rental assisted housing have children under age 6 with EBLs that

are not EIBLLs, that is, children for whom an environmental investigation and possible (*i.e.*, if hazards are found) interim control of their housing unit and common area servicing it would be newly required under the final rule.

- Regarding other units in the same property to have risk assessments conducted because they have children under age six (6) residing, there would be an estimated 8,014 units of public housing, 3,783 units of HUD project-based rental assisted housing, 2,855 units of tenant-based rental assisted housing, and 284 units of USDA project-based rental assisted housing.

- Regarding these other units having interim controls conducted based on the risk assessments finding lead-based paint hazards, there would be an estimated 986 units of public housing, 465 units of HUD project-based rental assisted housing, 351 units of tenant-based rental assisted housing, and 35 units of USDA project-based rental assisted housing that would have such controls.

- The conservative (*i.e.*, intentionally high, in this instance) assumption about the properties in which these children reside is that each of them is a different property (vs. there being more than one such child in a property); a similarly conservative assumption about the private entities (*i.e.*, the ones that lease units receiving project-based rental assistance to the families of these children, or that lease units occupied by households receiving tenant-based rental assistance to their families) is that all of them are small entities and all have just one such child (vs. an entity having more than one property with such a child), and that all index units in such properties have lead-based paint hazards. The economic analysis used the FY 2017 Congressional Justifications of the estimated number of housing units assisted by the several programs, recognizing that the actual numbers assisted vary over time: 1,100,000 public housing units, 1,200,000 HUD project-based rental assistance units, 2,200,000 tenant-based rental assistance units, and 286,108 USDA project-based rental assistance units.

#### *E. Environmental Impact*

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implements section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)). The Finding of No Significant Impact is available for public inspection electronically at Federal eRulemaking Portal at <http://www.regulations.gov>

under the title and docket number of this rule.

#### *F. Executive Order 13132, Federalism*

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments or is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule will not have federalism implications and would not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

#### *G. Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. This rule does not impose any federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of UMRA.

#### **List of Subjects in 24 CFR Part 35**

Grant programs—housing and community development, Lead poisoning, Mortgage insurance, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, HUD amends 24 CFR part 35 to read as follows:

#### **PART 35—LEAD-BASED PAINT POISONING PREVENTION IN CERTAIN RESIDENTIAL STRUCTURES**

■ 1. The authority citation for 24 CFR part 35 continues to read as follows:

**Authority:** 42 U.S.C. 3535(d), 4821, and 4851.

#### **§ 35.105 [Removed and Reserved]**

■ 2. Remove and reserve § 35.105.

■ 3. In § 35.110, add, in alphabetical order the definitions of "Elevated blood lead level" and "Environmental investigation", revise the definitions of "Certified", "Evaluation" and "Expected to reside" and remove the definition of "Environmental intervention blood lead level", to read as follows:

#### **§ 35.110 Definitions.**

\* \* \* \* \*

*Certified* means certified to perform such activities as risk assessment, lead-

based paint inspection, abatement supervision, or renovation, either by a State or Indian tribe with a lead-based paint certification program authorized by the Environmental Protection Agency (EPA), in accordance with 40 CFR part 745, subpart Q, or by the EPA, in accordance with 40 CFR part 745, subparts E or L.

\* \* \* \* \*

*Elevated blood lead level* means a confirmed concentration of lead in whole blood of a child under age 6 equal to or greater than the concentration in the most recent guidance published by the U.S. Department of Health and Human Services (HHS) on recommending that an environmental intervention be conducted. (When HHS changes the value, HUD will publish a notice in the **Federal Register**, with the opportunity for public comment, on its intent to apply the changed value to this part, and, after considering comments, publish a notice on its applying the changed value to this part.)

\* \* \* \* \*

*Environmental investigation* means the process of determining the source of lead exposure for a child under age 6 with an elevated blood lead level, consisting of administration of a questionnaire, comprehensive environmental sampling, case management, and other measures, in accordance with chapter 16 of the HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing (“Guidelines”).

*Evaluation* means a risk assessment, a lead hazard screen, a lead-based paint inspection, paint testing, or a combination of these to determine the presence of lead-based paint hazards or lead-based paint, or an environmental investigation.

*Expected to reside* means there is actual knowledge that a child will reside in a dwelling unit reserved or designated exclusively for the elderly or reserved or designated exclusively for persons with disabilities. If a resident woman is known to be pregnant, there is actual knowledge that a child will reside in the dwelling unit.

\* \* \* \* \*

■ 4. Amend § 35.125 by adding paragraph (c)(4)(iii) to read as follows:

**§ 35.125 Notice of evaluation and hazard reduction activities.**

\* \* \* \* \*

(c) \* \* \*

(4) \* \* \*

(iii) However, for the protection of the privacy of the child and the child’s family or guardians, no notice of

environmental investigation shall be posted to any centrally located common area.

**§ 35.155 [Amended]**

■ 5. Amend § 35.155(a) by removing the phrase “designated party or occupant” wherever it appears and adding in its place the phrase “designated party or owner”.

**§ 35.165 [Amended]**

■ 6. Amend § 35.165(b)(4) by removing the term “environmental intervention blood lead level” wherever it appears and adding in its place the term “elevated blood lead level”.

■ 7. Revise § 35.325 to read as follows:

**§ 35.325 Child with an elevated blood lead level.**

(a) If a child less than 6 years of age living in a federally assisted dwelling unit has an elevated blood lead level, the owner shall immediately conduct an environmental investigation. Interim controls of identified lead-based paint hazards shall be conducted in accordance with § 35.1330.

(b) *Other assisted dwelling units in the property.* (1) If the environmental investigation conducted under paragraph (a) of this section identifies lead-based paint hazards, the owner shall conduct a risk assessment for other assisted dwelling units covered by this subpart in which a child under age 6 resides or is expected to reside on the date interim controls are complete, and for the common areas servicing those units. The risk assessments shall be conducted within 30 calendar days after receipt of the environmental investigation report on the index unit if there are 20 or fewer such units, or 60 calendar days for risk assessments if there are more than 20 such units. If the risk assessment identifies lead-based paint hazards, the owner shall control identified hazards in accordance with § 35.1325 or § 35.1330 in those units and common areas within 30 calendar days, or within 90 calendar days if more than 20 units have lead-based paint hazards such that the control work would disturb painted surfaces that total more than the de minimis threshold of § 35.1350(d).

(2) The requirements for other assisted dwelling units covered by paragraph (b)(1) of this section do not apply if:

(i) The owner both conducted a risk assessment of the other assisted dwelling units covered by paragraph (b)(1), and the common areas servicing those units, and conducted reduction of identified lead-based paint hazards in accordance with § 35.1325 or § 35.1330

between the date the child’s blood was last sampled and the date the owner received the notification of the elevated blood lead level; or

(ii) The owner provides the Federal agency documentation of compliance with evaluation, notification, lead disclosure, ongoing lead-based paint maintenance, and lead-based paint management requirements under this part throughout the 12 months preceding the date the owner received the environmental investigation report.

(c) Interim controls are complete when clearance is achieved in accordance with § 35.1340.

(d) The Federal agency shall establish a timetable for completing, and providing documentation to the agency on the environmental investigation, risk assessments, and lead-based paint hazard reduction when a child is identified as having an elevated blood lead level.

**§ 35.715 [Amended]**

■ 8. Amend § 35.715 by:

■ a. Redesignating paragraph (d)(4) as paragraph (e); and

■ b. In newly redesignated paragraph (e), remove the term “environmental intervention blood lead level” wherever it appears and adding in its place “elevated blood lead level”.

**§ 35.720 [Amended]**

■ 9. Amend § 35.720(c) by removing the term “environmental intervention blood lead level” wherever it appears and adding in its place “elevated blood lead level”.

■ 10. Revise § 35.730 to read as follows:

**§ 35.730 Child with an elevated blood lead level.**

(a) *Environmental investigation.* Within 15 calendar days after being notified by a public health department or other medical health care provider that a child of less than 6 years of age living in a dwelling unit to which this subpart applies has been identified as having an elevated blood lead level, the owner shall complete an environmental investigation of the dwelling unit in which the child lived at the time the blood was last sampled and of common areas servicing the dwelling unit. The requirements of this paragraph apply regardless of whether the child is or is not still living in the unit when the owner receives the notification of the elevated blood lead level. The requirements of this paragraph shall not apply if the owner conducted an environmental investigation of the unit and common areas servicing the unit between the date the child’s blood was last sampled and the date when the

owner received the notification of the elevated blood lead level. If the owner conducted a risk assessment of the unit and common areas servicing the unit during that period, the owner need not conduct another risk assessment there but shall conduct the elements of an environmental investigation not already conducted during the risk assessment. If a public health department has already conducted an evaluation of the dwelling unit in regard to the child's elevated blood lead level case, the requirements of this paragraph shall not apply.

(b) *Verification.* After receiving information from a person who is not a medical health care provider that a child of less than 6 years of age living in a dwelling unit covered by this subpart may have an elevated blood lead level, the owner shall immediately verify the information with the public health department or other medical health care provider. If the public health department or provider denies the request, such as because it does not have the capacity to verify that information, the owner shall send documentation of the denial to the HUD rental assistance program manager, who shall make an effort to verify the information. If the public health department or provider verifies that the child has an elevated blood lead level, such verification shall constitute notification, and the owner shall take the action required in paragraphs (a) and (c) of this section.

(c) *Lead-based paint hazard reduction.* Within 30 calendar days after receiving the report of the environmental investigation conducted pursuant to paragraph (a) of this section or the evaluation from the public health department, the owner shall complete the reduction of identified lead-based paint hazards in accordance with § 35.1325 or § 35.1330. Lead-based paint hazard reduction is considered complete when clearance is achieved in accordance with § 35.1340 and the clearance report states that all lead-based paint hazards identified in the environmental investigation have been treated with interim controls or abatement or the public health department certifies that the lead-based paint hazard reduction is complete. The requirements of this paragraph do not apply if the owner, between the date the child's blood was last sampled and the date the owner received the notification of the elevated blood lead level, already conducted an environmental investigation of the unit and common areas servicing the unit and completed reduction of identified lead-based paint hazards. If the owner conducted a risk assessment of the unit and common

areas servicing the unit during that period, the owner is not required to conduct another risk assessment there but shall conduct the elements of an environmental investigation not already conducted during the risk assessment.

(d) If an environmental investigation or lead-based paint hazard evaluation or reduction is undertaken, each owner shall provide notice to occupants in accordance with § 35.125.

(e) *Reporting requirement.* (1) The owner shall report the name and address of a child identified as having an elevated blood lead level to the public health department within 5 business days of being so notified by any other medical health care professional.

(2) The owner shall also report each confirmed case of a child with an elevated blood lead level to the HUD field office and HUD Office of Lead Hazard Control and Healthy Homes within 5 business days of being so notified.

(3) The owner shall provide to the HUD field office documentation that the designated party has conducted the activities of paragraphs (a) through (d) of this section, within 10 business days of the deadline for each activity.

(f) *Other assisted dwelling units in the property.* (1) If the environmental investigation conducted pursuant to paragraph (a) of this section identifies lead-based paint hazards, the owner shall, for other assisted dwelling units covered by this part in which a child under age 6 resides or is expected to reside on the date lead-based paint hazard reduction under paragraph (c) of this section is complete, and for the common areas servicing those units, conduct a risk assessment within 30 calendar days after receipt of the environmental investigation report if there are 20 or fewer such other units, or 60 calendar days if there are more than 20 such other units.

(2) *Control measures.* If the risk assessment conducted under paragraph (f)(1) of this section identifies lead-based paint hazards, the owner shall complete the reduction of identified lead-based paint hazards in accordance with § 35.1325 or § 35.1330 in those units and common areas within 30 calendar days, or within 90 calendar days if more than 20 units have lead-based paint hazards such that the control work would disturb painted surfaces that total more than the de minimis threshold of § 35.1350(d). Lead-based paint hazard reduction is considered complete when clearance is achieved in accordance with § 35.1340 and the clearance report states that all lead-based paint hazards identified in

the risk assessment have been treated with interim controls or abatement.

(3) The owner shall provide to the HUD field office documentation that the designated party has conducted the activities of paragraph (f)(1) and (f)(2) of this section, within 10 business days of the deadline for each activity.

(4) The requirements of this paragraph (f) do not apply if:

(i) The owner both conducted a risk assessment of the other assisted dwelling units covered by paragraph (f)(1) of this section and the common areas servicing those units, and conducted reduction of identified lead-based paint hazards in accordance with § 35.1325 or § 35.1330 between the date the child's blood was last sampled and the date the owner received the notification of the elevated blood lead level; or

(ii) The owner has documentation of compliance with evaluation, notification, lead disclosure, ongoing lead-based paint maintenance, and lead-based paint management requirements under this part throughout the 12 months preceding the date the owner received the environmental investigation report pursuant to paragraph (a) of this section; and

(iii) In either case, the owner provides to the HUD field office documentation that it has conducted the activities of paragraphs (f)(4)(i) and (ii) of this section, within 10 business days of the deadline for each activity.

■ 11. Revise § 35.830 to read as follows:

**§ 35.830 Child with an elevated blood lead level.**

(a) *Environmental investigation.* Within 15 calendar days after being notified by a public health department or other medical health care provider that a child of less than 6 years of age living in a dwelling unit owned by HUD (or where HUD is mortgagee-in-possession) has been identified as having an elevated blood lead level, HUD shall complete an environmental investigation of the dwelling unit in which the child lived at the time the blood was last sampled and of common areas servicing the dwelling unit. The requirements of this paragraph apply regardless of whether the child is or is not still living in the unit when HUD receives the notification of the elevated blood lead level. The requirements of this paragraph shall not apply if HUD conducted an environmental investigation of the unit and common areas servicing the unit between the date the child's blood was last sampled and the date when HUD received the notification of the elevated blood lead level. If HUD conducted a risk

assessment of the unit and common areas servicing the unit during that period, HUD is not required to conduct another risk assessment there but it shall conduct the elements of an environmental investigation not already conducted during the risk assessment. If a public health department has already conducted an evaluation of the dwelling unit in regard to the child's elevated blood lead level case, the requirements of this paragraph shall not apply.

(b) *Verification.* After receiving information from a person who is not a medical health care provider that a child of less than 6 years of age living in a dwelling unit covered by this subpart may have an elevated blood lead level, HUD shall immediately verify the information with the public health department or other medical health care provider. If the public health department or provider denies the request, such as because it does not have the capacity to verify that information, the HUD Realty Specialist assigned to that property shall send documentation of the denial to the HUD Office of Lead Hazard Control and Healthy Homes, which shall make an effort to verify the information. If the public health department or provider verifies that the child has an elevated blood lead level, such verification shall constitute notification, and HUD shall take the action required in paragraphs (a) and (c) of this section.

(c) *Lead-based paint hazard reduction.* Within 30 calendar days after receiving the report of the environmental investigation conducted pursuant to paragraph (a) of this section or the evaluation from the public health department, HUD shall complete the reduction of identified lead-based paint hazards in accordance with § 35.1325 or § 35.1330. Lead-based paint hazard reduction is considered complete when clearance is achieved in accordance with § 35.1340 and the clearance report states that all lead-based paint hazards identified in the environmental investigation have been treated with interim controls or abatement or the public health department certifies that the lead-based paint hazard reduction is complete. The requirements of this paragraph do not apply if HUD, between the date the child's blood was last sampled and the date HUD received the notification of the elevated blood lead level, already conducted an environmental investigation of the unit and common areas servicing the unit and completed reduction of identified lead-based paint hazards. If HUD conducted a risk assessment of the unit and common areas servicing the unit during that period, it is not required to

conduct another risk assessment there but it shall conduct the elements of an environmental investigation not already conducted during the risk assessment.

(d) *Notice.* If lead-based paint hazard evaluation or reduction is undertaken, each owner shall provide a notice to occupants in accordance with § 35.125.

(e) *Reporting requirement.* (1) HUD shall report the name and address of a child identified as having an elevated blood lead level to the public health department within 5 business days of being so notified by any other medical health care professional.

(2) HUD shall also report each confirmed case of a child with an elevated blood lead level to the HUD Office of Lead Hazard Control and Healthy Homes within 5 business days of being so notified.

(3) HUD shall provide to the HUD Office of Lead Hazard Control and Healthy Homes documentation that it has conducted the activities of paragraphs (a) through (d) of this section, within 10 business days of the deadline for each activity.

(f) *Other assisted dwelling units in the property.* (1) If the environmental investigation conducted pursuant to paragraph (a) of this section identifies lead-based paint hazards, HUD shall, for other assisted dwelling units covered by this part in which a child under age 6 resides or is expected to reside on the date lead-based paint hazard reduction under paragraph (c) of this section, and the common areas servicing those units, is complete, conduct a risk assessment in accordance with § 35.815 within 30 calendar days after receipt of the environmental investigation report if there are 20 or fewer such other units, or 60 calendar days if there are more than 20 such other units.

(2) If the risk assessment conducted under paragraph (f)(1) of this section identifies lead-based paint hazards, HUD shall complete the reduction of identified lead-based paint hazards in accordance with § 35.1325 or § 35.1330 in those units and common areas within 30 calendar days, or within 90 calendar days if more than 20 units have lead-based paint hazards such that the control work would disturb painted surfaces that total more than the de minimis threshold of § 35.1350(d). Lead-based paint hazard reduction is considered complete when clearance is achieved in accordance with § 35.1340 and the clearance report states that all lead-based paint hazards identified in the risk assessment have been treated with interim controls or abatement.

(3) The requirements of this paragraph (f) do not apply if:

(i) HUD, between the date the child's blood was last sampled and the date HUD received the notification of the elevated blood lead level, both conducted a risk assessment in the other assisted dwelling units covered by paragraph (f)(1) of this section and the common areas servicing those units, and conducted interim controls of identified lead-based paint hazards in accordance with § 35.820; or

(ii) HUD has documentation of compliance with evaluation, notification, lead disclosure, ongoing lead-based paint maintenance, and lead-based paint management requirements under this part throughout the 12 months preceding the date HUD received the environmental investigation report pursuant to paragraph (a) of this section.

(4) HUD shall provide to the HUD Office of Lead Hazard Control and Healthy Homes documentation that it has conducted the activities of paragraph (f)(1) through (2) of this section, or that it has complied with the requirements in paragraph (f)(3) of this section, within 10 business days of the deadline for each activity.

(g) *Closing.* If the closing of a sale is scheduled during the period when HUD is responding to a case of a child with an elevated blood lead level, HUD may arrange for the completion of the procedures required by paragraphs (a) through (d) of this section by the purchaser within a reasonable period of time.

(h) *Extensions.* The Assistant Secretary for Housing-Federal Housing Commissioner or designee may consider and approve a request for an extension of deadlines established by this section for lead-based paint inspection, risk assessment, environmental investigation, lead-based paint hazard reduction, clearance, and reporting. Such a request may be considered, however, only during the first six months during which HUD is owner or mortgagee-in-possession of a multifamily property.

■ 12. Revise § 35.1130 to read as follows:

**§ 35.1130 Child with an elevated blood lead level.**

(a) *Environmental investigation.* Within 15 calendar days after being notified by a public health department or other medical health care provider that a child of less than 6 years of age living in a dwelling unit to which this subpart applies has been identified as having an elevated blood lead level, the PHA shall complete an environmental investigation of the dwelling unit in which the child lived at the time the

blood was last sampled and of common areas servicing the dwelling unit. The environmental investigation is considered complete when the PHA receives the environmental investigation report. The requirements of this paragraph apply regardless of whether the child is or is not still living in the unit when the PHA receives the notification of the elevated blood lead level. The requirements of this paragraph shall not apply if the PHA conducted an environmental investigation of the unit and common areas servicing the unit between the date the child's blood was last sampled and the date when the PHA received the notification of the elevated blood lead level. If the PHA conducted a risk assessment of the unit and common areas servicing the unit during that period, the PHA need not conduct another risk assessment there but shall conduct the elements of an environmental investigation not already conducted during the risk assessment. If a public health department has already conducted an evaluation of the dwelling unit in regard to the child's elevated blood lead level case, the requirements of this paragraph shall not apply.

(b) *Verification.* After receiving information from a person who is not a medical health care provider that a child of less than 6 years of age living in a dwelling unit covered by this subpart may have an elevated blood lead level, the PHA shall immediately verify the information with the public health department or other medical health care provider. If that department or provider denies the request, such as because it does not have the capacity to verify that information, the PHA shall send documentation of the denial to its HUD field office, who shall make an effort to verify the information. If that department or provider verifies that the child has an elevated blood lead level, such verification shall constitute notification, and the housing agency shall take the action required in paragraphs (a) and (c) of this section.

(c) *Lead-based paint hazard reduction.* Within 30 calendar days after receiving the report of the environmental investigation conducted pursuant to paragraph (a) of this section or the evaluation from the public health department, the PHA shall complete the reduction of identified lead-based paint hazards in accordance with § 35.1325 or § 35.1330. Lead-based paint hazard reduction is considered complete when clearance is achieved in accordance with § 35.1340 and the clearance report states that all lead-based paint hazards identified in the environmental investigation have been treated with

interim controls or abatement or the local or State health department certifies that the lead-based paint hazard reduction is complete. The requirements of this paragraph do not apply if the PHA, between the date the child's blood was last sampled and the date the PHA received the notification of the elevated blood lead level, already conducted an environmental investigation of the unit and common areas servicing the unit and completed reduction of identified lead-based paint hazards. If the PHA conducted a risk assessment of the unit and common areas servicing the unit during that period, it is not required to conduct another risk assessment there but it shall conduct the elements of an environmental investigation not already conducted during the risk assessment. If the PHA does not complete the lead-based paint hazard reduction required by this section, the dwelling unit is in violation of the standards of 24 CFR 965.601, which incorporates the uniform physical condition standards of § 5.703(f), including that it be free of lead-based paint hazards.

(d) *Notice of lead-based paint hazard evaluation and reduction.* The PHA shall notify building residents of any lead-based paint hazard evaluation or reduction activities in accordance with § 35.125.

(e) *Reporting requirement.* (1) The PHA shall report the name and address of a child identified as having an elevated blood lead level to the public health department within 5 business days of being so notified by any other medical health care professional.

(2) The PHA shall report each confirmed case of a child with an elevated blood lead level to the HUD field office and the HUD Office of Lead Hazard Control and Healthy Homes within 5 business days of being so notified.

(3) The PHA shall provide to the HUD field office documentation that it has conducted the activities of paragraphs (a) through (d) of this section, within 10 business days of the deadline for each activity.

(f) *Other units in the property.* (1) If the environmental investigation conducted pursuant to paragraph (a) of this section identifies lead-based paint hazards, the PHA shall conduct a risk assessment of other units of the building in which a child under age 6 resides or is expected to reside on the date lead-based paint hazard reduction under paragraph (c) of this section is complete, and the common areas servicing those units within 30 calendar days after receipt of the environmental investigation report if there are 20 or

fewer such other units, or 60 calendar days if there are more such units.

(2) If the risk assessment conducted under paragraph (f)(1) of this section identifies lead-based paint hazards, the PHA shall control the hazards, in accordance with Sec. 35.1325 or § 35.1330, in those units and common areas within 30 calendar days, or within 90 calendar days if more than 20 units have lead-based paint hazards such that the control work would disturb painted surfaces that total more than the de minimis threshold of § 35.1350(d). Lead-based paint hazard reduction is considered complete when clearance is achieved in accordance with § 35.1340 and the clearance report states that all lead-based paint hazards identified in the risk assessment have been treated with interim controls or abatement.

(3) The PHA shall provide to the HUD field office documentation that it has conducted the activities of paragraphs (f)(1) and (2) of this section, within 10 business days of the deadline for each activity.

(4) The requirements of this paragraph (f) of this section do not apply if:

(i) The PHA, between the date the child's blood was last sampled and the date the PHA received the notification of the elevated blood lead level, both conducted a risk assessment of the other assisted dwelling units covered by paragraph (f)(1) of this section and the common areas servicing those units, and conducted interim controls of identified hazards in accordance with § 35.1120(b); or

(ii) If the PHA has documentation of compliance with evaluation, notification, lead disclosure, ongoing lead-based paint maintenance, and lead-based paint management requirements under this part throughout the 12 months preceding the date the PHA received the environmental investigation report pursuant to paragraph (a) of this section; and,

(iii) In either case, the PHA provided the HUD field office, within 10 business days after receiving the notification of the elevated blood lead level, documentation that it has conducted the activities described in this paragraph (f)(4) of this section.

#### § 35.1135 [Amended]

■ 13. Amend § 35.1135(d) by removing the term "*Environmental intervention blood lead level*" and adding in its place the term "*Elevated blood lead level*".

■ 14. In § 35.1215, amend paragraph (b) by adding a sentence to the end of the paragraph to read as follows:

**§ 35.1215 Activities at initial and periodic inspection.**

\* \* \* \* \*

(b) \* \* \* For the unit subsequently to come under a HAP contract with the housing agency for occupancy by a family with a child under age 6, paint stabilization must be completed, including clearance being achieved in accordance with § 35.1340.

\* \* \* \* \*

■ 15. Revise § 35.1225 to read as follows:

**§ 35.1225 Child with an elevated blood lead level.**

(a) Within 15 calendar days after being notified by a public health department or other medical health care provider that a child of less than 6 years of age living in a dwelling unit to which this subpart applies has been identified as having an elevated blood lead level, the designated party shall complete an environmental investigation of the dwelling unit in which the child lived at the time the blood was last sampled and of common areas servicing the dwelling unit. When the environmental investigation is complete, the designated party shall immediately provide the report of the environmental investigation to the owner of the dwelling unit. If the child identified as having an elevated blood lead level is no longer living in the unit when the designated party receives notification from the public health department or other medical health care provider, but another household receiving tenant-based rental assistance is living in the unit or is planning to live there, the requirements of this section apply just as they do if the child still lives in the unit. If a public health department has already conducted an evaluation of the dwelling unit in regard to the child's elevated blood lead level case, or the designated party conducted an environmental investigation of the unit and common areas servicing the unit between the date the child's blood was last sampled and the date when the designated party received the notification of the elevated blood lead level, the requirements of this paragraph shall not apply. If the designated party or the owner conducted a risk assessment of the unit and common areas servicing the unit during that period, the designated party need not conduct another risk assessment there but shall conduct the elements of an environmental investigation not already conducted during the risk assessment.

(b) *Verification.* After receiving information from a person who is not a medical health care provider that a child of less than 6 years of age living

in a dwelling unit covered by this subpart may have an elevated blood lead level, the designated party shall immediately verify the information with the public health department or other medical health care provider. If the public health department or provider denies the request, such as because it does not have the capacity to verify that information, the designated party shall send documentation of the denial to the HUD rental assistance program manager, who shall make an effort to verify the information. If that department or provider verifies that the child has an elevated blood lead level, such verification shall constitute notification, and the designated party shall take the action required in paragraphs (a) and (c) of this section.

(c) *Lead-based paint hazard reduction.* Within 30 calendar days after receiving the report of the environmental investigation from the designated party or the evaluation from the public health department, the owner shall complete the reduction of identified lead-based paint hazards in accordance with § 35.1325 or § 35.1330. Lead-based paint hazard reduction is considered complete when clearance is achieved in accordance with § 35.1340 and the clearance report states that all lead-based paint hazards identified in the environmental investigation have been treated with interim controls or abatement or the public health department certifies that the lead-based paint hazard reduction is complete. The requirements of this paragraph do not apply if the designated party or the owner, between the date the child's blood was last sampled and the date the designated party received the notification of the elevated blood lead level, already conducted an environmental investigation of the unit and common areas servicing the unit and the owner completed reduction of identified lead-based paint hazards. If the owner does not complete the lead-based paint hazard reduction required by this section, the dwelling unit is in violation of the standards of 24 CFR 982.401.

(d) *Notice of lead-based paint hazard evaluation and reduction.* The owner shall notify building residents of any lead-based paint hazard evaluation or reduction activities in accordance with § 35.125.

(e) *Reporting requirement.* (1) The owner shall report the name and address of a child identified as having an elevated blood lead level to the public health department within 5 business days of being so notified by any other medical health care professional.

(2) The owner shall also report each confirmed case of a child with an elevated blood lead level to the HUD field office and the HUD Office of Lead Hazard Control and Healthy Homes within 5 business days of being so notified.

(3) The owner shall provide to the HUD field office documentation that it has conducted the activities of paragraphs (a) through (d) of this section, within 10 business days of the deadline for each activity.

(f) *Other assisted dwelling units in the property.* (1) If the environmental investigation conducted pursuant to paragraph (a) of this section identifies lead-based paint hazards, the designated party or the owner shall, for other assisted dwelling units covered by this part in which a child under age 6 resides or is expected to reside on the date lead-based paint hazard reduction under paragraph (c) of this section is complete, and the common areas servicing those units, conduct a risk assessment in accordance with § 35.1320(b) within 30 calendar days after receipt of the environmental investigation report if there are 20 or fewer such units, or 60 calendar days if there are more such units.

(2) If the risk assessment conducted under paragraph (f)(1) of this section identifies lead-based paint hazards, the owner shall complete the reduction of the lead-based paint hazards in accordance with § 35.1325 or § 35.1330 within 30 calendar days, or within 90 calendar days if more than 20 units have lead-based paint hazards such that the control work would disturb painted surfaces that total more than the de minimis threshold of § 35.1350(d). Lead-based paint hazard reduction is considered complete when clearance is achieved in accordance with § 35.1340 and the clearance report states that all lead-based paint hazards identified in the risk assessment have been treated with interim controls or abatement.

(3) The requirements of this paragraph (f) of this section do not apply if:

(i) The designated party or the owner, between the date the child's blood was last sampled and the date the owner received the notification of the elevated blood lead level, both conducted a risk assessment of the other assisted dwelling units covered by paragraph (f)(1) of this section and the common areas servicing those units, and the owner conducted interim controls of identified lead-based paint hazards in accordance with § 35.1225(c); or

(ii) The owner has documentation of compliance with evaluation, notification, lead disclosure, ongoing lead-based paint maintenance, and lead-

based paint management requirements under this part throughout the 12 months preceding the date the owner received the environmental investigation report pursuant to paragraph (a) of this section; and,

(iii) In either case, the owner provided the HUD field office, within 10 business days after receiving the notification of the elevated blood lead level, documentation that it has conducted the activities described in this paragraph (f)(3).

(g) *Data collection and record keeping responsibilities.* At least quarterly, the designated party shall attempt to obtain from the public health department(s) with area(s) of jurisdiction similar to that of the designated party the names and/or addresses of children of less than 6 years of age with an identified elevated blood lead level. At least quarterly, the designated party shall also report an updated list of the addresses of units receiving assistance under a tenant-based rental assistance program to the same public health department(s), except that the report(s) to the public health department(s) is not required if the health department states that it does not wish to receive such report. If it obtains names and addresses of elevated blood lead level children from the public health department(s), the designated party shall match information on cases of elevated blood lead levels with the names and addresses of families receiving tenant-based rental assistance, unless the public health department performs such a matching procedure.

If a match occurs, the designated party shall carry out the requirements of this section.

■ 16. Revise § 35.1330(a)(4)(iii) to read as follows:

**§ 35.1330 Interim controls.**

(a) \* \* \*

(4) \* \* \*

(iii) A renovator course accredited in accordance with 40 CFR 745.225.

\* \* \* \* \*

Dated: December 14, 2016.

**Nani Coloretti,**

*Deputy Secretary.*

[FR Doc. 2017-00261 Filed 1-12-17; 8:45 am]

**BILLING CODE 4210-67-P**

**DEPARTMENT OF TRANSPORTATION**

**Saint Lawrence Seaway Development Corporation**

**33 CFR Part 401**

**RIN 2135-AA40**

**Civil Penalties**

**AGENCY:** Saint Lawrence Seaway Development Corporation (SLSDC), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** This final rule updates the maximum civil penalty amounts for violations of statutes and regulations administered by SLSDC pursuant to the Federal Civil Penalties Inflation Adjustment Improvement Act of 2015. This final rule amends our regulations to reflect the new civil penalty amounts for violations of the Seaway Regulations and Rules under the authority of the Ports and Waterways Safety Act of 1972, as amended (PWSA).

**DATES:** This rule is effective on January 15, 2017.

**FOR FURTHER INFORMATION CONTACT:** Carrie Lavigne, Chief Counsel, SLSDC, telephone (315) 764-3231, 180 Andrews Street, Massena, NY 13362.

**SUPPLEMENTARY INFORMATION:**

**Background**

On November 2, 2015, the Federal Civil Penalties Inflation Adjustment Improvement Act (the 2015 Act), Public Law 114-74, was signed into law. The purpose of the 2015 Act is to improve the effectiveness of civil monetary penalties (CMPs) and to maintain their deterrent effect. The 2015 Act required agencies to make an initial catch up adjustment to the CMPs they administer through an interim final rule and then to make subsequent annual adjustments for inflation that shall take effect not later than January 15. The initial catch up adjustments for inflation to the SLSDC's CMP was published in the **Federal Register** on June 28, 2016 and as required, did not exceed 150 percent of the amount of the CMP on the date of enactment of the Federal Civil Penalties Inflation Adjustment Act of 2015. The revised methodology for agencies for 2017 and each year thereafter provides for the improvement of the effectiveness of CMPs and to maintain their deterrent effect. Effective 2017, agencies annual adjustments for in inflation to CMPs apply only to CMPs with a dollar amount.

The SLSDC's 2017 adjustments for inflation to the CMP set forth in this regulation were determined pursuant to

the revised methodology prescribed by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, which requires the maximum CMP to be increased by the cost-of-living adjustment. The term "cost-of-living adjustment" is defined by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. For the 2017 adjustments for inflation to CMPs, the percentage for each CMP by which the Consumer Price Index for the month of October 2016 exceeds the Consumer Price Index for the month of October 2015.

**Classification**

Pursuant to 5 U.S.C. 553(b)B, there is good cause to issue this rule without prior public notice or opportunity for public comment because it would be impracticable and unnecessary. The Federal Civil Penalties Inflation Adjustment Act of 2015 (Section 701(b)) requires agencies effective 2017, to make annual adjustments for inflation to CMPs notwithstanding section 553 of Title 5 United States Code. Additionally, the methodology used, effective 2017, for adjusting CMPs for inflation is given by statute, with no discretion provided to agencies regarding the substance of the adjustments for inflation to CMPs. The SLSDC is charged only with performing ministerial computations to determine the dollar amount of adjustments for inflation to CMPs. Accordingly, prior public notice and opportunity for public comment are not required for this rule.

**Regulatory Analysis**

*E.O. 12866, Regulatory Review*

SLSDC has considered the impact of this rulemaking action under Executive Order 12866, Executive Order 13563, and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed under Executive Order 12866 or Executive Order 13563. This action is limited to the adoption of adjustments of civil penalties under statutes that the agency enforces, and has been determined to be not "significant" under the Department of Transportation's regulatory policies and procedures and the policies of the Office of Management and Budget. Because this rulemaking does not change the number of entities that are subject to civil penalties, the impacts are limited.

We also do not expect the increase in the civil penalty amount in 33 CFR 401.102 to be economically significant. Since January 1, 2010 to the present, the SLSDC assessed a total of approximately \$27,000 in civil fines and penalties.