



DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
24 CFR Part 35

[Docket No. FR-5816-P-01]
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 Lead Hazard Control and Healthy Homes, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend HUD's lead-based paint regulations on reducing blood lead levels in children under age 6 who reside in federally-owned or -assisted pre-1978 housing and formally adopt the revised definition of "elevated blood lead levels" in children under the age of 6 in accordance with guidance of the Centers for Disease Control and Prevention (CDC), and establish more comprehensive testing and evaluation procedures for the housing where such children reside. In 2012, the CDC issued guidance revising its definition of elevated blood lead level in children under age 6 to be a blood lead level based on the distribution of blood lead levels in the national population. Since CDC's revision of its definition, HUD has applied the revised definition to funds awarded under its Lead-Based Paint Hazard Control grant program and its Lead Hazard Reduction Demonstration grant program, and has updated its Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing to reflect this definition. CDC is continuing to consider, with respect to evolution of scientific and medical understanding, how best to identify childhood blood lead levels for which environmental interventions are recommended. Through this rule, HUD formally adopts through regulation the CDC's approach to the definition of "elevated blood lead levels" in children under

the age of 6 and addresses the additional elements of the CDC guidance pertaining to assisted housing.

DATE: Comment Due Date: [Insert date that is 60 days after date of publication in the Federal Register].

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410–0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. Submission of Comments by Mail. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410–0500.

2. Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at <http://www.regulations.gov>. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make comments immediately available to the public. Comments submitted electronically through the <http://www.regulations.gov> website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. It is not acceptable to submit comments by facsimile (fax). Again, all submissions must refer to the docket number and title of the rule.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and downloading at <http://www.regulations.gov>.

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 20410-3000, telephone number (202) 402-7698 or e-mail your inquiry to lead.regulations@hud.gov. For legal questions, contact John B. Shumway, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, Room 9262, Washington, DC 20410-0500; telephone number (202) 402-5190. The above telephone numbers are not toll-free numbers. Hearing and speech-impaired persons may access the above telephone numbers via TTY by calling the toll-free Federal Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

A. HUD's Long-term and Ongoing Efforts to Reduce Lead Poisoning in Children

Childhood lead poisoning has long been recognized as causing reduced intelligence, low attention span, reading and learning disabilities, and has been linked to juvenile delinquency, behavioral problems, and many other adverse health effects. Current reviews by the U.S. Department of Health and Human Services (HHS), including by its Agency for Toxic Substances and Disease Registry (ATSDR) and National Institute of Environmental Health Sciences (NIEHS) and by the U.S. Environmental Protection Agency (EPA) Office of Research and

Development have described these effects in detail.¹ The removal of lead-based gasoline and paint from commerce has drastically reduced the number of children exposed to levels of lead associated with the most significant among these problems. Data from CDC's National Center for Health Statistics show that mean blood lead levels among children ages 1 to 5 dropped from 16.0 µg/dL in 1976-1980 to 2.6 µg/dL in 1991-1994, to 0.97 µg/dL in 2011-2012.² However, national statistics mask the fact that blood lead monitoring continues to find some children exposed to elevated blood lead levels due to their specific housing environment. As sources of lead paint sources have decreased, focus has increased on other sources of exposures, including legacy water pipes in homes and schools.

In 2014, the CDC noted that, "Lead-based paint and lead contaminated dust are the most hazardous sources of lead for U.S. children,"³ reaffirming their 2005 Statement on preventing lead poisoning in young children that, "lead-based paint is the most important source of lead" exposure for young children.⁴ Continued progress in lead paint abatement and interim control over the last decade, such as through HUD's lead hazard control grant programs discussed below, and the lead hazard control work required of landlords under settlements HUD has

¹ See the following: Agency for Toxic Substances and Disease Registry. Toxicological profile for lead. Atlanta: U.S. Department of Health and Human Services (HHS), August 2007. www.atsdr.cdc.gov/toxprofiles/tp13.pdf. HHS, National Institute of Environmental Health Sciences, National Toxicology Program. NTP Monograph on Health Effects of Low-Level Lead. NIH Publication No. 12-5996. June 13, 2012.

<http://ntp.niehs.nih.gov/pubhealth/hat/noms/lead/index.html>. Office of Research and Development. Integrated Science Assessment for Lead. Research Triangle Park, NC. U.S. Environmental Protection Agency (EPA), June 2013. <https://cfpub.epa.gov/ncea/risk/recordisplay.cfm?deid=255721>. (See esp. pp. lxxxvii – lxxxviii, and 1-20 – 1-24. See also Memo Regarding a Study Assessed in the 2013 ISA for Lead - Dated May 9, 2014.

http://ofmpub.epa.gov/eims/eimscomm.getfile?p_download_id=518543.)

² Porter, K. National Health and Nutrition Examination Survey. 2015 National Conference on Health Statistics, August 24, 2015, www.cdc.gov/nchs/ppt/nchs2015/Porter_Monday_SalonE_A6.pdf. p. 48.

³ Centers for Disease Control and Prevention (CDC). Lead. Prevention Tips. June 19, 2014. Sec. 2, par. 1. www.cdc.gov/nceh/lead/tips.htm.

⁴ CDC. Preventing Lead Poisoning in Young Children. A Statement by the Centers for Disease Control and Prevention. August 2005. p. 4. www.cdc.gov/nceh/lead/publications/PrevLeadPoisoning.pdf.

reached in enforcing the Lead Disclosure Statute and that statute's Rule (42 U.S.C. 4852d; 24 CFR 35, subpart A) has meant further significant decreases in lead exposure among children.

Even so, there are a considerable number of assisted housing units that have lead-based paint in which children under age 6 reside. As detailed in the regulatory impact assessment accompanying this notice, there are about 4.3 million housing units in the assistance programs covered by this rulemaking (1.1 million public housing, 1.2 million project-based rental assistance, and 2.0 million tenant-based rental assistance units), of which about 450,000 are estimated to have been built before 1978 and have children under age 6 residing (about 110, 130, and 210 thousand units, respectively). Of those units, about 57,000 units are estimated to have lead-based paint hazards (about 14, 16, and 27 thousand, respectively).

Health concerns have also been documented for adults exposed to high levels of lead from occupational exposures and to some extent from hobbies and other product or environmental sources, such as what might be associated with workers conducting lead hazard control activities; see, e.g., the Occupational Safety and Health Administration's (OSHA's) Lead standards, one for general industry and one for the construction industry (29 CFR 1910.1025 and 1926.62, respectively); see OSHA's Safety and Health Topics webpage on the health effects of high lead exposure in exposed workers;⁵ the CDC/National Institute for Occupational Safety and Health (NIOSH) guides on lead for public health officials and researchers,⁶ and for workers;⁷ and

⁵ OSHA Salt Lake Technical Center. Lead. Health Effects. <https://www.osha.gov/SLTC/lead/healtheffects.html>.

⁶ NIOSH. LEAD. Information for Public Health Officials and Researchers. www.cdc.gov/niosh/topics/lead/publichealth.html.

⁷ NIOSH. LEAD. Information for Workers. www.cdc.gov/niosh/topics/lead/health.html.

the ATSDR Toxicological Profile for lead and the EPA Integrated Science Assessment for Lead cited above (fn. 1).⁸

B. Authority for HUD's Lead-Based Paint Regulations

HUD's Lead-Based Paint regulations designed to reduce lead exposure in federally-owned and federally-assisted housing (sometimes, for brevity, referred to here as "assisted housing"), referred to as the Lead Safe Housing Rule (LSHR), are found in title 24 of the Code of Federal Regulations (CFR) part 35, subparts B through R. The LSHR implements the Residential Lead-Based Paint Hazard Reduction Act of 1992, which is Title X of the Housing and Community Development Act of 1992 (Public Law 102-550, approved October 28, 1992), specifically, the LSHR implements sections 1012 and 1013 of Title X (42 U.S.C. 4822). One of the purposes of the LSHR is to ensure, as far as practicable, that federally-owned or federally-assisted housing that may have lead-based paint, which is most housing constructed prior to 1978 (called "target housing")⁹ does not have lead-based paint hazards.

As reflected in the LSHR and consistent with Title X, HUD's primary focus is on minimizing childhood lead exposures, rather than on waiting until children have elevated blood lead levels (see section I.B, below) to undertake actions to eliminate the lead-based paint hazards or the lead-based paint. HUD's Office of Lead Hazard Control and Healthy Homes' (OLHCHH's) ongoing efforts in lead poisoning prevention – i.e., acting before children are

⁸ As discussed below, while the focus of HUD's existing Rule (Lead Safe Housing Rule) (24 CFR 35, subparts B–R) proposed to be amended by this rulemaking is the protection of the health of children under age 6, the currently codified Rule also addresses protection of all occupants in dwelling units covered by the Rule (see, e.g., § 35.1345), and workers conducting lead-related activities in housing covered by the Rule (see, e.g., § 35.145).

⁹ HUD's regulations, at 24 CFR 35.110, based on the Title X definition at 42 U.S.C. § 4851b (27), define "target housing" as "any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless a child of less than 6 years of age resides or is expected to reside in such housing for the elderly or persons with disabilities) or any zero- bedroom dwelling. In the case of jurisdictions which banned the sale or use of lead-based paint prior to 1978, HUD may designate an earlier date." (Note that HUD has not made any such designations.)

exposed to lead such that they develop an elevated blood lead level – were recognized in the HUD’s *Healthy Homes Strategic Plan*.¹⁰ As noted in that document, HUD’s OLHCHH has administered a successful Lead Hazard Control program since 1993. Through robust grants, enforcement efforts, research, and outreach, this program has been instrumental in the reduction of 84 percent in childhood blood lead levels of 10 µg/dL or more from 1988-1991 to 1999-2004¹¹ and least an estimated 97 percent through 2014.¹² The success of HUD’s OLHCHH comes from taking all actions feasible and authorized to reduce lead exposure in children, and these actions include 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), to name a few.¹³

CDC has recognized that the “HUD Lead Hazard Control Program ... is the most easily identifiable and largest source of federal funding for lead-hazard remediation.”¹⁴ HUD notes that that program, which implements section 1011 of Title X (42 U.S.C. § 4852) does not address all types of housing with which HUD is associated. Specifically, section 1011 prohibits housing

¹⁰ HUD. *Leading Our Nation to Healthier Homes: The Healthy Homes Strategic Plan*. July 9, 2009. http://portal.hud.gov/hudportal/documents/huddoc?id=hhstratplan_7_9_09.pdf.

¹¹ Dropping from 8.6% to 1.4%. Jones, R., et al. Trends in Blood Lead Levels and Blood Lead Testing Among US Children Aged 1 to 5 Years, 1988–2004. *Pediatrics* Vol. 123 No. 3 March 2009, pp. E376-E385. <http://pediatrics.aappublications.org/content/123/3/e376>.

¹² Dropping from 1.4% to an estimated 0.28% or less, based on the 2.5% of children with blood lead levels at or above 5 µg/dL (see section I.B, below) and data collected by CDC’s national surveillance program on blood lead testing data, comparing the numbers of children with blood lead levels at or above 5 µg/dL with those at or above 10 µg/dL in CDC. Number of Children Tested and Confirmed BLL’s ≥10 µg/dL by State, Year, and BLL Group, Children < 72 Months Old. www.cdc.gov/nceh/lead/data/Website_StateConfirmedByYear_1997_2014_01112016.xlsx.

¹³ See *Advancing Healthy Housing, a Strategy for Action* at http://portal.hud.gov/hudportal/documents/huddoc?id=ratplan_final_11_13.pdf.

¹⁴ CDC. *CDC Response to Advisory Committee on Childhood Lead Poisoning Prevention Recommendations in “Low Level Lead Exposure Harms Children: A Renewed Call of Primary Prevention.”* (CDC Response.) Atlanta, June 7, 2012. (Corrected from initial release May 13, 2012) www.cdc.gov/nceh/lead/acclpp/cdc_response_lead_exposure_recs.pdf

that is “federally assisted housing, federally owned housing, or public housing” from being enrolled under the section’s grants. Indeed, Congress required lead hazard evaluation and control in precisely those three categories of housing when it enacted sections 1012 and 1013 of Title X, under which the LSHR was issued, so that the lead hazard control grants and the LSHR complement each other in the housing stock they address.

HUD emphasizes that the scope of its authority under Title X is limited to lead-based paint hazard reduction in housing, and the scope of this rule is further limited to the reduction of those hazards in HUD-assisted housing. HUD is authorized by Title X to control lead-based paint and lead-based paint hazards in certain HUD-assisted target housing. 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. Title X required the EPA to promulgate standards for lead-based paint hazards, specifically, paint-lead hazards, dust-lead hazards, and soil-lead hazards, which it did through rulemaking.¹⁵ HUD has incorporated the EPA’s lead-based paint hazard standards in the LSHR.¹⁶ Controlling exposures to lead from water is outside of HUD’s authority under Title X. The EPA also has responsibilities regarding lead-based paint under Title X, and the EPA administers other laws regulating lead, including the Clean Air Act, Clean Water Act, Safe Drinking Water Act, Resource Conservation and Recovery Act, and Comprehensive Environmental Response, Compensation, and Liability Act, among others.¹⁷

C. CDC’s Revised Guidance on Elevated Blood Lead Levels

¹⁵ 15 U.S.C. 2683, implemented by EPA at 40 CFR 745.65 and 745.227(e)(8)(vii).

¹⁶ 24 CFR 35.110, 35.1315, 35.1320(b)(2), and 35.1325.

¹⁷ See <https://www.epa.gov/lead/lead-laws-and-regulations> for more information.

Until 2012, children were identified by CDC as having a blood lead “level of concern” if testing found 10 or more micrograms per deciliter of lead in the blood (10 µg/dL). In 2012, CDC revised its guidance on childhood lead poisoning in response to recommendations by CDC’s Advisory Committee on Childhood Lead Poisoning Prevention (ACCLPP), which concluded that a growing number of scientific studies show that even low blood lead levels can cause lifelong health effects. CDC accepted the recommendation of the ACCLPP to eliminate its use of the term and concept of “blood lead level of concern.”¹⁸ CDC is instead using a “reference range value” to identify children who have been exposed to lead and who require case management. CDC uses the phrase, “to identify persons whose exposure to a toxic substance is higher than that of most persons in the population and useful in instances when no clear threshold for effects has been identified,” as is the case for childhood blood lead levels.¹⁹

Consistent with the ACCLPP recommendation II that CDC link lead levels in its guidance to results from CDC’s National Health and Nutritional Examination Survey (NHANES),²⁰ the CDC’s “reference range value” method for defining elevated blood lead levels (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 NHANES. CDC’s current reference range level is 5 µg/dL (5 micrograms of lead per deciliter). This level, established in 2012 as part of CDC’s response to

¹⁸ See Advisory Committee on Childhood Lead Poisoning Prevention. Low Level Lead Exposure Harms Children: A Renewed Call for Primary Prevention. Atlanta, January 4, 2012. www.cdc.gov/nceh/lead/acclpp/final_document_030712.pdf. The ACCLPP’s charter expired in October 2013. Activities in the Committee’s field of interest are now conducted by the Childhood Lead Poisoning Prevention Subcommittee of the CDC’s Board of Scientific Counselors, National Center for Environmental Health / Agency for Toxic Substances and Disease Registry (NCEH/ATSDR). See, e.g., www.atsdr.cdc.gov/science/docs/BSC_MINUTES_MAY_2014.pdf.

¹⁹ Raymond J, Wheeler W, Brown, MJ. Lead Screening and Prevalence of Blood Lead Levels in Children Aged 1–2 Years — Child Blood Lead Surveillance System, United States, 2002–2010 and National Health and Nutrition Examination Survey, United States, 1999–2010. *Morbidity and Mortality Weekly Report*. v. 63, n. 2, p. 36–42. September 12, 2014. www.cdc.gov/mmwr/preview/mmwrhtml/su6302a6.htm.

²⁰ CDC National Center for Health Statistics, National Health and Nutrition Examination Survey. Homepage at www.cdc.gov/nchs/nhanes.htm.

ACCLPP, is lower than CDC's former blood lead level of concern, established in its 1991 Statement,²¹ which had been 10 µg/dL, and its level for recommending environmental intervention for children, 20 µg/dL, or 15 µg/dL if that level persists, levels that it reaffirmed in its 2005 Statement.²² This new lower value means that more children will likely be identified as having lead exposure, allowing parents, doctors, public health officials and communities to take action earlier to reduce the child's future exposure. It is important to note that by CDC's tying its reference value to the national distribution of blood lead levels, the reference level will continue to decrease whenever progress is made on reducing childhood lead exposure. For instance, if the 97.5 percentile drops to 2 µg/dL due to reductions in exposure to lead paint exposure, the number of children who have lead exposures above the new reference value would change only slightly, based on the growth of the national population of children under age 6, which would be about 2 percent over CDC's four-year reference range value updating period.²³ CDC concurred in principle with the ACCLPP recommendation to adopt a reference range that is tied to the national distribution of blood lead levels (CDC Response to ACCLPP recommendation II.)

HUD's currently codified LSHR, at 24 CFR 35.110 (the definition section), uses the term "environmental intervention blood lead level" (EIBLL). EIBLL is the blood lead level at which an evaluation for lead-based paint hazards and interim controls of such hazards identified (i.e., a type of environmental intervention) are to be conducted in certain housing covered by the LSHR. Specifically, HUD defined EIBLL as "a confirmed concentration of lead in whole blood equal to

²¹ CDC. Preventing Lead Poisoning in Young Children. A Statement by the Centers for Disease Control, chap. 8. October 1991. www.cdc.gov/nceh/lead/publications/books/plpyc/contents.htm.

²² CDC. Preventing Lead Poisoning in Young Children. A Statement by the Centers for Disease Control and Prevention. August 2005. p. 2. www.cdc.gov/nceh/lead/publications/PrevLeadPoisoning.pdf.

²³ Calculated based on Table 1, Population by Sex and Selected Age Groups: 2000 and 2010, in Howden LM and Meyer JA. U.S. Census Bureau. Age and Sex Composition 2010. 2010 Census Briefs. C2010BR-03. May 2011. Page 2. www.census.gov/prod/cen2010/briefs/c2010br-03.pdf.

or greater than 20 µg/dL for a single test or 15-19 µg/dL in two tests taken at least 3 months apart.” HUD’s definition is consistent with the guidance issued by CDC in November 1997, i.e., shortly before the LSHR was published on September 15, 1999, at 64 FR 50139-50231. CDC’s 1997 guidance was that a blood lead level of 10-14 µg/dL should trigger monitoring, certain parental actions, and perhaps community-wide education, but not lead hazard control in an individual child’s home.²⁴ At the time that HUD was developing the LSHR, CDC did not recommend a full home inspection or assessment in response to blood lead levels below 15 µg/dL. CDC’s revised guidance uses a reference range value to trigger the identification of conditions in the environment associated with lead-exposure hazards. CDC’s revised guidance recommends that children under age 6 should not live or spend significant time in homes with lead-exposure hazards (CDC Response to ACCLPP recommendations II and III).

Although HUD has not yet conformed the LSHR to reflect the CDC’s 2012 revised approach for establishing the definition of EBLL, HUD’s *Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing* (HUD Guidelines) second edition (2012), which provide guidance information regarding evaluation and hazard reduction activities described in the LSHR (24 CFR 35.1310(a)), adopted CDC’s reference range value method for defining an EBLL.²⁵ In addition, HUD has implemented use of CDC’s revised definition in both of its lead hazard control grant programs – the Lead-Based Paint Hazard Control grant program and the Lead Hazard Reduction Demonstration grant program – in the annual notices of funding

²⁴ CDC. Screening Young Children for Lead Poisoning: Guidance for State and Local Public Health Officials. Chapter 4. Role of Child Health-Care Providers in Childhood Lead Poisoning Prevention. Atlanta. November 1997. www.cdc.gov/nceh/lead/publications/screening.htm.

²⁵ See http://portal.hud.gov/hudportal/HUD?src=/program_offices/healthy_homes/lbp/hudguidelines, HUD Guidelines, esp. chapter 16, Investigation and Treatment of Dwellings that House Children with Elevated Blood Lead Levels.

availability (NOFAs) issued for these programs commencing in fiscal year 2013,²⁶ the first NOFAs issued after CDC revised its guidance, advising the grantees of grants awarded under those NOFAs to use the definition to prioritize enrollment of housing units for lead hazard control work.

ACCLPP recommendation X was that CDC adopt prevention strategies to reduce environmental lead exposures in soil, dust, paint, and water before children are exposed. As part of its response, CDC noted that it would continue to emphasize the importance of environmental assessment and mitigation of lead hazards before children are exposed (CDC Response to ACCLPP recommendation X).

ACCLPP recommendation XI was that, “If lead hazards trigger a response in any unit in a multi-family housing complex, the same response action should be applied to all similar untested units in the housing complex, unless a risk assessment demonstrates that no lead hazards are present in the other units.” In response, CDC concurred with the evidence suggesting that a building that houses one child with lead poisoning is an indication that other children in that building are likely at risk (CDC Response to ACCLPP recommendation XI).

D. Response to CDC Guidance

²⁶ HUD Office of Lead Hazard Control and Healthy Homes. Notice of Funding Availability for HUD’s Fiscal Year (FY) 2013 Lead-Based Paint Hazard Control Grant Program and Lead Hazard Reduction Demonstration Grant Program. December 3, 2012. <http://portal.hud.gov/huddoc/2013leadcombonofa.pdf>. FY 2014 Lead-Based Paint Hazard Control (LBPHC) Grant Program and Lead Hazard Reduction Demonstration (LHRD) Grant Program. May 13, 2014. <http://portal.hud.gov/hudportal/documents/huddoc?id=2014leadcombonofa.pdf>. FY 2015 Lead-Based Paint Hazard Control (LBPHC) Grant Program. May 7, 2015. <http://portal.hud.gov/hudportal/documents/huddoc?id=2015lbphcnofa.pdf>. FY 2015 Lead Hazard Reduction Demonstration (LHRD) Grant Program. May 7, 2015. <http://portal.hud.gov/hudportal/documents/huddoc?id=2015lhrdnofa.pdf>. Lead-Based Paint Hazard Control (LBPHC) Grant Program for FY 2016. http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/grants/fundsavail/nofa16/lbphc. Lead Hazard Reduction Demonstration (LHRD) Grant Program for FY 2016. http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/grants/fundsavail/nofa16/lhrd.

HUD has been implementing primary prevention – the strategy of emphasizing preventing exposure rather than responding after the exposure has taken place²⁷ – since before CDC responded to the ACCLPP recommendations, specifically, implementing most of those recommendations that pertain to HUD.

Regarding the CDC Response to ACCLPP recommendation II, on using the reference range value, as noted above, HUD issued the second edition of its *Guidelines*, which included information on environmental interventions based on CDC’s revised approach to EBL, ²⁸ and used the revised definition in its NOFAs for its Lead Hazard Control Grant Programs starting with the first NOFA after the CDC Response was published.

Regarding the CDC Response to ACCLPP recommendation III, on primary prevention, one of the purposes of the LSHR, as noted above, is to ensure, as far as practicable, that federally-owned or federally-assisted target housing does not have lead-based paint hazards. Assisted target housing covered by the rule is assessed for hazards before the assisted occupants move in; controls before occupancy are required when hazards are identified; when the assistance is ongoing, ongoing lead-based paint maintenance is required, periodic re-evaluations for the presence of lead hazards are conducted, and hazards are controlled, and occupants are notified of the results – all of these actions are independent of, and precede, children’s blood lead levels increasing as a result of lead-based paint hazards in their housing.

Regarding the CDC Response to ACCLPP recommendation VI, that clinicians report EBL cases to local and state health and/or housing departments, the LSHR includes, in the subparts pertaining to ongoing assistance for target housing, the requirement that the owner (or

²⁷ CDC Response. *op. cit.*

other “designated party” responsible for the assistance under the rule) promptly report the name and address of a child identified as having an EIBLL to the public health department within 5 business days of being so notified by any other medical health care professional.²⁹

Regarding the CDC Response to ACCLPP recommendation VII, HUD has long been engaged in educating families, service providers, advocates, and public officials on primary prevention of lead exposure in homes, through outreach campaigns, development, publication and distribution of brochures, flyers, manuals, and guidance documents, training of housing sector stakeholders, and supporting the EPA’s National Lead Information Center, which provides the general public and professionals with information about lead, lead hazards, and their prevention.³⁰

Regarding the CDC Response to ACCLPP recommendation VIII, HUD has long facilitated data-sharing between health and housing agencies, promoted preventive lead-safe housing standards for target housing, identifying financing for lead hazard remediation, and provided families with the information needed to protect their children from hazards in the home. For example, as far back as 1990, in its Interim Guidelines on addressing lead hazards in public and Indian housing, HUD encouraged public housing agencies to collaborate with health departments on, e.g., encouraging blood lead screening and development of outreach materials, sharing data about cases of high blood lead levels in children, then called “lead poisoning” or elevated blood

²⁹ 24 CFR 35.730(e), 830(d), 1130(e), 1225(e).

³⁰ See, e.g., EPA. Lead Hotline - The National Lead Information Center. <https://www.epa.gov/lead/forms/lead-hotline-national-lead-information-center>.

lead level (albeit with the different quantitative meaning at that time), referring children to a lead hazard control program,³¹ and the Department has continued these efforts since then.

Regarding the CDC Response to ACCLPP recommendation X, which emphasizes the importance of environmental assessments to identify and mitigate lead hazards as a primary prevention technique, as noted above, the LSHR requires this of all of the assisted housing covered by the rule. Similarly, on the item that CDC adopt prevention strategies to reduce environmental lead exposures in soil, dust, paint, and water before children are exposed, under the LSHR, as noted above, HUD has been implementing the prevention strategy to reduce environmental lead exposures in soil, dust, and paint, the media for which it has authority to do so under Title X. Regarding lead exposures from water, see the EPA Integrated Science Assessment for Lead.³²

Regarding several additional ACCLPP recommendations, HUD has been implementing the CDC response since the issuance of the CDC Response.

Regarding the recommendation XIII, specifically, the element of the recommendation that has a housing connection, on CDC improving the use of data from screening programs, HUD and CDC collaborated on matching addresses of HUD-assisted residents with national health survey data to develop a method for improving the targeting of lead hazard control efforts and resources.³³ HUD will continue seeking ways it can contribute to CDC's efforts in this regard.

II. Regulatory Approach

³¹ HUD Office of Public and Indian Housing. Lead-Based Paint: Interim Guidelines for Hazard Identification and Abatement in Public and Indian Housing. September 1990.

³² EPA. Integrated Science Assessment for Lead. See fn. 1.

³³ The abstract from this research will be published in the conference program for the Epidemiology Congress of the Americas' conference, June 21-24, 2016 (<https://epiresearch.org/2016-meeting/>). The full abstract citation will be inserted here at that time, and when the article is published, that article's citation will be inserted here.

Although HUD is already applying the CDC's 2012 revised definition of EBLL in its lead hazard control NOFAs and in its *Guidelines*, the LSHR has not yet been updated to reflect the CDC's revised definition of EBL. During this time, federal agencies involved with reducing childhood lead exposures, including HUD, CDC, EPA and NIEHS, have continued to explore how best to use scientific and medical information to approach the problem of childhood lead exposures and develop approaches for prioritizing action within the limits of available resources. To keep HUD's criterion for requiring environmental intervention in response to a child having a sufficiently high blood lead level to warrant such action in synchrony with CDC's approach for determining when environmental intervention is recommended, this rule therefore proposes to revise the LSHR to adopt the CDC's approach to establishing a blood lead level for which CDC recommends environmental intervention, i.e., a trigger level for environmental intervention as the definition of EBLL in the LSHR, and apply it to determining when environmental interventions in federally-assisted and federally-owned target housing covered by the rule are to be conducted. In addition, this rule proposes to change the LSHR to reflect other CDC guidance responding to the ACCLPP recommendations, and to make additional improvements based on HUD's experience with implementing the LSHR in order to further strengthen prevention strategies in federally-assisted and federally-owned target housing.

Specifically, HUD is proposing to revise the LSHR regarding target housing covered by the five subparts of the LSHR that are related to children under age 6 exposed to lead in housing where the Federal Government maintains a continuing financial or ownership relationship. HUD proposes to implement the recommendations of the CDC, within the scope of HUD's authority, and in consideration of available federal resources. The five subparts currently use the EIBLL threshold for undertaking an environmental response.

HUD is proposing to revise these subparts to use the CDC's approach for determining when a child's blood lead level triggers the environmental response. The following types of federal housing assistance are covered in 24 CFR part 35 subparts for which an environmental intervention may be required:

D – Project-Based Assistance Provided by a Federal Agency other than HUD

H – Project-Based Assistance

I – HUD-Owned and Mortgagee-in-Possession Multifamily Property

L – Public Housing Programs

M – Tenant-Based Rental Assistance

Provisions proposed to be revised within the individual subparts are described below.

In regard to housing for which the current rule requires response to EIBLL cases and this proposed rule would require response to EBL cases, the following types of hazard evaluation and reduction activities are required, whether or not a child with an EIBLL resides or is expected to reside in a unit covered by the LSHR:

Lead-based paint inspection: Subparts I and L. This is a surface-by-surface investigation to determine the presence (including the location) of lead-based paint and providing a report explaining the results of the investigation.

Hazard Evaluation:

- Risk Assessment: Subparts D, H (assistance over \$5,000 per unit per year), and I. Lead risk assessments involve visual assessment for deteriorated paint, testing of deteriorated paint to determine if it is lead-based paint (and thus, a lead-based paint hazard because of the

deterioration), dust wipe sampling of window sills and floors, and sampling of bare soil.

- Visual assessment for deteriorated paint: Subparts H (assistance up to \$5,000 per unit per year), M
- Reevaluation: Subparts D, H (assistance over \$5,000 per unit per year), I and L. Reevaluations involve a visual assessment of painted surfaces and limited dust and soil sampling conducted periodically following lead-based paint hazard reduction where lead-based paint is still present.
- Periodic inspection for deteriorated paint: Subpart M: These periodic inspections are conducted as part of the inspection of the assisted housing.

Hazard Reduction:

- Abatement of LBP hazards: L (during comprehensive modernization). Abatement is set of measures designed to permanently (for an expected design life of at least 20 years) eliminate lead-based paint or lead-based paint hazards Abatement includes: removing lead-based paint and dust-lead hazards, permanently enclosing or encapsulating lead-based paint, replacing components or fixtures painted with lead-based paint, and removing permanently covering soil-lead hazards; along with all the preparation, cleanup,

disposal, and post-abatement reoccupancy clearance testing activities associated with those measures.

Interim controls of LBP hazards: Subparts D, I, and L (pending abatement during comprehensive modernization). Interim controls are measures designed to reduce temporarily human exposure or likely exposure to lead-based paint hazards. They include, but are not limited to, repairs, painting, temporary containment, specialized cleaning, clearance for tenant reoccupancy after projects that involve paint disturbance larger than the *de minimis* amounts specified in the rule,³⁴ ongoing lead-based paint maintenance activities, and the establishment and operation of management and resident education programs.

Paint stabilization: Subparts H (assistance up to \$5,000 per unit per year), M. Paint stabilization involves repairing any physical defect in the substrate of a painted surface that is causing paint deterioration, removing loose paint and other material from the surface to be treated, and applying a new protective coating or paint.

Lead hazard evaluation and control activities in HUD-assisted and HUD-owned housing are subject to the requirements of the applicable civil rights laws, including the Fair Housing Act as amended (for example, by the Fair Housing Amendments Act), and its prohibition of discrimination on the basis of disability or 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). These laws,

³⁴ 24 CFR 35.1350(d): 20 square feet on exterior surfaces, 2 square feet in any one interior room or space, or 10 percent of the total surface area on an interior or exterior type of component with a small surface area (e.g., window sills, baseboards, and trim).

and their associated HUD regulations³⁵ and guidance³⁶ are incorporated into the LSHR through its § 35.145, Compliance with Federal laws and authorities. The applicability of the fair housing laws, regulations, and guidance to these activities would continue without change by this proposed rule.

A. Response to Young Children with Elevated Blood Lead Levels

In updating the LSHR to reflect the CDC's approach to defining EBL, within the scope of HUD's authority, HUD is proposing to shift its threshold for environmental intervention from the environmental intervention blood lead level (EIBLL), as described above, to the elevated blood lead level (EBLL) that is identified in CDC's guidance for recommending a childhood blood lead level such that an environmental intervention should be conducted, at any given point in time. In 2012, CDC's guidance used the reference range value, which had the numerical value of 5 µg/dL; HUD would continue to rely on CDC's guidance, whether CDC's approach continued to use the reference range value or used another criterion. In addition, this rule proposes to revise the type of hazard control undertaken when lead-based paint or other hazards are identified and, in the case of housing projects with more than one unit, address lead-based paint hazards in those other units in which children under age 6 reside.

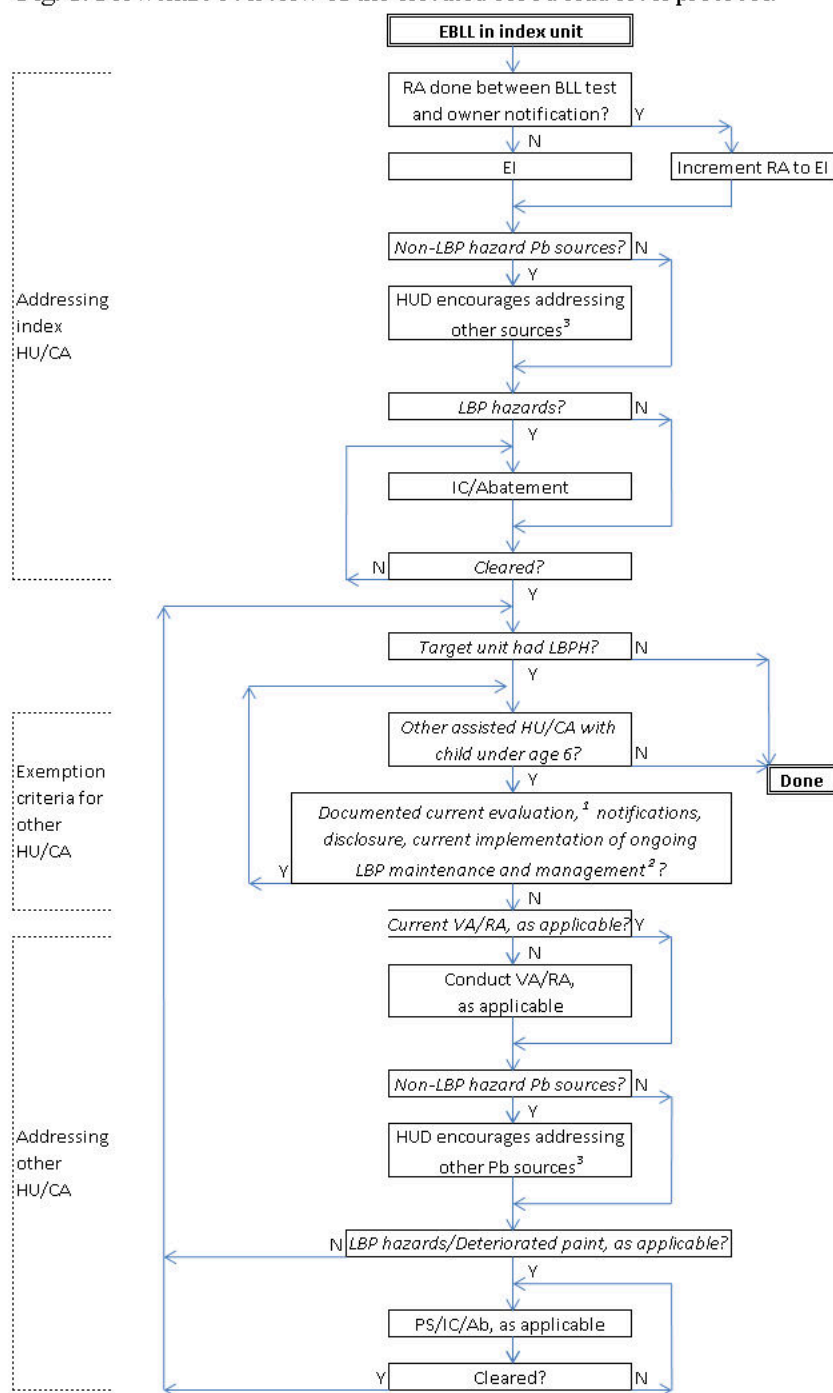
The approach to implementing the regulatory protocol under this proposed rulemaking is founded on the currently codified LSHR, the CDC guidance on blood lead reference levels, the HUD *Guidelines*, and HUD's experience implementing the LSHR since its 1999 promulgation.

³⁵ See 24 CFR parts 100 – 180, especially parts 135 and 146.

³⁶ See the Office of Fair Housing and Equal Opportunity's FHEO Library at http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/library#Guidance for links to a set of Policy and Guidance documents. The FHEO Library also contains links to sets of documents on Decrees and Conciliation Agreements, Marketing Materials, Memorandums of Understanding (MOU), Publications, Studies, Voluntary Compliance Agreements, and Annual Reports. The Office's homepage is at http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp.

Figure 1 provides an overview of the proposed protocol for addressing elevated blood lead level cases in assisted housing covered by the LSHR; its details are discussed below.

Fig. 1. Flowchart overview of the elevated blood lead level protocol.



1. LBP inspection, RA, VA, reevaluation, as applicable.

2. Used certified firms/workers in maint/rehab/mod/abatement, successful clearances in past year.

3. E.g., through educational efforts in collaboration with the public health department and other resources. See the HUD *Guidelines*, Chapter 16, section IV.C, Elimination or Control of Other Lead Hazards, for guidance and links to materials.

4. For VA, assess all units with children under age 6. For RA, select units with children under age 6 to assess randomly based on HUD *Guidelines*, Chapter 7, Section V.B, Selection of Housing Units, Common Areas, and Exterior Site Areas.

Ab = Abatement, BLL = blood lead level, CA = common area, EBLL = elevated blood lead level, HU = housing unit, IC = interim controls, LBP = lead-based paint, Pb = lead, PS = paint stabilization, RA = risk assessment, VA = visual assessment.

In broad terms, HUD’s proposed protocol for responding to a case of a child under age 6 with an EBLL would include the “designated party” undertaking certain actions. The designated party is the owner or other entity (e.g., federal agency, 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 § 35.110). As described below, the protocol is the same for each of the four applicable HUD subparts (H, I, L, M), and slightly narrower for the other agencies’ subpart (D), for which the agencies would decide how to deal with other housing units in multi-unit properties than the unit in which the child with an EBLL resides.

The protocol would include the designated party:

- Conducting an environmental investigation³⁷ of the dwelling unit in which the child lived at the time the blood was last sampled (the “index” unit³⁸) and of common areas servicing the index unit.³⁹ (The procedure for conducting the environmental investigation is described below.)
- Conducting interim control⁴⁰ of lead-based paint hazards identified in the index unit and,

³⁷ This rule proposes to defined this term as 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”).

³⁸ 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.

³⁹ However, if the designated party conducted a risk assessment of the unit and common areas servicing the unit between the time the child’s blood was last sampled and when the designated party received notification of the EBLL, the designated party need only conduct the elements of an environmental investigation not already conducted during the risk assessment. See below for the discussion of environmental investigations vs. risk assessments.

⁴⁰ Interim control refers to actions that reduce temporarily human exposure or likely exposure to lead-based paint hazards including specialized cleaning, repairs, maintenance, painting, temporary containment.

in the unlikely case that the work duration exceeds thresholds in the LSHR⁴¹ (the most applicable threshold, of 5 calendar days, with the worksite contained and it and the area within 10 feet cleaned so that the family can return each day, is not expected to be exceeded), temporarily relocating the family to a suitable, decent, safe, and similarly accessible dwelling unit that does not have lead-based paint hazards.

- Controlling other housing-related sources of lead exposure in the building, such as lead-contaminated debris.
- Being encouraged to gain the collaboration of the occupants in addressing the presence and use of sources of lead exposure that are not housing-related. Non-housing items (such as lead-containing cosmetics, pottery, folk remedies,⁴² take-home exposures from the workplace, etc.) owned or used by the occupants are outside of the scope of Title X and, as a result, the LSHR.

The proposed procedure for conducting an environmental investigation, including procedures for investigating sources of lead exposure other than lead-based paint hazards, as presently found is found in Chapter 16 of the HUD *Guidelines*.⁴³ The protocol includes:

⁴¹ 24 CFR 35.1345(a)(2).

⁴² Lead has been found in some traditional (folk) medicines used by, for example, East Indian, Indian, Middle Eastern, West Asian, and Hispanic cultures. Folk medicines can contain herbs, minerals, metals, or animal products. Lead and other heavy metals are put into certain folk medicines because these metals are thought to be useful in treating some ailments. Sometimes lead accidentally gets into the folk medicine during grinding, during coloring, or from the package. See www.cdc.gov/nceh/lead/tips/folkmedicine.htm.

⁴³ Chapter 16 of the HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing notes that, “The purpose of the [environmental] investigation is to identify lead hazards in the environment of a child. An ordinary risk assessment attempts to uncover lead-based paint hazards in a dwelling, regardless of whether a child has an EBL. The investigator is obligated to conduct a comprehensive investigation of all sources of lead in the child’s environment, not just those lead exposures directly related to the child’s residence. This investigation includes studying less-common sources of lead, such as glazed pottery and folk medicines or remedies, etc., and

- Reviewing the findings of any previous lead-based paint inspection, risk assessment, environmental investigation, or reevaluation for the property.
- Conducting a comprehensive interview of the family of the child, based on the CDC EBLL environmental investigation checklist or HUD EBLL questionnaire (both are in the chapter), or a comparable questionnaire (such as one from the public health department).
- Conducting a risk assessment.⁴⁴
- Augmenting the risk assessment, in consultation with the public health department managing the child's EBLL case, if that public health department chooses to cooperate with the designated party, to determine what, if any, other possible sources of exposure should be investigated, including, but not limited to:
 - Drinking water.
 - Glazed pottery or tableware that may contain lead glazes.

other dwellings or areas frequented by the child. Some of these sources may be discovered by the results of the questionnaire. The investigator tests deteriorated paint on furniture identified as a potential hazard to the environmental intervention blood lead (EIBLL) child, regardless of who owns the furniture.” (Paragraphs merged.)

⁴⁴ A risk assessment is (per § 35.110), an on-site investigation to determine the existence, nature, severity, and location of lead-based paint hazards; and the provision of a report by the individual or firm conducting the risk assessment explaining the results of the investigation and options for reducing lead-based paint hazards. As such, it is narrower in scope than an environmental investigation, as described here.

- o Work clothes or vehicle that may have been contaminated from a parent's or guardian's work place.
 - o Imported cosmetics, hobbies, folk remedies, and candies. (Hobby contamination involving lead (e.g., hunting, fishing, furniture refinishing, stained glass making, etc.) has been recognized as a lead exposure source in, e.g., CDC guidance and EPA guidance).
- Providing to the HUD field office documentation that the designated party has conducted the activities above, within 10 business days of the deadline for each activity. In accordance with the Government Paperwork Elimination Act, which encourages electronic submission of information as a substitute for paper,⁴⁵ the designated party may submit the documentation of compliance with the LSHR regarding the affected units electronically.

The designated party or public health department may have conducted an environmental investigation of the index unit and common areas servicing it between the dates the child's blood was last sampled and the designated party received the EBLN notification. If so, the designated party would not need to conduct another environmental investigation. Similarly, if the designated party had conducted a risk assessment of the index unit and common areas servicing the unit during that period, it would not need to conduct another risk assessment, it would need to conduct only the additional elements of an environmental investigation.

⁴⁵ 44 U.S.C. 3504(a)(1)(B)(vi).

A key part of the response to the case of a child with an elevated blood lead level is the environmental investigation of the unit in which the child resided, i.e., the index unit. The index unit may be in a building or project with other assisted dwelling units covered by the LSHR in which children under age 6 reside or are expected to reside (see the discussion of “expected to reside” in section II.A.2). If so, the protocol would include the designated party either:

- Providing to the HUD field office⁴⁶ documentation that the designated party has complied with required evaluation (with the type of evaluation, i.e., lead-based paint inspection, risk assessment, or visual assessment for deteriorated paint, in accordance with the Rule’s subpart regarding the type of assistance), notification, lead disclosure, ongoing lead-based paint maintenance, and lead-based paint management in those units; or,
- If the designated party does not provide such documentation of compliance to date, conducting a risk assessment of the non-compliant other units within the building or project covered by the LSHR and the common areas that service them, and conducting interim controls of lead-based paint hazards identified, or in the case of tenant-based rental assisted units and project-based rental assisted units receiving

⁴⁶ See the HUD Field Office listing webpage at http://portal.hud.gov/hudportal/HUD?src=/program_offices/field_policy_mgt/localoffices. For Multifamily Housing assistance, designated parties may also contact the respective Regional Center, Regional Satellite Office, Hub or Program Center directly; see the Multifamily Regional Centers and Satellite Offices webpage at http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/hsgmfbus/abouthubspcs.

under \$5,000 per unit per year or being single family housing, conducting visual assessment and stabilization of deteriorated paint,⁴⁷ and providing to the HUD field office documentation that the designated party has conducted the evaluation (i.e., risk assessment or visual assessment, as applicable) and hazard control (i.e., interim controls or paint stabilization, as applicable) within 10 business days of the deadline for the respective activities.⁴⁸

As noted above in regard to the Government Paperwork Elimination Act, the designated party may submit the documentation of compliance with the LSHR regarding the affected units electronically.

Consistent with CDC's response to the ACCLPP recommendations, chapter 16 of the HUD *Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing* (HUD *Guidelines*)⁴⁹ recommends control of sources of lead exposure identified during an environmental investigation or risk assessment. These sources of lead exposure include:

- Lead-based paint hazards (i.e., paint-lead hazards, dust-lead hazards, or soil-lead hazards, as defined and given quantitative measure by EPA at 40 CFR 745.63 and 745.65, respectively), which are identified by a lead risk

⁴⁷ Paint stabilization is "repairing any physical defect in the substrate of a painted surface that is causing paint deterioration, removing loose paint and other material from the surface to be treated, and applying a new protective coating or paint." (§ 35.110)

⁴⁸ Paint stabilization is "repairing any physical defect in the substrate of a painted surface that is causing paint deterioration, removing loose paint and other material from the surface to be treated, and applying a new protective coating or paint." (§ 35.110)

⁴⁹ HUD. *Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing*. Washington, 2014. http://portal.hud.gov/hudportal/HUD?src=/program_offices/healthy_homes/lbp/hudguidelines.

assessment. A risk assessment is defined in the LSHR at § 35.110 (see footnote 45, above), and given operational meaning for the LSHR incorporation of EPA's Lead-Based Paint Hazards, Lead-Based Paint Activities, and State and Indian Tribal Programs rules (40 CFR part 745, parts D, E, and Q, respectively, by the LSHR at 24 CFR 35.1320, Lead-based paint inspections and risk assessments), and

- Other housing-related sources of lead exposure that are outside of the scope of lead risk assessments. The procedure for environmental investigations, as provided in chapter 16 of the Guidelines, is summarized above.

HUD notes that reevaluation is not part of the response to an EBL. Reevaluations (or, for tenant-based rental assistance, periodic housing quality standard inspections) are already part of the regular ongoing lead-based paint management required in the subparts this proposed rule would amend, so they are not part of this amendment.

HUD's statutory authority to require controls of lead exposure sources, in contrast to recommending control of them, is limited to housing hazards under the United States Housing Act of 1937 (1937 Act) 42 U.S.C. 1437 et seq., as amended⁵⁰ (e.g., on public housing meeting housing quality standards⁵¹ through lease contracts obligating public housing agencies to

⁵⁰ Pub.L. 93-383, 88 Stat. 633, approved August 22, 1974. (The codified version can be searched on www.fdsys.gov; the text of the United States Code's subchapter, General Program of Assisted Housing (42 U.S.C. 1437 - 1437z-8) can be downloaded from www.gpo.gov/fdsys/pkg/USCODE-2012-title42/html/USCODE-2012-title42-chap8-subchapI.htm.)

⁵¹ Section 6(f)(2); 42 U.S.C. 1437d(f)(2).

maintain housing projects in safe condition,⁵² and on safety requirements for housing assistance programs for lower-income families⁵³). In this context, the controls are limited to lead-based paint hazards, rather than lead exposures from the personal contents of the housing residents and visitors, the public water supply, ambient air levels or industrial emissions.

As seen in numerous HUD regulations from its various program offices,⁵⁴ HUD can encourage activities even if it does not require them. Accordingly, through this rulemaking, HUD encourages (in §§ 35.730(f)(3)(iv), 35.1130(f)(4), and 35.1225(f)(3)) designated parties to identify and control lead-based paint hazards in locations not covered by the LSHR (i.e., unassisted housing units), and lead exposure sources other than lead-based paint hazards, even if doing so is not required by the LSHR.

As described below, across the different subparts of the LSHR, there are some differences in terminology, scoping, and exceptions, based on the specifics of the housing assistance.

1. Dwelling unit in which the child resided.

HUD is proposing that, when a child under age 6 residing in target housing where the Federal government maintains a continuing financial or ownership relationship is reported to have an EBLL, the designated party must complete an environmental investigation of the index unit, and of common areas servicing the index unit, within 15 calendar days of the designated party being notified.

As noted above, several types of federal housing assistance, covered by 24 CFR part 35 subparts D, H, I, L, and M, identified above, have provisions that address lead safety in regard to

⁵² Section 6(l)(3); 42 U.S.C. 1437d(l)(3).

⁵³ Section 8(c)(4); 42 U.S.C. 1437f(c)(4).

⁵⁴ E.g., 24 CFR 8.28(a)(2), 50.3(a), 51.101(a)(5), 51.106(a)(4), 91.105(a)(2)(i)(ii)(iii), 200.857(g)(4), 570.466, 902.75(f), 964.15, and 984.201(d)(5), etc.

children under age 6. The subparts apply when the Federal government maintains a continuing financial or ownership relationship to the target housing (vs. the short-term relationship in most rehabilitation projects, which ends when the construction work is completed, if there is no other long-term assistance relationship).

Similarly to the process under the currently codified rule, if the notification of an EBL case is received from a person who is not a medical health care provider, the requirement to conduct an environmental investigation would be conditioned on verification of the case information, including the child's blood lead level information with the public health department or other medical health care provider. However, the threshold for such verification would be changed from EIBLL to EBL as defined under this proposal.

Under the currently codified rule, the blood lead threshold for conducting the environmental investigation is fixed. Under this proposed rule, the threshold for the EBL would change when CDC updates its guidance for a childhood blood lead level such that an environmental intervention should be conducted. As of 2012, this was the reference range level for children under age 6 (i.e., the blood lead level at or above which the top 2.5th percentile of U.S. children's blood lead levels are to be found, per CDC's NHANES). CDC announced that it plans to update the reference range value every 4 years (CDC response to ACCLPP Recommendation II).⁵⁵ Thus, CDC's recommendation on a childhood blood lead level for recommending an environmental intervention would be updated at least that often.

⁵⁵ HUD recognizes that, if the EBL threshold continues to decrease over time, the measurement variability (sampling and analytical variability) will represent a larger fraction of the threshold value. It would therefore, be likely that, at some point, the percentile approach of the reference range value might not be correlated as tightly with determinable lead exposure sources, i.e., a smaller fraction of cases may be attributable to lead-based paint hazards. The environmental investigation will make that determination in individual cases. Should a statistically significant substantial trend toward low fractions of EBL cases being attributable to lead-based paint hazards be identified, HUD would consider further LSHR rulemaking based on the evidence available at that future point.

If the proposed rule is adopted, after CDC publishes an update to the EBL guidance, HUD would issue a notice on the applicability of that updated threshold to the LSHR going forward after a preparatory transition period. HUD's notice would, in order to provide regulatory and programmatic clarity, and to avoid unnecessary retroactive program changes, specify that the change would be prospective, not retroactive. Thus, the status of housing of children with blood lead levels based on measurements taken before the transition period ends that are in the range between the earlier and newer reference range values would not be affected by the change. (For example, if the earlier reference range value was 5.0 µg/dL, and a 4-year old child's blood lead level measured before the end of the transition period were 3.7 µg/dL, the child's dwelling unit would not need to be subject to an environmental investigation, even if the updated EBL value published after the child's blood were tested is 3.7 µg/dL or less. If the child continues to reside in federally-owned or -assisted housing covered by the environmental intervention requirement, and the child's blood, as retested after the transition period has ended is at or above the updated EBL value (in this example, at or above 3.7 µg/dL), the environmental intervention would then be required.)

Similarly, the blood lead level that would prompt notification to the public health department would be an EBL rather than an EIBL.

In order that HUD be able to promptly monitor implementation of the evaluation and hazard control procedures when an EBL case has occurred in HUD-assisted or HUD-owned target housing, HUD is proposing that the designated party notify within 5 business days of being notified of the EBL case by a public health department or any other medical health care professional both the HUD field office (as the currently codified rule requires for public housing, under § 35.1130(e)) and HUD's OLHCHH, which has been delegated authority for oversight of

the Lead Safe Housing Rule.⁵⁶ The OLHCHH, which is functioning as a public health authority as defined by the Privacy Rule (45 CFR parts 160 and 164) promulgated under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) (Pub.L. 104-191, 110 Stat. 1936, approved August 21, 1996, as amended),⁵⁷ is developing an electronic portal for submitting the case information, in order to minimize the reporting burden on designated parties, and will announce the availability of the portal and instructions for its use in a Federal Register notice. If, and so long as there is sufficient demand for notifications to be sent by mail or fax, the OLHCHH will make those submittal pathways available. Should it determine that there is insufficient demand; the OLHCHH will post a Federal Register notice to that effect.

The 15-day period for conducting environmental investigation would be the same period as the current LSHR requires in EIBLL cases.

If the investigation identified lead-based paint hazards in these areas, the designated party (or the owner, as applicable) would be required to conduct interim controls of the hazards within 30 calendar days of receiving the report of the investigation, as in the current rule.

Similarly, as part of this rulemaking, HUD encourages the designated party to address sources of lead exposure other than lead-based paint hazards. If those sources are housing-related, e.g., airborne emissions from housing activities conducted by the designated party (or the owner, as applicable), such as uncontrolled emissions from welding or soldering operations in the property's machine shop, the designated party (or the owner, as applicable) is encouraged by HUD to address the hazards. The public health department may issue an abatement order in regard to those sources; compliance with such an order is a requirement of state, tribal or local

⁵⁶ HUD. Delegation of Authority for the Office of Healthy Homes and Lead Hazard Control. 76 FR 45592. July 29, 2011. <https://federalregister.gov/a/2011-19279>.

⁵⁷ HUD-CDC memorandum, March 9, 2004. www.hud.gov/offices/lead.

law, as applicable. Some or all of the sources of lead exposure may be outside of the scope of Title X and the LSHR because they are not housing-related sources. For example, the sources may be non-housing items, such as lead-containing cosmetics, pottery, folk remedies, etc. owned or used by the occupants that produce exposures, lead contamination on clothing or skin and in vehicles from the workplace, out-of-home hobbies, or in-home hobbies. Chapter 16 of the HUD *Guidelines* includes a set of links to the CDC lead webpage on such sources.⁵⁸ That chapter also refers to the CDC lead webpage on at-risk populations (including children who are poor, are members of racial-ethnic minority groups, are recent immigrants, live in older, poorly maintained rental properties, or have parents who are exposed to lead at work; pregnant women; refugee children; and internationally adopted children),⁵⁹ which is of particular interest when no probable source of lead may be identified. Both of those web pages have further links to web pages on specific topics.

Regarding these sources, HUD encourages the designated party to gain the cooperation of the occupants in addressing the presence and use of non-housing-related sources of lead exposures. Similarly, some of these sources may be ambient, such as hazardous waste facility siting, or industrial emissions, regarding which, by this rulemaking, HUD is indicating that it is important that the designated party inform or even engage with local, state, and/or federal public health and/or environmental officials in addressing the problem.

Hazard reduction would be considered complete when either:

⁵⁸ www.cdc.gov/nceh/lead/tips/sources.htm .

⁵⁹ www.cdc.gov/nceh/lead/tips/populations.htm .

- Clearance of the unit and common areas servicing the unit is achieved and the clearance report from the risk assessor states that the control measures have been completed; or
- The public health department certifies that the lead-based paint hazard reduction and the control of other housing-related lead hazards are complete.

The designated party may have, between the date the child's blood was last sampled and when the designated party received the notification, conducted hazard reduction of the unit and common areas servicing the unit as described above, including passing clearance. If so, it need not redo the hazard reduction.

2. Other assisted dwelling units in the building or project.

ACCLPP's recommendation XI was that, "If lead hazards trigger a response in any unit in a multi-family housing project, the same response action should be applied to all similar untested units in the housing project, unless a risk assessment demonstrates that no lead hazards are present in the other units."

HUD is proposing that if, a) the dwelling unit in which the child under age 6 resided when she or he was reported as having an EBLL, i.e., the index unit, is part of a residential property or project that has other units of housing covered by the LSHR, and b) the index unit has been confirmed to have lead-based paint hazards, then the occupancy and lead management of other units covered by the LSHR with a child under age 6 residing or expected to reside would be examined to determine whether the designated party must conduct a risk assessment or visual assessment (as described in the bulleted paragraphs above). If so, and if lead-based paint hazards

(or deteriorated paint) are found in those other units, then interim controls or paint stabilization,⁶⁰ as applicable must be conducted, and clearance passed. On the other hand, if the index unit has been found not to have lead-based paint hazards, HUD is proposing that no risk assessment or visual assessment, as applicable, be required in other assisted units in the building or project. This approach is based on the predicate in the CDC response to ACCLPP recommendation XI, namely, that a response in other units is based on having “lead hazards trigger a response in any unit in a multi-family housing complex.” If the index unit does not have lead-based paint hazards, the CDC guidance does not recommend actions in other units.

If index unit has any lead-based paint hazards, HUD is proposing that the types of action required depend on whether a child under age 6 resides or is expected to reside in one or more other assisted units in the building or project, and the documented degree of compliance with the LSHR by the designated party in regard to the residential property, as reviewed by HUD if the designated party wishes to use its performance record as demonstrating that no lead-based paint hazards are likely to be present in other units. This prioritization is intended to focus limited federal resources on the situations of the highest risk to children under age 6 in other assisted units in the building or project where exposure to lead hazards may have occurred. HUD has, of course, no jurisdiction under sections 1012 or 1013 of Title X over unassisted units, but it encourages the use of the protocol below in unassisted units, even if it cannot require its application to those units. Similarly, regarding lead safety in situations not covered by the Rule, HUD encourages housing owners (occupant owners and landlords), housing maintenance, management, and renovation firms, and others to be aware of its hazards, and to work safely with

⁶⁰ Paint stabilization refers to repairing any physical defect in a painted surface that is causing paint deterioration, removing loose paint and other material from the surface to be treated, and applying a new protective coating or paint.

lead-containing building materials, for the protection of the health of occupants, visitors and workers, and their families.

In general, when the index unit has been found to have lead-based paint hazards, and a child under age 6 resides or is expected to reside in one or more other assisted units in the building or project, HUD is proposing certain actions be undertaken, based on the type of assistance. Specifically, the designated party would be required to (with exceptions as noted below):

- Conduct a risk assessment of those other units in public housing, project-based rental assisted multifamily properties receiving \$5,000 or more per unit per year in HUD assistance, or HUD-owned and mortgagee-in-possession multifamily properties with unit selection as described in the statistically valid random sampling protocol in Chapter 7, Section V, Inspections in Multi-family Housing, of the HUD Guidelines (as discussed below), or sample all of those other units.
- Conduct a visual assessment for deteriorated paint in those other units in tenant-based rental assisted units, project-based rental assisted properties receiving under \$5,000 per unit per year in HUD assistance, or project-based rental assisted single family housing in the same project receiving HUD assistance. Again, when there are a sufficient number of those other units, the random sampling

protocol in Chapter 7, Section V, of the HUD Guidelines may be used (as discussed below) for unit selection.

The occupancy of the other assisted units in the building or project would be examined to determine in which of them, if any, children under age 6 resided or were expected to reside as of the date when, regarding the index unit and common areas servicing that unit:

- If lead-based paint hazards were identified, the date the lead hazard control work passed clearance, that is, the unit (and/or common area) where the work was done is completed, and the residents can move into their unit (and/or pass through the common area) based on a successful visual inspection for completion of the work and cleanliness is passed and, for work that would disturb painted surfaces that total more than a small (“de minimis”) amount (defined for the LSHR in 24 CFR 35.1350(d)), passing a residual dust-lead level test; or
- If no lead-based paint hazards were identified, the date the environmental investigation in regard to the child in the index unit was completed.

The “expected to reside” wording is used because it is in the statutory and regulatory definitions of target housing as the exception to the exemption of housing for persons with disabilities or the elderly from target housing. Thus, housing for persons with disabilities or the elderly in which a child under age 6 resides or is expected to reside is covered by the scope of the

LSHR.⁶¹ As detailed in the definition section (§ 35.110) of the LSHR, as proposed to be amended by this rule:

“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.”

It is important to note that a “dwelling unit reserved for the elderly,” or a “dwelling unit ... designated exclusively for persons with disabilities” differs from a unit’s happening to be occupied by the elderly or by persons with disabilities. A child may be “expected to reside” in family housing (i.e., housing available for general occupancy, meaning that there are no restrictions on the types of people who may occupy the unit, or, in other words, the unit is available for occupancy in general to all individuals and families and is not designated or reserved for any particular category) even if there is no child living there at a particular time or even if an elderly family or a family with one or more persons with disabilities are the occupants.

When the designated party has this actual knowledge about another assisted unit in the building or project, that unit would be included among those that are assessed (unless the designated party had documented to HUD’s satisfaction, compliance with the LSHR demonstrating that no lead-based paint hazards were likely to be present in other units) and, if lead-based paint hazards or deteriorated paint (as applicable) are identified, treated.

The date clearance has passed is used in establishing the deadline for conducting the evaluation of the other units and the control of hazards identified, so that the designated party

⁶¹ 42 U.S.C. 4822(e)(1), 4851b(27); 24 CFR 35.110, 35.115.

will focus its initial efforts on the index unit and its associated common areas, in order to expedite evaluating and, if necessary, controlling lead-based paint hazards there.

If a family with a child under age 6 moves in to a unit formerly designated as one in which no children under age 6 were residing or expected to reside, a risk assessment or visual assessment (as applicable, based on the type of assistance) must be conducted in accordance with the current rule. If lead-based paint hazards or deteriorated paint (as applicable) are found, then, under the current rule, lead hazard control will be conducted to protect the child's health.

If the index unit has been found to have lead-based paint hazards, it is possible that the designated party may not have met the proposed certain performance requirements under the LSHR. Specifically, under the LSHR, the designated party is responsible for conducting and documenting current evaluation, notifications, and disclosure, and, depending on the type of assistance, may be responsible for conducting and documenting ongoing lead-based paint maintenance and management (see Sections II.A.3 and 4, respectively, below).

If the designated party has not met the applicable performance requirements above, and a child under age 6 with an EBLL resides in a unit covered by the LSHR that has lead-based paint hazards, HUD is proposing that the designated party conduct a risk assessment (or visual assessment, as applicable) in other dwelling units covered by the LSHR in which children under age 6 reside or are expected to reside, and the common areas servicing those units. If lead-based paint hazards or deteriorated paint, as applicable, are found in those other units, then interim controls or paint stabilization, as applicable must be conducted, and clearance passed.

If the designated party has met the applicable performance requirements above, and a child under age 6 with an EBLL resides in a unit covered by the LSHR, the designated party is encouraged by HUD to conduct a risk assessment (or visual assessment, as applicable) in other

dwelling units covered by the LSHR, although it would not be required to do so. When the set of units with children under age 6 has been identified, if a risk assessment is to be conducted, the designated party (in typical practice, through its risk assessment staff or contractor) would select either all of these units (and the common areas that service them) to assess, or, if the number of units is large enough (over 20, in pre-1960 housing, and over 10 in 1960-1977 housing), a random sample of units (and of the common areas that service them) in accordance with the HUD *Guidelines*, Chapter 7, Section V.B, Selection of Housing Units, Common Areas, and Exterior Site Areas. Random sampling for risk assessments is appropriate in the context of an elevated blood lead level response because it provides “a statistically significant degree of confidence about the existence of lead-based paint hazards,” in multifamily housing, and “avoids questions about the quality of the criteria used for targeting or worst case sample selection,” according to the HUD *Guidelines*, Chapter 5, Section III.B.1, Targeted, Worst Case, and Random Sampling. This level of programmatic confidence is particularly important in addressing housing in which a child has an EBL.

When the set of units with children under age 6 has been identified, if visual assessment is to be conducted, the designated party (in typical practice, through its risk assessment staff or contractor) would select all of these units (and the common areas that service them) to assess. The visual assessment procedure is much faster than the risk assessment procedure, with the trade-off that it provides less information. Accordingly, conducting a random sample of units and of common areas is not appropriate in this context of a child under age 6 with an EBL in the building or project.

However, as under the current LSHR, if the designated party were to choose not to evaluate the other units covered by the LSHR for lead-based paint hazards (or deteriorated paint,

as applicable), the designated party would have to presume that lead-based paint hazards are present in these other units and common areas. This is allowable because the current LSHR provides, in §§ 35.120(a) and (b), for risk assessments not to be conducted if “the designated party ... presume[s] that lead-based paint or lead-based paint hazards or both are present throughout the residential property,” and use standard treatments on the painted building components and horizontal surfaces, and HUD is continuing to allow the designated party to use this option. A designated party may, for example, have staff or contracts in place to control presumed lead-based paint hazards, if it does not wish to delay undertaking the control activities.

For target housing units receiving tenant-based rental assistance in which children under age 6 reside (which are covered by LSHR subpart M), the legislative history of Title X, as described in the preamble to the LSHR (64 FR 50139, *at* 50146), supports that, “Congress did not intend for HUD to apply the new minimum procedures set out in section 1012(a) of Title X,” in particular, risk assessments. However, HUD does not accept the assumption that “Congress intended to abolish HUD’s [then] current procedures” for lead safety evaluation, and those procedures serve as LSHR’s basis for requiring a visual assessment for deteriorated paint in this housing. Accordingly, HUD is continuing to allow the approach of using a visual assessment for this housing in the context of assessing units and common areas other than the index unit and common areas servicing the index unit.

HUD is proposing that if a risk assessment or a visual assessment (as applicable) finds lead-based paint hazards or deteriorated paint (as applicable), or if these hazards or deterioration are presumed to exist in the other dwelling units with children under age 6 residing or expected to reside and the common areas servicing those units, then the approach to controlling them should be the same as for the index unit and common areas servicing the index unit. For all

subparts covered by this rulemaking the control approach would be interim controls, except for subpart M on tenant-based rental assistance, and a portion of subpart H on project-based rental assistance (to units receiving under \$5,000 per unit per year or being single family housing) for which the approach is paint stabilization. For both, interim controls and paint stabilization, the control measure would be followed by clearance if the amount of deteriorated paint is above the LSHR's *de minimis* threshold.⁶²

As in the current rule, the designated party would be required to implement lead hazard control measures promptly, with the period specified in the applicable subpart of the rule. In housing covered by the LSHR, for index units, the period for interim controls would be 30 calendar days of receiving the report of the investigation. For other units covered by the LSHR with children under age 6 residing or expected to reside, the period would be 30 calendar days for paint stabilization (as in the current rule at §§ 35.720(a)(2) and 35.1215(b)), and a schedule based on the main threshold for multifamily unit sampling in the HUD Guidelines' chapter 7 as a means of characterizing a large hazard control project.⁶³ Within 30 calendar days, or within 90 calendar days if more than 20 units each require lead hazard control work that would disturb painted surfaces that total more than the *de minimis* threshold of § 35.1350, Safe work practices, paragraph (d), De minimis levels,⁶⁴ and, therefore, would require the work to be done using lead

⁶² HUD. Lead Safe Housing Rule. 24 CFR 35.1350(d). The de minimis threshold is either: (1) 20 square feet (2 square meters) on exterior surfaces; 2 square feet (0.2 square meters) in any one interior room or space; or 10 percent of the total surface area on an interior or exterior type of component with a small surface area. Examples include window sills, baseboards, and trim.

⁶³ Formally, the number of units for which random sampling provides 95 percent confidence that fewer than 5 percent of units (or 50 units, for projects of over 1000 units) have lead-based paint, for lead-based paint inspections, or lead-based paint hazards, for risk assessments. For up to 20 units, all units are sampled; for larger numbers of units, only a fraction need be sampled. (For routine inspections and risk assessments, this criterion is applied to pre-1960 housing, but that year-of-construction distinction need not be made in this case, because of the essential difference that the index unit is known to have lead-based paint hazards.) See the *Guidelines*, chapter 7, section V.B.

⁶⁴ "Safe work practices are not required when maintenance or hazard reduction activities do not disturb painted surfaces that total more than: (1) 20 square feet (2 square meters) on exterior surfaces; (2) 2 square feet (0.2 square

safe work practices and certified renovation or abatement firms.⁶⁵ Basing the schedule on the amount of hazard control work to be done recognizes resource availability limitations when large numbers of units require work. HUD encourages owners to conduct hazard control work expeditiously, especially if there are few other units in which work is to be done.

See the description of the evaluation and lead-based paint hazard control approach in Section II.A.1, above, along with the approach to addressing sources of lead exposure other than lead-based paint hazards.

3. Documentation of current evaluation, notifications, disclosure.

The LSHR requires, in the applicable subparts of title 24 CFR part 35, that evaluations be conducted for lead-based paint, deteriorated paint, and/or lead-based paint hazards, i.e., paint-lead, dust-lead and soil-lead hazards, as applicable to the subpart, and that occupants be notified of the results of evaluations and hazard reduction activities.

This proposed rule would retain the requirement of notification of evaluations and hazard reduction activities in accordance with § 35.125, Notice of evaluation and hazard reduction activities, of the LSHR. That section requires notification within 15 calendar days of when the designated party receives the evaluation report or the hazard reduction activities have been completed, to each occupied dwelling unit affected by the evaluation, presumption, or hazard reduction activity or serviced by common areas in which it took place.

meters) in any one interior room or space; or (3) 10 percent of the total surface area on an interior or exterior type of component with a small surface area. Examples include window sills, baseboards, and trim.” (Reformatted here.)

⁶⁵ The landlord may be a certified firm. For example, EPA’s Renovation, Repair and Painting Program: Property Managers page (www.epa.gov/lead/renovation-repair-and-painting-program-property-managers) has the following questions and answers (reformatted here): “How can property managers comply with the RRP rule? Do you or your employees conduct renovation, repair, or painting activities in a pre-1978 residential building? If yes, then you must become a Lead-Safe Certified Firm. If no, then hire only a Lead-Safe Certified firm for building maintenance, repair, or painting activities that could disturb lead-based paint.”

The implementing provisions in other parts of title 24 CFR incorporate part 35 by reference, including both the LSHR, in subparts B – R, and the Lead Disclosure Rule, in subpart A. Disclosure is required in addition to notification. Note that any lead-based paint hazards identified by a risk assessment or environmental investigation, and the results of any lead hazard control work, must, under the Lead Disclosure Rule, be disclosed to prospective tenants and buyers, and to current tenants before lease renewal. See HUD's Lead Disclosure Rule website at www.hud.gov/lead. Note also that HUD's Lead Disclosure Rule is substantively identical to EPA's Lead Disclosure Rule at 40 CFR part 745 subpart F; see EPA's Real Estate Disclosure website at <http://www2.epa.gov/lead/real-estate-disclosure/>.

HUD is proposing that, if the designated party has not complied with these requirements in the 12 months ending on the date the owner received the environmental investigation report, or if it has not provided the HUD field office documentation demonstrating compliance, the designated party must conduct the evaluation and, if applicable, hazard reduction requirements in the other assisted dwelling units with children under age 6 and common areas serving them, as described in Section II.A.2, above. Note that, under rules pertaining to the type of assistance, HUD may consider taking remedial action under the assistance contract or agreement as a result of the noncompliance.

4. Documentation of ongoing lead-based paint maintenance and management.

Implementation of ongoing lead-based paint management and maintenance is important in ensuring that, between evaluations, lead-based paint is maintained properly (such as during day-to-day occupancy and, in particular, renovation, repair and painting (RRP) work) and managed properly (such as during rehabilitation and modernization activities) so that lead-based paint hazards are unlikely to occur. Each of the five LSHR subparts covering HUD-assisted housing

for which the current rule has an EIBLL requirement also requires ongoing lead-based paint maintenance. Similarly, when rehabilitation, under subpart J, Rehabilitation, is conducted in such housing, appropriate lead hazard control is required, as is the use of properly certified firms and workers in these activities. Specifically, the LSHR requires compliance with Federal laws and authorities for all lead-based paint activities (24 CFR 35.145). This includes the Environmental Protection Agency's lead-based paint regulations at 40 CFR part 745, such as its RRP Rule.⁶⁶

The designated party may have complied with the evaluation, notification and disclosure requirements described in Section II.A.3, above, but not properly maintained and managed lead-based paint, lead in dust, and lead in soil, or not documented compliance. (Proper management in this context includes using lead-certified firms and workers in maintenance and management activities, and achieving successful clearances for such activities conducted in accordance with the LSHR throughout the 12 months ending on the date the owner received the environmental investigation report.) In such a case of inadequate or absent documentation, or the designated party's not having provided the documentation to the HUD field office, HUD is proposing that the designated party must conduct the evaluation and, if applicable, hazard reduction requirements in the other dwelling units with children under age 6 and common areas serving them, as described in Section II.A.3, above.

B. Effective Date

⁶⁶ See, especially, 40 CFR part 745 subpart E, on certified RRP work practices, and renovation firm and renovator certifications; subpart L, including conducting certified lead-based paint inspection, risk assessment and abatement activities, including clearance examinations when required; and subpart Q, on State and Indian Tribal certification programs that complement EPA's certification programs in other parts of the Nation in which EPA implements the certification program.)

HUD is proposing a delayed effective date for these regulations that would be one or more months after the date of publication of the final rule in the Federal Register. In determining an appropriate delayed effective date, HUD considered three options: 1 month, 6 months, and 12 months after publication of the final rule.

The argument in favor of a 1 month delayed effective date is based on Title X (sections 1012 and 1013) requiring the evaluation and reduction of lead-based paint hazards in housing receiving Federal assistance and residential property owned by the Federal government. Under one line of argumentation, any delay beyond the mandatory 30 day delayed effective date (42 U.S.C. 3535(o)(3)) in implementing requirements based on the guidance of the federal public health agency would pose an undue risk to the health of children. The argument for a longer delayed effective date is that program administrators at all levels of government, as well as property owners and contractors performing lead-based paint activities, would not have adequate education and training time to implement the new criterion and the associated requirements and procedures required under the proposed regulation.

Further, the Department recognizes that HUD clients conducting ongoing program activities will need time to incorporate the revised requirements for responding to cases of children with elevated blood lead levels into their programs. As a result, HUD is proposing to delay the effective date of the final rule for 6 months after publication of the final rule as a way to allow all parties--lead-based paint professionals, housing agencies, state and local government agencies, and private property owners--time to prepare for proper implementation of the revised requirements. The Department shares the concern of the public health community that delays in implementing these requirements may have young children with EBLLs living in certain HUD-assisted housing where no environmental intervention has taken place spend a longer amount of

time in that housing than the time it takes to control the lead-based hazard. At the same time, however, it would be impractical for HUD to establish a 30 day delayed effective date knowing that the organizational infrastructure necessary to carry it out would not be fully in place.

Because most of the LSHR went into effect 12 months after its publication,⁶⁷ and this rulemaking would affect only a small fraction of the housing covered by the whole LSHR, HUD is proposing that this rulemaking go into effect sooner than 12 months. More specifically, HUD believes that a 6 month delayed effective date is sufficient for designated parties to be informed of the rule's becoming final and to prepare for taking action if a child residing in the assisted units has an EIBLL. Most designated parties would not need to take any action in response to this proposed rule, if adopted, because they will not have any children under age 6 in programs covered by this rulemaking who have EBLs, and those that will need to take action will do so on an occurrence basis, rather than in the anticipation of a likely EBL.

HUD welcomes comments on the length of the proposed delayed effective date for this rule.

C. Subparts

1. Subpart B – General Lead-Based Paint Requirements and Definitions for All Programs. This subpart sets out general requirements for federally owned residential property and housing receiving Federal assistance.

a. Definitions. HUD is proposing to add two new terms, delete one term, and revise two terms, in § 35.110, Definitions:

Elevated blood lead level. In this rule, HUD proposes to replace the EIBLL threshold with the EBL threshold that is the blood lead level in children under 6 years of age for which

⁶⁷ HUD. Lead Safe Housing Rule. 24 CFR 35.105 Effective dates.

CDC guidance says that an environmental intervention should be conducted. The EBLL will be used for determining when environmental interventions are to be taken under the LSHR.

As discussed in Section I, above, in 2013, CDC revised its guidance to provide an operational definition of EBLL based on data from NHANES, and committed to update that definition every four years. Accordingly, HUD is proposing to add a definition of EBLL so that the term can be used in the program subparts instead of writing out the full wording of the definition in each applicable section.

Specifically, 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 guidance published by the Department of Health and Human Services for recommending that an environmental intervention be conducted.

The entity mentioned in the definition is the Department of Health and Human Services, rather than CDC, in order to accommodate the possibility that that Department could choose to have another organizational unit than CDC announce the updated EBL value, without HUD having to amend this Rule to reflect that updated value.

HUD is proposing to add a definition that 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 Department of Health and Human Services on recommending that an environmental intervention be conducted.

ii. Environmental intervention blood lead level. For the reasons discussed above in regard to adding the definition of elevated blood lead level, the term environmental intervention blood lead level is no longer needed in the program subparts of the LSHR, so HUD is proposing to delete the definition of environmental intervention blood lead level. This proposed rule

replaces the term environmental intervention blood lead level with the term elevated blood level throughout the LSHR.

iii. Environmental investigation. For purposes of clarity, brevity, and consistency with CDC's response to ACCLPP, the term environmental investigation is defined in this proposed regulation the way it is defined in the HUD *Guidelines*. Specifically, an environmental investigation would be defined to mean 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"). With HUD proposing that an environmental investigation in response to EBLL cases be included in the program subparts of the LSHR, HUD proposes to define the term rather than having to write out its substance in each applicable section. Accordingly, HUD is proposing to add a definition that 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, as all of these elements are conducted in accordance with chapter 16 of the HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing ("Guidelines"). See preamble Section II.A.1, above, for a summary of the environmental investigation protocol.

iv. Evaluation. In the current LSHR, an evaluation is 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. This proposed rule would add the term environmental investigation, as discussed above, to the list of activities that are evaluations. As a

result, in accordance with the LSHR, § 35.125(a), Notice of evaluation or presumption, when an environmental investigation is conducted in a housing unit or common area servicing the units, the tenants will be notified of the results. However, a prohibition against posting a notice of environmental investigation in centrally located common areas is added to § 35.125(d) for the protection of the privacy of the child and the child’s family or guardians, in accordance with the Health Insurance Portability and Accountability Act (HIPAA).⁶⁸

v. Expected to reside. For purposes of clarity, the phrases “reserved for” and “designated exclusively for” in the current LSHR are being unified into the single term “reserved or designated exclusively for.” Specifically, “reserved for the elderly” in regard to whether pre-1978 housing is target housing is being revised to “reserved or designated exclusively for the elderly,” and “designated exclusively for persons with disabilities” is being revised to “reserved or designated exclusively for persons with disabilities.” Certain housing laws and HUD regulations use one or the other phrase.⁶⁹ Using a unified term eliminates possible confusion about the applicability of the exemption based on the statutory or regulatory history of the type of assistance to a property, allowing HUD and designated parties to focus on the current status of the assistance.

2. Subpart D – Project-Based Assistance Provided by a Federal Agency Other Than HUD. This subpart sets out minimum requirements, consistent with section 1012 of Title X, for

⁶⁸ See the HIPAA in regard to privacy of children and their families regarding individually identifiable health information. See, especially HIPAA § 1171, creating 42 U.S.C. § 1320d–6, Wrongful disclosure of individually identifiable health information, with the definition of the term created at 42 U.S.C. 1320d(6).

⁶⁹ See, e.g., 42 U.S.C. 1437e, Designated housing for elderly and disabled families, 24 CFR 880.612a(d)(1), which mentions vacant units “reserved for elderly families;” and 24 CFR § 945.105, in which “Mixed population project means a public housing project reserved for elderly families and disabled families.”

Federal agencies other than HUD that have housing programs that provide more than \$5,000 of project-based assistance per unit per year to a target housing property.

This subpart currently requires specific actions in response to a child with an environmental intervention blood lead level in § 35.325. In addition to revising this section to refer to an elevated blood lead level, HUD proposes that the change in evaluation method be updated to reflect the change from risk assessment to environmental investigation.

HUD is proposing that children under age 6 in this housing be covered when they live in other units in the building or project. Specifically, if the environmental investigation of the index unit identifies any lead-based paint hazards, the owner would generally, as described below, conduct a risk assessment for other assisted dwelling units 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 serving those units. Risk assessments would 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 were to identify lead-based paint hazards, the owner would have to control the hazards in those units and common areas. The control work would have to be done 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), as discussed in Section I.A.2, above. These requirements for other units would not apply if either the owner conducted a risk assessment and conducted interim controls of identified lead-based paint hazards 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 if 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,

Federal agencies other than HUD would be responsible for updating their policies under this subpart and implementing them.

3. Subpart H – Project-Based Assistance. This subpart establishes procedures to eliminate as far as practicable lead-based paint hazards in residential properties receiving project-based assistance under a HUD program.

This subpart covers several categories of project-based assistance programs. Section 35.715 covers project-based assistance to multifamily properties receiving more than \$5,000 per unit per year, and includes a paragraph (d) on properties that have not yet had a risk assessment conducted in accordance with paragraph (a). Section 35.720 covers multifamily properties receiving up to \$5,000 per unit per year, and single family properties. Both sections incorporate the same § 35.730, about a child with an environmental intervention blood lead level, by reference. HUD is proposing that § 35.730, be revised to reflect the protocol for addressing elevated blood level cases as described above.

Regarding other dwelling units in the property covered by this subpart other than the index unit, HUD is proposing that, if the environmental investigation report on the index unit identifies lead-based paint hazards, then, for units in which a child under age 6 resides:

- Evaluation (risk assessment (per § 35.715(a)) or visual assessment (per § 35.720(a)(1)), as applicable) would be conducted within 30 calendar days after receipt of the environmental investigation report on the index unit for visual assessments, 30 calendar days for risk assessments

if there are 20 or fewer such units, or 60 calendar days for risk assessments if there are more than 20 such units. These periods provide promptness while recognizing that more than one unit may have to be assessed, and the limited availability of certified risk assessors in some jurisdictions, so that the 15-day period used in § 35.730(a) for conducting an evaluation on that one, index, unit may not be sufficient for the owner to arrange for identifying other units where a child under 6 resides or is expected to reside, and having the evaluation of those other units conducted. HUD encourages owners to conduct these evaluations expeditiously, especially if there are a small number of other units to be evaluated.

- Hazard control work be completed in these other units on a schedule described above: 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). HUD encourages owners to conduct hazard control work expeditiously, especially if there are few other units in which work is to be done.

As noted above, to enable prompt HUD monitoring of implementation of the evaluation and hazard control procedures under this subpart when an EBL case has occurred, HUD is proposing that the designated party notify the HUD field office and HUD's OLHCHH within 5

business days of being so notified by the public health department or medical health care professional.

It should be noted that CDC used the terms “multi-family housing” and “housing complex” in its Response to ACCLPP recommendation XI to refer to a group of buildings, apartments, etc., that are located near each other and used for a particular purpose, as “complex” is commonly defined in the building context. HUD regulations and program documents use several terms to refer to such a similar group of residential buildings, including “complex,” “buildings,” “apartments,” and “project.” For the sake of uniformity, and to provide clarity for HUD stakeholders, the HUD synonym “project” is used in this and other subparts of the LSHR outside of quotations from CDC that use “complex.”

HUD proposes to make a technical correction to § 35.715, to redesignate paragraph (d)(4), on blood lead level response, which requires the response until a risk assessment of a property is conducted, but does not require a blood lead level response after the risk assessment is done, as paragraph (e). The current paragraph numbering inadvertently makes the requirement for the higher level of assistance in this section less stringent than the requirement for the lower level of assistance covered by § 35.720. As a result of correcting this inconsistency, the redesignation would have the requirement apply to multifamily properties receiving more than \$5,000 per unit, whether before or after the risk assessment has been conducted.

4. Subpart I – HUD-Owned and Mortgagee-in-Possession Multifamily Property. The purpose of this subpart is to establish procedures to eliminate, as far as practicable, lead-based paint hazards in a HUD-owned multifamily residential property or a multifamily residential property for which HUD is identified as mortgagee-in-possession.

This subpart currently requires specific actions in response to a child with an environmental intervention blood lead level in § 35.830; the requirements are generally the same with respect to risk assessment, verification, hazard reduction, and reporting requirement as those for housing receiving project-based rental assistance in § 35.730, discussed in Section II.C.3. The difference is that, because HUD is the owner of these properties covered by § 35.830, the term “HUD” is used here where the wording “the owner” is used in § 35.730.

HUD is proposing that § 35.830 be revised to reflect the protocol for addressing EBLL cases as described above, with the difference that, because HUD is the owner of these properties, for specificity, “HUD” would be used in § 35.830 rather than the phrase “the owner” that would be used in § 35.730.

As noted above, to enable prompt HUD OLHCHH monitoring of implementation of the evaluation and hazard control procedures under this subpart when an EBLL case has occurred, HUD is proposing that the HUD office managing the property notify the HUD field office and the OLHCHH within 5 business days of being so notified by the public health department or medical health care professional.

5. Subpart L--Public Housing Programs. The purpose of this subpart L is to establish procedures to eliminate, as far as practicable, lead-based paint hazards in public housing. More formally, public housing is residential property assisted under the 1937 Act, excluding housing assisted under section 8 of the 1937 Act. Target housing assisted under section 8 is covered by subparts D, H, and M of the LSHR, rather than this subpart L.

This subpart currently requires specific actions in response to a child with an environmental intervention blood lead level in § 35.1130, which are generally the same as those

for housing receiving project-based rental assistance in § 35.730 of subpart H, discussed in Section II.C.3, with a difference in terminology and some additional requirements.

Regarding the terminology, because the public housing agency (PHA) carries out the lead-based paint functions of owner of the properties covered by § 35.1130, the term “PHA” is used where the term “owner” is used in § 35.730. Similarly, “public housing development” is used in this section, where “dwelling unit to which this subpart applies” is used in § 35.730.

HUD is proposing that § 35.1130(e) require that PHAs report each confirmed (previously labelled “known,” and revised to follow CDC terminology more closely) case of a child with an EBLL to the HUD field office; in the currently codified rule such reporting is required for EIBLL cases. As noted above, to enable prompt HUD monitoring of implementation of the evaluation and hazard control procedures under this subpart when an EBLL case has occurred, HUD is proposing that the designated party also notify the OLHCHH within 5 business days of being so notified by the public health department or medical health care professional of an EBLL case.

The case of the PHA not completing the hazard reduction required by § 35.1130, which was not addressed in the original rule, is addressed here by noting the linkage between the LSHR and the Uniform Physical Condition Standards (UPCS) at § 5.703, which are incorporated by reference into the public housing regulations at 24 CFR part 965. In particular, if the hazard reduction is not completed, the dwelling unit is not free of lead-based paint hazards, so it is in violation of § 5.703(f), which among other things, requires that the housing be free of lead-based paint hazards. The UPCS are incorporated by reference into the public housing physical condition standards at § 965.601. The LSHR, including its subpart L, Public Housing, is also incorporated by reference into the public housing standards at § 965.701.

Most significantly, current § 35.1130(f) establishes requirements for PHAs regarding other units in the building with the index unit if the risk assessment of the index unit and common areas servicing the index unit identifies lead-based paint hazards but previous evaluations of the building did not identify lead-based paint or lead-based paint hazards. In such a case, the PHA is required to conduct a risk assessment of other units covered by the LSHR in the building, and interim controls of identified hazards.

HUD is proposing that, generally, if previous evaluations of the building did identify lead-based paint or lead-based paint hazards, and the risk assessment of the index unit and common areas servicing the index unit identifies lead-based paint hazards, then, generally, the PHA would conduct a risk assessment in other dwelling units covered by the LSHR in which a child under age 6 resides or is expected to reside (and the common areas that service those units). The risk assessments would have to be conducted on a schedule described above, 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. If lead-based paint hazards are found in any of these other units, they would have to be controlled on a schedule described above, 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). However, if the PHA has met the applicable performance requirements in Section II.A.2, above, for conducting current evaluations, notifications, disclosure, and ongoing lead-based paint maintenance and management in the 12 months before receiving the report of a child with EBLI in the index unit, and provides the HUD field office with documentation of its regulatory compliance, HUD would encourage the PHA to conduct a

risk assessment in other dwelling units covered by the LSHR in which a child under age 6 resides (and the common areas that service them), although it would not be required to do so.

HUD is proposing that § 35.1130 be revised to refer to an elevated blood lead level, and that the section be updated to reflect the protocol for addressing EBLL cases as described above, with the differences that, because the PHA is the owner of these properties, for specificity, “PHA” would be used in § 35.1130 rather than the phrase “the owner” that would be used in § 35.730.

HUD is proposing to make a technical correction to § 35.1130(f). The first sentence (which HUD is proposing to redesignate as § 35.1130(f)(1)) discusses the requirement for the PHA to conduct interim controls of identified hazards in accordance with the schedule provided in, according to the currently codified rule, § 35.1120(c). The pertinent schedule in § 35.1120 is, however, in paragraph (b), not paragraph (c), so HUD proposes to correct the citation.

6. Subpart M--Tenant-Based Rental Assistance. The purpose of this subpart is to establish procedures to eliminate as far as practicable lead-based paint hazards in housing occupied by families receiving tenant-based rental assistance.

This subpart currently requires specific actions in response to a child with an environmental intervention blood lead level in § 35.1225, Child with an environmental intervention blood lead level; similar to those for housing receiving project-based rental assistance in § 35.730 of subpart H, discussed in Section II.C.3, with a difference in terminology and some variations in requirements.

Regarding the terminology, because of the variety of HUD assistance programs covered by this subpart (see § 35.1200(a)), the generic term “designated party” is used where the term “owner” is used in § 35.730 for project-based assisted housing.

As noted above, to enable prompt HUD monitoring of implementation of the evaluation and hazard control procedures under this subpart when an EBLL case has occurred, HUD is proposing that the designated party notify the HUD field office and the OLHCHH within 5 business days of being so notified by the public health department or medical health care professional.

Regarding the other tenant-based rental assisted units where a child less than 6 years is residing or expected to reside in a building with a tenant-based rental assisted unit with a child less than 6 years who has an EBLL, as noted in Section II.C.2, above, HUD is proposing that those other units and common areas servicing them receive a visual assessment for deteriorated paint. (As noted above, HUD does not have the discretion to require risk assessments in those other units and common areas servicing those other units.) The visual assessments would have to be conducted within 30 calendar days after receipt of the environmental investigation report. Similarly, the response action, should deteriorated paint be identified, would be paint stabilization, a treatment that does not require the quantitative information about dust-lead and soil-lead levels needed for the full set of interim control activities that a risk assessment provides. If deteriorated paint is found in any of these other units, the paint would have to be stabilized on a schedule described above, within 30 calendar days, or within 90 calendar days if more than 20 units have deteriorated paint such that the control work would disturb painted surfaces that total more than the de minimis threshold of § 35.1350(d). Of course, a designated party may choose to conduct a risk assessment or environmental investigation of those other units and common areas, and conduct interim controls if lead-based paint hazards are identified, and even conduct that evaluation and hazard control in unassisted units with children under age 6, and HUD encourages them to do so.

For the sake of clarity regarding target housing occupied by families receiving tenant-based rental assistance with children under age 6 in which deteriorated paint has been identified by a visual assessment, HUD proposes to add a sentence to the end of § 35.1215(b). Regarding a subsequent housing assistance payment (HAP) contract for the unit (i.e., after the unit is no longer under the original HAP contract), the added sentence would provide that paint stabilization must be completed for a family with a child under age 6 to occupy that unit. This would reaffirm the first sentence of paragraph (b), that, for units to be occupied by a child under age 6, the owner shall stabilize each deteriorated paint surface before commencement of assisted occupancy. The placement of this sentence will strengthen the protection against children under age 6 being lead poisoned by clarifying the need for paint stabilization before the unit is occupied by a child under age 6 under a HAP contract.

D. Specific Questions for Comments

While HUD welcomes comments on all aspects of this proposed rule, HUD is seeking specific comment on the following 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 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?

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?

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?

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 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.

III. Findings and Certifications

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 proposed rule under Executive Order 12866 (entitled “Regulatory Planning and Review”). This rule was determined to be a “significant regulatory action,” 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.

Regulatory Impact Assessment

HUD is publishing, concurrently with this proposal, its draft Regulatory Impact Analysis (RIA) that examines the costs and benefits of the proposed regulatory action in conjunction with

this proposed 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 proposed rule. These costs and benefits, however, include the present value of future costs and benefits associated with first year hazard reduction activities. For example, the costs associated with first year activities include the present value of future reevaluation costs. Similarly, the benefits of first year activities include the present value of lifetime earnings benefits for children living in or visiting the affected unit during that first year, and for children living in or visiting that unit during the second and subsequent years after 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 on Regulatory Analysis,⁷⁰ and A-94 on Guidelines and Discount Rates for Benefit-Cost Analysis of Federal Programs.⁷¹ 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 \$97.91 million; while first-year costs are \$22.17 million. Thus the estimated net benefit is \$75.74 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 proposed rule are estimated to be \$31.81 million, and estimated first

⁷⁰ https://www.whitehouse.gov/omb/circulars_a004_a-4/

⁷¹ https://www.whitehouse.gov/omb/circulars_a094

year costs remain at \$22.17 .28 million. The proposed rule would therefore be seen as having a net benefit of \$9.64 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 decreased attention, increased impulsivity, hyperactivity,⁷² impaired hearing, slowed growth, delayed menarche,⁷³

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 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 but not non-monetized quality of life factors associated with children's lower intelligence, fewer skills, and reduced education and job potential, and adults' decreased 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.⁷⁴

Paperwork Reduction Act Statement

⁷² EPA. Integrated Science Assessment for Lead (see fn. 1, above). 2013. Table ES-1. p. lxxxiii - lxxxvii.

⁷³ 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*. 2003 Apr 17;348(16):1527-36. www.nejm.org/doi/full/10.1056/NEJMoa020880.

⁷⁴ EPA. Integrated Science Assessment for Lead (see fn. 1, above). 2013. Table ES-1. p. lxxxiii - lxxxvii.

The number of housing units that would require evaluation, possible hazard reduction, and/or reporting of EBLL information to HUD would be changed by the proposed rule.

Accordingly, HUD is requesting OMB approval for revising its information collection request approval to reflect the change in the burden.

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520), for incorporation under existing OMB approval 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.

Table 1 — Requirements for Notification, Evaluation, and Reduction of Lead-Based Paint Hazards in Federally Owned Residential Property and Housing Receiving Federal Assistance:

Information Collection	Number of Respondents	Frequency of Response	Total Annual Responses	Burden Hours per Response	Total Annual Burden Hours	Total Annual Cost
Notice of Evaluation	6,887	4	27,550	0.175	4,821	\$42,819
Notice of Reduction	6,887	3.17	21,833	0.1	2,183	\$25,707
Summary Reporting	6,887	8	55,100	0.1	5,510	\$59,404
Recordkeeping	6,887	4	27,550	0.033	909	\$10,808
EBLL Report	6,887	4	27,550	1	27,550	\$278,907

Total or Average	6,887	23	159,583	5.95	40,974	\$417,645
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In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning the information collection requirements in this interim rule regarding:

- (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- (2) The accuracy of the agency's estimate of the burden of the collection of information;
- (3) Whether the collection of information enhances the quality, utility, and clarity of the information to be collected; and
- (4) Whether the information collection minimizes the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology (e.g., permitting electronic submission of responses).

Interested persons are invited to submit comments regarding the information collection requirements in this rule. Under the provisions of 5 CFR part 1320, OMB is required to make a decision concerning this collection of information between 30 and 60 days after the publication date. Therefore, a comment on the information collection requirements is best assured of having its full effect if OMB receives the comment within 30 days of the publication date. This time frame does not affect the deadline for comments to the agency on the interim rule, however. Comments must refer to the interim rule by name and docket number (FR-5816-P-01) and must be sent to:

HUD Desk Officer
Office of Management and Budget
New Executive Office Building
Washington, D.C. 20503
Fax number: (202) 395-6947

and

Anna P. Guido
HUD Reports Liaison Officer
Department of Housing and Urban Development
451 7th Street, S.W., Room 4186
Washington, D.C. 20410

Interested persons may submit comments regarding the information collection requirements electronically through the Federal eRulemaking Portal at <http://www.regulations.gov>. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the <http://www.regulations.gov> website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). HUD has determined that the following provisions contain information collection requirements: 24 CFR part 35, subparts D, H, I, L, and M.

Regulatory Flexibility Act

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

Specifically, the economic analysis estimated the number of index units and other assisted units to be evaluated and, possibly, based on the evaluation, having lead hazard control work done. 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 or visual assessment for other units that are assisted and have a child under age 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 estimates are summarized in the table below.

	Public housing	HUD Project-based	Tenant-based	USDA Project-based	All assistance types
Number of index units	1,899	1,494	3,383	112	6,887
Average cost per index unit for environmental investigation and hazard control	\$2,680	\$2,680	\$2,680	\$2,680	-
Cost for index units	\$5,090,047	\$4,004,506	\$9,066,416	\$300,206	\$18,461,176
Other assisted units with children under age 6	8,014	3,783	2,855	284	14,935
Average cost per other assisted housing unit for risk assessment (or visual assessment) and hazard control	\$615	\$615	\$260	\$615	-
Cost for other assisted units	\$4,924,470	\$2,324,545	\$740,829	\$174,264	\$8,164,108
Total cost	\$10,014,517	\$6,329,051	\$9,807,245	\$474,471	\$26,625,284
Total number of units evaluated and possibly hazard controlled	9,913	5,277	6,237	396	21,822
Total number of assisted units	1,100,000	1,200,000	2,200,000	286,108	4,786,108
Percent of assisted units evaluated and possibly hazard controlled	0.90%	0.44%	0.28%	0.14%	0.46%

Among the key results are that:

- About 6,887 housing units would have a child under age 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.
- About 14,935 other housing units would be evaluated and have any lead-based paint hazards controlled.

- About 0.46 percent of the assisted housing stock covered by this rulemaking would be evaluated and have any lead-based paint hazards controlled, 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.
- The total cost of evaluation and control (and the small amount of temporary relocation of occupants) would be \$26.63 million, including \$10.01 million for public housing, \$6.33 million for HUD project-based rental assisted housing, \$9.81 million for tenant-based rental assisted housing, and \$286,000 for USDA project-based rental assisted housing.
- Using the 3 percent discount rate, benefits are estimated at \$97.91 million, with net benefits (i.e., benefits less the \$22.17 million in costs) estimated at \$75.74 million. Using the OMB's 7 percent discount rate, benefits are estimated at \$31.81 million, with costs remaining at \$22.17 million, so the net benefits would be \$9.65 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 EBLLs that are not EIBLLs, that is, children for whom an environmental investigation and possible (i.e., if hazards are found) hazard control of their housing unit and common area servicing it would be newly required under the proposed rule.

- Regarding other units to have lead hazard control work conducted, for FY 2015, there would be an estimated 8,014 units of public housing, 3,783 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.
- 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 the project-based and the tenant-based assisted units to the families of these children) 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). The economic analysis used the FY 2017 Congressional Justifications of the number of housing units assisted by the several programs: 1,100,000 public housing units, 1,200,000 HUD project-based units, 2,200,000 tenant-based units, and 286,108 USDA project-based units. Regarding units other than the index units, a maximum of approximately 0.73 percent of other public housing units, 0.32 percent of other HUD project-based units, 0.13 percent of other tenant-based units, and 0.10 percent of USDA project-based units (overall, 0.31 percent of units in these assistance programs) would be required to undertake a risk assessment and, possibly, based on the risk assessment, lead hazard control.

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 implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(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.

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.

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

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.

2. In § 35.100, add, in alphabetical order the definitions of “Elevated blood lead level”, “Environmental investigations”, revise the definitions of “Evaluation” and “Expected to reside” and delete the definition of “Environmental intervention blood lead level”, to read as follows:

§ 35.110 Definitions.

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.

* * * * *

3. 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.

§ 35.165 Prior evaluation or hazard reduction.

4. In § 35.165 amend paragraph (b)(4) by removing the term "environmental intervention blood level" wherever it appears and adding its place the term "elevated blood lead level".

5. 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. 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 serving those units. The risk assessments would 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 the hazards 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). The requirements for other assisted dwelling units covered by this subpart do not apply if:

(1) The owner conducted an environmental investigation and conducted interim controls of identified lead-based paint hazards 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

(2) 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 environmental investigations and hazard reduction when a child identified as having an elevated blood lead level is identified.

§ 35.715 Multifamily properties receiving more than \$5,000 per unit.

6. Amend § 35.715 by:
 - a. Redesignating paragraph (d)(4) as paragraph (e); and
 - b. Removing the term “environmental intervention blood level” and adding in its place “elevated blood lead level”.

§ 35.720 Multifamily properties receiving up to \$5,000 per unit, and single family properties.

7. In § 35.720 amend paragraph (c) by removing the term “environmental intervention blood level” wherever it appears and adding in its place “elevated blood lead level”.

8. 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, the requirements of this paragraph (a) of this section 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) 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. 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, evaluation or hazard 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 hazard reduction under paragraph (c) of this section is complete, and for the common areas servicing those units, conduct a risk assessment if the unit investigated was covered by § 35.715, 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; or conduct a visual assessment if the unit investigated was covered by § 35.720, within 30 calendar days of receipt of the environmental investigation report.

(2) Control measures. (i) 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).

(ii) If the visual assessment conducted under paragraph (f)(1) of this section identifies deteriorated paint, the owner shall stabilize the paint 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).

(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 the property meets any of these conditions:

(i) If the property is covered by § 35.715, the owner conducted a risk assessment and conducted interim controls of identified lead-based paint hazards in accordance with § 35.175(b) between the date the child's blood was last sampled and the date the owner received the notification of the elevated blood lead level;

(ii) If the property is covered by § 35.720, the owner conducted a visual assessment and stabilized deteriorated paint (unless it was determined not to be lead-based paint) identified in accordance with § 35.720(b)(2) in the other assisted dwelling units and the common areas serving those units, 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

(iii) 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

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

(g) HUD encourages the owner to evaluate for sources of lead exposure in units other than those covered by this subpart, and to control such sources.

9. 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, 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 environmental intervention blood lead level, such verification shall constitute notification, and HUD shall take the action required in paragraphs (a) and (c) of this section.

(c) 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. 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 evaluation or hazard 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 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).

(3) The requirements of this paragraph (f) 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, conducted a risk assessment in the other assisted dwelling units and the common areas serving those units, and conducted interim controls of identified lead-based paint hazards in accordance with § 35.820.

(4) The requirements of this section do not apply if 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.

(5) 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 (3) of this section, or that it has complied with the requirements in paragraph (f)(4) 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, hazard reduction, 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.

10. 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, 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) 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. 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 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 evaluation and hazard reduction. The PHA shall notify building residents of any evaluation or hazard 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 covered by this subpart 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, and shall complete the reduction of identified 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).

(2) If the environmental investigation conducted pursuant to paragraph (a) of this section identifies lead-based paint hazards and previous evaluations of the building conducted pursuant to § 35.1320 identified lead-based paint or lead-based paint hazards, the PHA shall, for other

dwelling units in the property in which a child under age 6 resides or is expected to reside on the date hazard reduction under paragraph (c) of this section is complete, and the common areas serving those units, conduct a risk assessment 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.

(3) Control measures. If the risk assessment conducted under paragraph (f)(2) of this section identifies lead-based paint hazards, the PHA shall control the hazards 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).

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

(5) The requirements of this paragraph (f) of this section 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, conducted a risk assessment of the other assisted dwelling units and the common areas serving those units, and conducted interim controls of identified hazards in accordance with § 35.1120(b); or 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, 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)(5) of this section.

(g) HUD encourages the PHA to evaluate for sources of lead exposure in units other than those covered by this subpart, and to control such sources.

§ 35.1135 Eligible costs.

11. Amend § 35.1135(d) by removing the term “environmental intervention blood level” and adding in its place the term “elevated blood lead level”.

12. Revise § 35.1215(b) 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 Sec. 35.1340.

* * * * *

13. 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, 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) 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. 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 hazard reduction required by this section, the dwelling unit is in violation of the standards of 24 CFR 982.401.

(d) Notice of evaluation and hazard reduction. The owner shall notify building residents of any evaluation or hazard 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 hazard reduction under paragraph (c) of this section is complete, and the common areas serving those units, conduct a visual assessment in accordance with the procedures of § 35.1215(a), 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 visual assessment conducted under paragraph (f)(1) of this section identifies deteriorated paint, the owner shall stabilize the paint within 30 calendar days, or within 90 calendar days if more than 20 units have deteriorated paint such that the control work would disturb painted surfaces that total more than the de minimis threshold of § 35.1350(d).

(3) The requirements of this paragraph (f) of this section do not apply if 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, conducted a visual assessment or risk assessment in those other assisted dwelling units and the common areas serving those units, and the owner stabilized deteriorated paint (unless it was determined not to be lead-based paint) identified; or if 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, 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)(4) of this section.

(g) HUD encourages the designated party or the owner to evaluate for sources of lead exposure in units other than those covered by this subpart, and to control such sources.

(h) 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.

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