

October 1, 2018

Erin Conley  
Division of Legal Services  
Illinois Department of Public Health  
535 W. Jefferson St., 5th floor  
Springfield IL 62761

Delivered via email to: [dph.rules@illinois.gov](mailto:dph.rules@illinois.gov)

Dear Ms. Conley:

Thank you for the opportunity to comment on the proposed amendments to the Lead Poisoning Prevention Code put forward by the Illinois Department of Public Health (IDPH).

There is no known safe level of human exposure to lead, and the harmful effects of childhood lead exposure can ripple out through adolescence and adulthood, imparting lifelong consequences on the social and learning abilities of a child. Research demonstrates low-level lead exposure can result in decreased IQ, decreased cognitive performance, impaired executive functioning, decreased reading readiness with increased rates of reading disabilities, and increased incidence of ADHD and behavioral and mood disorders. All of these outcomes can have a significant impact on a child's future, including impaired academic performance, underemployment, lower socioeconomic status, increased arrests, and, ultimately, decreased quality of life. IDPH has an opportunity to greatly enhance Illinois' lead poisoning prevention strategy through adoption of best practice and proactive primary and secondary lead poisoning prevention requirements.

Overall, we strongly support IDPH's proposed rules that adopt the federal Centers for Disease Control and Prevention (CDC) reference value for elevated blood lead level. The change will afford more opportunities for lead-exposed children to receive nurse home visits to provide lead and nutrition education, developmental screenings and follow-up. The proposed rules will also allow for proactive inspection and lead mitigation in regulated facilities that previously fell outside of the State of Illinois' lead poisoning prevention enforcement mandates. As a result, we know that fewer children will suffer the debilitating consequences of an entirely preventable disease.

However, we do have recommendations to both strengthen and clarify the proposed rules. What follows is our section-by-section recommendations with specific wording changes highlighted in red.

## **SUBPART A: GENERAL PROVISIONS**

### **Section**

**845.15 Incorporated and Referenced Materials**

Proposed section 845.15 states:

2) Federal Guidelines:

- A) Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing, Department of Housing and Urban Development (HUD) ([2012](#))

Available from: Office of [Healthy Homes and Lead Hazard Control](#), HUD, Room [8236](#), 451 Seventh Street, SW, Washington DC 20410

Also available online at:

[https://www.hud.gov/program\\_offices/healthy\\_homes/lbp/hudguidelines](https://www.hud.gov/program_offices/healthy_homes/lbp/hudguidelines)

**Comments:**

We recommend section 845.15 reads as follows:

2) Federal Guidelines:

- A) Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing, Department of Housing and Urban Development (HUD) ([2012](#))

Available from: [HUD Office of Lead Hazard Control and Healthy Homes](#), Room [8236](#), 451 Seventh Street, SW, Washington DC 20410

Also available online at:

[https://www.hud.gov/program\\_offices/healthy\\_homes/lbp/hudguidelines](https://www.hud.gov/program_offices/healthy_homes/lbp/hudguidelines)

c) The following State statutes and rules are referenced in this Part:

Proposed section 845.15 states:

- 1) [Lead Poisoning Prevention Act \[410 ILCS 45\]](#)

- 2 Code of Civil Procedure [735 ILCS 5]
- 3 Communicable Disease Report Act [745 ILCS 45]
- 4 Illinois Clinical Laboratory and Blood Bank Act [210 ILCS 25]
- 5 Freedom of Information Act [5 ILCS 140]
- 6 State Records Act [5 ILCS 160]
- 7 Medical Studies Act [735 ILCS 5/Art. VIII, Part 21]
- 8 [Administrative Review Law \[735 ILCS 5/Art. III\]](#)
- 9 Rules of Practice and Procedure in Administrative Hearings (77 Ill. Adm. Code 100)
- 10 Child [and Student Health Examination and Immunization](#) Environmental Code (77 Ill. Adm. Code 665)
- 11 [Laboratory Service Fees \(77 Ill. Adm. Code 475\)](#)
- 12 [Illinois Plumbing Code \(77 Ill. Adm. Code 890\)](#)

**Comments:**

We recommend section 845.15 reads as follows:

- 1) [Lead Poisoning Prevention Act \[410 ILCS 45\]](#)
- 2 Code of Civil Procedure [735 ILCS 5]
- 3 Communicable Disease Report Act [745 ILCS 45]
- 4 Illinois Clinical Laboratory and Blood Bank Act [210 ILCS 25]
- 5 Freedom of Information Act [5 ILCS 140]

- 6) State Records Act [5 ILCS 160]
- 7) [Early Intervention Services System Act \[325 ILCS 20\]](#)
- 8) Medical Studies Act [735 ILCS 5/Art. VIII, Part 21]
- 9) [Administrative Review Law \[735 ILCS 5/Art. III\]](#)
- 10) Rules of Practice and Procedure in Administrative Hearings (77 Ill. Adm. Code 100)
- 11) Child [and Student Health Examination and Immunization Environmental](#) Code (77 Ill. Adm. Code 665)
- 12) Laboratory Service Fees (77 Ill. Adm. Code 475)
- 13) Illinois Plumbing Code (77 Ill. Adm. Code 890)

**Comments:**

We recommend the inclusion of the Early Intervention Services System Act [325 ILCS 20], as it's referenced in Section 845.80 Case Management and there in noted as a reference for making appropriate referrals.

**845.20 Definitions**

**Definition: "Case Management"**

The proposed rule has the following definition:

"Case Management" means any activity that involves coordinating, providing and overseeing the services required to reduce blood levels.

**Comments:**

We recommend the section 845.20 reads as follows:

Should insert 'lead' into 'blood levels' as: "Case Management" means any activity that involves coordinating, providing and overseeing the services required to reduce blood **lead** levels.

**Definition: “Child Care Facility”**

The proposed rule has the following definition:

"Child Care Facility" means any structure used by a child care provider required to be licensed by the Department of Children and Family Services or public or private school structure frequented by children 6 years of age or younger. (Section 2 of the Act)

**Comments:**

We recommend the section 845.20 reads as follows:

"Child Care Facility **and School**" means any structure used by a child care provider required to be licensed by the Department of Children and Family Services or **charter**, public or private school structure frequented by children 6 years of age or younger. (Section 2 of the Act)

We are including “schools” so that the definition acknowledges them as structures frequented by children 6 years of age and younger. In addition, we have modified the list of school structures to include “charter schools” to the list of school types, since charter schools are now required to comply with all non-curricular health and safety requirements applicable to public schools. Effective August 10, 2015, Public Act 99-0325 modified Section 27A-5(d) of the School Code 105 ILCS 5/27A-5(d).

**Definition: “Confirmed Blood Lead Level”**

The proposed rule has the following definition:

"Confirmed Blood Lead Level" means a blood lead level resulting from a single venous blood lead test. Elevated capillary blood test results shall be confirmed by a venous test.

**Comments:**

We would like to commend the Department on the inclusion of confirming blood test results via venous test instead of a capillary confirmation. We agree that venous confirmation is far more accurate and appreciate the inclusion of this best practice.

**Definition: "Elevated Blood Lead Level"**

The proposed rule has the following definition:

"Elevated Blood Lead Level" or "EBL" means a blood lead level greater than or equal to 5 micrograms per deciliter (µ g/dL) of whole blood.

## Comments:

As we stated in our introductory remarks for this letter, we strongly support IDPH's proposed rules that adopt the federal Centers for Disease Control and Prevention (CDC) reference value for elevated blood lead level. However, as we also pointed out at the beginning of this letter, there is no known safe level of human exposure to lead, and the harmful effects of childhood lead exposure can ripple out through adolescence and adulthood. Therefore, our recommendation must be that the definition of elevated blood lead level should be "a blood lead level greater than or equal to the amount currently defined by the CDC reference value for elevated exposure." This would allow Illinois to continually adhere to national expert guidelines without needing additional legislative and/or rule changes in the future. Please note that if this recommendation is accepted, additional references to 5 µg/dL of whole blood in the proposed rule, as well as our comments on the proposed rule, will need to be updated, as well.

## Definition: "EBL Inspection"

The proposed rule has the following definition:

"EBL Inspection" means an on-site inspection and any necessary follow-up in a regulated facility where a child or pregnant person is reported to have a confirmed blood lead level greater than or equal to 10 µg/dL has frequented. EBL inspections shall only be performed by the Department or delegate agency personnel licensed as a lead risk assessor.

## Comments:

We recommend the section 845.20 reads as follows:

"EBL Inspection" means a lead inspection, lead risk assessment and any necessary follow-up in a regulated facility to determine the source of lead poisoning. EBL inspections shall only be performed by the Department or delegate agency personnel licensed as a lead risk assessor.

We believe it's more appropriate to define the standards for conducting an EBL inspection in Section 845.85 Environmental Follow-Up. Please see our comments on that section for our specific EBL inspection recommendations. In general, we support that an EBL Inspection occur whenever a child or pregnant person has an elevated blood lead level as defined in these rules, including inspection of common areas and other dwelling units in a multifamily property if other children or pregnant persons reside there. We made other changes to reflect that an EBL inspection includes components of lead inspection and lead risk assessment defined elsewhere in these rules.

**Definition: “Final Clearance Evaluation”**

The proposed rule has the following definition:

"Final Clearance Evaluation" means the activity of performing a visual assessment and collecting dust wipe samples following a lead abatement or lead mitigation for the purpose of determining compliance with the Department's standard for lead dust levels.

**Comments:**

We recommend the section 845.20 reads as follows:

"Final Clearance Evaluation" means the activity of performing a visual assessment and collecting dust wipe samples following a lead abatement or lead mitigation for the purpose of determining compliance with the Department's standard for lead dust levels to ensure that lead hazard control work was successfully completed.

We recommend that this language go beyond requiring that samples are collected to determine compliance. This language should state clearly that the Final Clearance Evaluation must ensure that the hazard control work was successfully completed.

**Definition: “Health Care Provider”**

The proposed rule has the following definition:

"Health Care Provider" means any person providing health care services to children, who is authorized pursuant to the Illinois Clinical Laboratory and Blood Bank Act [210 ILCS 25] to request the testing of specimens. -

**Comments:**

We recommend the section 845.20 reads as follows:

"Health Care Provider" means any person providing health care services to children, including anyone who is authorized pursuant to the Illinois Clinical Laboratory and Blood Bank Act [210 ILCS 25] to request the testing of specimens. -

We feel that a broader definition of health care provider allows for a more encompassing interpretation, therefore better reflecting the full array of activities set forth in the IL Lead Poisoning Prevention Act (410 ILCS 45). Furthermore, without this revision, the definition becomes limited to only those persons listed in the Illinois Clinical Laboratory and Blood Bank Act which doesn't represent a comprehensive list of those individuals providing health services

to children, such as medical assistants who may administer, for example, the Childhood Lead Risk Questionnaire as defined in Section 845.55(c).

**Definition: “Intact Surface”**

The proposed rule has the following definition:

"Intact Surface" means a surface with no loose, peeling, chipping or flaking paint. Intact surfaces must not be damaged or worn down in any way that would make paint or debris accessible to children.

**Comments:**

We recommend the section 845.20 reads as follows:

"Intact Surface" means a surface with no loose, peeling, chipping, flaking, or otherwise separating from substrate. Intact surfaces must not be damaged or worn down in any way that would make deteriorated paint or debris accessible to children.

**Definition: “Lead Abatement Worker”**

The proposed rule has the following definition:

"Lead Abatement Worker" means any person employed by a lead abatement contractor and licensed by the Department to perform lead abatement and mitigation. (Section 2 of the Act)

**Comments:**

We recommend the section 845.20 reads as follows:

"Lead Abatement Worker" means any person employed by a lead abatement contractor and licensed by the Department to perform lead abatement and lead mitigation. (Section 2 of the Act)

**Definition: “Lead Bearing Substance”:**

The proposed rule has the following definition:

"Lead Bearing Substance" means any item or part of an item containing or coated with lead such that the lead content is more than 0.06% lead by total weight; or any dust on surfaces

or in furniture or other nonpermanent elements of the [regulated facility with lead content in excess of the limits specified in Section 845.205\(c\)](#); or [any accessible or bare soil containing lead in excess of the limits specified in Section 845.205\(b\)](#); or any paint or other surface coating material containing more than 0.5% lead by total weight (calculated as lead metal) in the total non-volatile content of liquid paint; or [lead-bearing](#) substances containing greater than one milligram per square centimeter or any lower standard for lead content in residential paint as may be established by federal law or [rule](#); or more than 1 milligram per square centimeter in the dried film of paint or previously applied substance; or item or dust on item containing lead in excess of the amount specified in this Part or a lower standard for lead content as may be established by federal law or [rule](#). "Lead-bearing substance" does not include firearm ammunition or components as defined by the Firearm Owners Identification Card Act. (Section 2 of the Act)

### Comments:

We recommend the section 845.20 reads as follows:

"Lead Bearing Substance" means any item or part of an item, [excluding existing paint already applied to a regulated facility](#), containing or coated with lead such that the lead content is equal to or more than **90 ppm**; or any dust on surfaces or in furniture or other nonpermanent elements of the [regulated facility with lead content in excess of the limits specified in Section 845.205\(c\)](#); or [any accessible or bare soil containing lead in excess of the limits specified in Section 845.205\(b\)](#); or any [existing house](#) paint or other surface coating material containing more than [or equal to](#) 0.5% lead [or greater than or equal to 1 mg/cm<sup>2</sup> lead](#); [or paint or consumer product that exceeds federal Consumer Product Safety Commission or US Environmental Protection Agency or US Department of Housing and Urban Development standards](#); or item or dust on item containing lead in excess of the amount specified in this Part or a lower standard for lead content as may be established by federal law or [rule](#). "Lead-bearing substance" does not include firearm ammunition or components as defined by the Firearm Owners Identification Card Act. (Section 2 of the Act)

Our recommendation strengthens the proposed language, as well deletes duplicative terms.

### Definition: "Lead Hazard"

The proposed rule has the following definition:

"Lead Hazard" means a [lead-bearing](#) substance that poses an immediate health hazard to humans. (Section 2 of the Act)

**Comments:**

We recommend the section 845.20 reads as follows:

"Lead Hazard" means a [lead-bearing](#) substance that poses an immediate health hazard to humans. (Section 2 of the Act) Lead hazard includes a condition in which exposure to lead from lead-contaminated dust, lead contaminated soil, or deteriorated lead-based paint would have an adverse effect on human health (as established by the EPA at 40 CFR 745.65, under Title IV of the Toxic Substances Control Act). Lead-based paint hazards include, for example, paint-lead hazards, dust-lead hazards, and soil-lead hazards.

This definition is consistent with existing federal regulations.

**Definition: "Lead Hazard Screen"**

The proposed rule has the following definition:

"Lead Hazard Screen" means a lead risk assessment that involves limited dust and paint sampling for [lead-bearing](#) substances and lead hazards. This service is used as a screening tool designed to determine if further lead investigative services are required for the regulated facility. ([Section 2 of the Act](#))

**Comments:**

We recommend that this definition be deleted from the rule:

We recommend this section be deleted as IDPH proposes that Section 845.220 Procedures for Lead Hazard Screens in Regulated Facilities be repealed and the few other uses of the term in the rule seem to be duplicative of other terms.

**Definition: "Lead Inspection"**

The proposed rule has the following definition:

"Lead Inspection" means a surface-by-surface investigation to determine the presence of lead-based paint. ([Section 2 of the Act](#))

**Comments:**

We recommend the section 845.20 reads as follows:

"Lead Inspection" means a surface-by-surface investigation to determine the presence of **lead-bearing substances** ([Section 2 of the Act](#))

We recommend replacing "lead-based paint" with "lead-bearing substance" in order to maintain consistency within defined terminology as lead-bearing substance is defined to include lead-based paint.

**Definition: "Permissible Limits"**

The proposed rule has the following definition:

**Comments:**

We would like to commend the Department on their removal of this definition as we agree that there is no blood lead level that can be considered safe. This removal confirms that the Department understands the risk of any level of lead in children, pregnant and breastfeeding women.

**Definition "Prenatal-risk Evaluation for Lead Exposure"**

Proposed section 845.20 does not include a definition of "Prenatal-risk Evaluation for Lead Exposure"

**Comments:**

We recommend section 845.20 reads as follows:

“Prenatal-risk Evaluation for Lead Exposure” means the questionnaire developed by the Department for use by physicians and other health care providers to determine if a pregnant person is at risk for lead exposure and should have a blood lead test.

We request the addition of this definition as our recommended modification to section 845.55 references the Prenatal Risk Evaluation for Lead Exposure form. The proposed definition is consistent with both the definition of Childhood Lead Risk Questionnaire as set forth in the Department’s proposed rules and the Departments Prenatal-risk Evaluation for Lead Exposure questionnaire.

**Definition: “Regulated Facility”**

The proposed rule has the following definition:

"Regulated Facility" means a residential building or child care facility (Section 2 of the Act)

**Comments:**

We recommend the section 845.20 reads as follows:

"Regulated Facility" means a residential building, child care facility or school (Section 2 of the Act)

This suggested change is to keep the definition consistent with the previous recommended changes made to the “Child Care Facility” definition.

**Definition: “USEPA”**

The proposed rule has the following definition:

"USEPA" means the United States Environmental Protection Agency.

**Comments:**

Please add definitions for HUD, U.S. Department of Housing and Urban Development, and CDC, Centers for Disease Control and Prevention, as well.

**Definition: “Window Stool”**

The proposed rule has the following definition:

"Window Stool" means the lower part of the window's shelf-like portion of the frame, inside the house, that is flat and extends inward from the bottom rail of a sash (sometimes called a "window sill").

**Comments:**

We recommend the section 845.20 reads as follows:

"Window Stool" means the lower part of the window's shelf-like portion of the frame, inside the house, including the window well and window trough, that is flat and extends inward from the bottom rail of a sash (sometimes called a "window sill").

**845.25 Disclosure Requirements**

**Proposed section 845.25 states:**

a) An owner of a regulated facility who has received a mitigation notice under Section 9 of the Act shall, before entering into a lease or purchase agreement for the regulated facility for which the mitigation notice was issued, provide prospective lessees or purchasers of that unit with written notice that a lead hazard has previously been identified in the regulated facility. An owner may satisfy this notice requirement by providing the prospective lessee or purchaser with a copy of the inspection report, mitigation notice and subsequent certificate of compliance prepared pursuant to Section 9 of the Act.

**Comments:**

The passage of PA 99-0790 made changes to this section of the law that should be reflected in these rules to ensure consistency with the law. The changes to the Lead Poisoning Prevention Act, effective January 1, 2017, are included below:

An owner of a regulated facility who has received a mitigation notice under Section 9 of this Act shall, before the renewal of an existing lease agreement or before entering into a new sales contract for the dwelling unit for which the mitigation notice was issued:

- (1) Provide the current lessee or lessees, if the lease is to be renewed, and prospective purchasers of that unit with written notice that a lead hazard has previously been identified in the dwelling unit, unless the owner has obtained a certificate of compliance for the unit under Section 9. An owner shall satisfy this notice requirement by providing

the prospective lessee or purchaser with a copy of the mitigation notice and inspection report prepared pursuant to Section 9; and

- (2) Provide the Department with written notice of the sale of the dwelling unit for which the mitigation notice was issued, including the date of the sale, and the name, address, telephone number, and email address of the prospective purchaser of the unit.

An owner of a regulated facility who has received a mitigation notice under Section 9 of this Act or an owner of a regulated facility who has purchased the facility from an owner who has received a mitigation notice under Section 9 of this Act and who also receives notice as provided in paragraph (1) of this Section shall, before entering into a new lease agreement for the dwelling unit for which the mitigation notice was issued, mitigate the lead hazard previously identified in the regulated facility and obtain a certificate of compliance under Section 9. For purposes of determining compliance with this Act, the date of the mitigation notice for an owner of a regulated facility who has purchased the facility from an owner subject to this Section and who also receives notice as provided for in paragraph (1) of this Section shall be deemed to be the date of the sale as provided for in paragraph (2) of this Section.

Before entering into a residential lease agreement or sales contract, all owners of regulated facilities containing dwelling units built before 1978 shall give prospective lessees or purchasers information on the potential health hazards posed by lead in regulated facilities by providing prospective lessees or purchasers with a copy of an informational brochure prepared by the Department and shall be consistent with the requirements set forth in 40 CFR Part 745, Subpart F.

## **SUBPART B: DEPARTMENT AND DELEGATE AGENCY ACTIVITIES**

### **Section**

#### **845.50 Approval of Units of Local Government or Health Departments as Delegate Agencies to Administer and Enforce the Act**

#### **Comments:**

The text of this section was not included in the proposed rule. We assume this was in error.

#### **845.55 Lead Testing**

- a) Any physician licensed to practice medicine in all its branches or health care provider who sees or treats children 6 years of age or younger shall test those children for lead poisoning when those children-reside in an area defined as high risk by the Department. Children residing in areas defined as low risk by the

Department shall be evaluated for risk by the Childhood Lead Risk Questionnaire developed by the Department, or tested if indicated. (Section 6.2 of the Act) Medicaid enrolled children shall receive a blood test-as required in the Healthy Kids' Early and Periodic Screening, Diagnosis and Treatment Program

1) Children determined to be at high risk based upon thea Childhood Lead Risk Questionnaire shall receive a blood lead

2) Children who have elevated capillary results of 5 µg/dL or greater shall be confirmed by a venous sample.

**Comments:**

We recommend section 845.55 reads as follows:

- a) Any physician licensed to practice medicine in all its branches or health care provider who sees or treats children 6 years of age or younger shall test those children for lead poisoning when those children reside or spend significant time in an area defined as high risk by the Department. Children residing in areas defined as low risk by the Department shall be evaluated for risk by the Childhood Lead Risk Questionnaire developed by the Department and if determined to be a high risk, shall receive a blood lead test. (Section 6.2 of the Act) Medicaid enrolled children shall receive a blood lead test as required in the Healthy Kids' Early and Periodic Screening, Diagnosis and Treatment Program (89 Ill. Adm. Code 140.485). Children who have elevated capillary results of 5 µg/dL or greater shall be confirmed by a venous sample. All children with elevated blood lead level that has been confirmed, shall receive follow-up blood lead testing according to the schedule set forth by the Department.

We have suggested moving a.1 and 2 into the text body for purposes of simplification and clarity. For example, by including a.1 in the risk evaluation, health care providers are more clearly directed to conduct a blood lead test for children determined as high risk.

In addition, we ask that the Department specify blood lead test, as a point of clarity on the specific required test, and to make it consistent with the Lead Poison Prevention Act 410 ILCS 45. Regarding Medicaid testing we recommend adding a reference to the 89 Ill. Adm. Code 140.485, as it's a clarifying resource for the Healthy Kids EPSDT provisions around blood lead testing requirements. Including a.2 into the body of the text eliminates unnecessary subsections, while still conveying relevant information. Adding, "spend significant time in an area" puts the language in the rule in accordance with the language already found in IDPH's Childhood Lead Risk Questionnaire. Finally, the Department's publication "Lead Testing Case Follow-Up Guidelines for Health Departments" (page 6) sets forth the required intervals for follow-up testing to ensure a child's blood lead level decreases over time. We believe this was the original intent of a. 2 which is inadvertently eliminated in the Department's proposed change.

**Proposed section 845.55 states:**

b) Each licensed, registered, or approved health care facility serving children 6 years of age or younger, including, but not limited to, health departments, hospitals, clinics, and health maintenance organizations approved, registered or licensed by the Department, shall take the appropriate steps (referral of children with identified risk factors as defined in the Department- provided Childhood Lead Risk Questionnaire to a physician or health care provider) to ensure that children 6 years of age or younger be evaluated for risk or tested for lead poisoning or both. (Section 6.2 of the Act)

**Comments:**

We recommend section 845.55 reads as follows:

b) Each licensed, registered, or approved health care facility serving children 6 years of age or younger, including, but not limited to, health departments, hospitals, clinics, and health maintenance organizations approved, registered or licensed by the Department, shall take the appropriate steps to ensure that children 6 years of age or younger be evaluated for risk or tested for lead poisoning or both

(Section 6.2 of the Act)

We believe that this section is confusing because it reads as though the explicitly listed entities are expected to only do risk assessment and referrals rather than risk assessments and testing. Since we want to encourage all health care facilities to do both, we removed the limiting language.

**Proposed section 845.55 states:**

c) Physicians and health care providers may evaluate children 7 years of age and older, and pregnant persons, in accordance with the Childhood Lead Risk Questionnaire provided by the Department.

**Comments:**

We recommend section 845.55 reads as follows:

c) Physicians and health care providers should evaluate children 7 years of age and older, and pregnant persons, in accordance with the Childhood Lead Risk Questionnaire and Prenatal-risk Evaluation for Lead Exposure provided by the Department.

We want to highlight this as a best practice and for this reason changed “may” to “should.” We also want to make reference to the Prenatal-risk Evaluation for Lead Exposure as it clarifies the appropriate evaluation for “pregnant persons” as a suggested population. This is also consistent with Section 6.2 (c) of the Act which states: “Children 7 years and older and pregnant persons may also be tested by physicians or health care providers, in accordance with rules adopted by the Department. Physicians and health care providers shall also evaluate children for lead poisoning in conjunction with the school health examination, as required under the School Code, when, in the medical judgment of the physician, advanced practice registered nurse, or physician assistant, the child is potentially at high risk of lead poisoning.” The Department should also consider amendments to the Lead Poisoning Prevention Act to require risk assessments for all children age 7 and older and pregnant persons.

**Proposed section 845.55 states:**

d) Each day care center, day care home, preschool, nursery school, kindergarten, or other child care, licensed or approved by the State, including programs operated by a public school district, shall include a requirement that each parent or legal guardian of a child between one and 7 years of age provide a statement from a physician or health care provider that the child has been screened for risk of lead poisoning, or tested, or both. This statement shall be provided prior to admission and

subsequently in conjunction with physical examinations required by 77 Ill. Adm. Code 665.140 of the Department's rules titled Child [and Student](#) Health Examination [and Immunization](#) Code. (Section 7.1 of the Act)

**Comments:**

We recommend section 845.55 reads as follows:

d) Each [child](#) care center, [child](#) care home, preschool, nursery school, kindergarten, or other [child care](#), licensed or approved by the State, including programs operated by a public school district, shall include a requirement that each parent or legal guardian of a child between [one and 7](#) years [of age](#) provide a statement from a physician or health care provider that the child has been screened for [risk of lead poisoning](#), [or tested, or both](#). This statement shall be provided prior to admission and subsequently in conjunction with physical examinations required by [both the Healthy Kids' Early and Periodic Screening, Diagnostic and Treatment Program \(89 Ill. Adm. Code 140.485\) and](#) 77 Ill. Adm. Code 665.140 of the Department's rules titled Child [and Student](#) Health Examination [and Immunization](#) Code (Section 7.1 of the Act).

Child health examinations are required every two years in home and center-based early care and education programs, and recommended but not required every two years for school-based programs. This means that early care and education providers miss an important opportunity to ensure children are regularly screened for risk and tested since children who enter care at, for example, 6 months of age, may not be required to provide another statement from a health care provider until the child is over age 2 and for school based programs, not until the child enters kindergarten. The current standard misses an important window of opportunity and is inconsistent with the screening and testing intervals adopted by IDPH, which are reflected in the Healthy Kids' EPSDT program (at minimum at age 12 and 24 months). Adoption of this requirement should also help increase Illinois' testing rate. This recommendation is also supported by the Illinois Early Learning Council Systems Integration and Alignment Committee's "Health Subcommittee Proposed Plan for Integrating Health into Early Care and Education Systems" (2014).

We also recommend that Section 845.55 include following additional sections not included in the proposed rule:

[f\) Child care facilities that participate in the Illinois Child Care Assistance Program \(CCAP\) shall annually send or deliver to the parents or guardians of children enrolled in the facility's care an informational pamphlet regarding awareness of lead poisoning. Pamphlets shall be produced and made available by the Department and shall be downloadable from the Department's Internet website. The Department shall assist in the distribution of the pamphlet. \(Section 7.1 of the Act\).](#)

The language added as (f) is found in Section 7.1 of the Act and for purposes of clarity and accountability should be included in the rules.

g) All child and pregnant participants in the Special Supplemental Food Program for Women, Infants, and Children (WIC program) may receive lead testing at the local WIC office. Testing should follow the hematological testing periodicity conducted by WIC staff during the certification/recertification/mid-certification appointments.

Research has shown that children in families receiving public assistance such as WIC are more likely to have elevated blood lead levels than children not enrolled in a public assistance program. As such, the WIC program which covers pregnant and postpartum women and children up to age 5, presents a prime opportunity to test more at-risk individuals for lead poisoning. Additionally, such testing could occur at intervals that WIC staff are already performing hematological testing, helping to ensure that more pregnant women and children are conveniently tested. Additionally, by adding this language to the rules, IDPH is in a better position to assist WIC programs with funds for blood lead testing, including Medicaid reimbursement.

## **845.60 Reporting**

### **Proposed section 845.60 states:**

a) Every physician who diagnoses, or health care provider, nurse, hospital administrator, public health officer or director of a clinical laboratory who has verified information of the existence of a blood lead test result for any child or pregnant person, shall report the result to the Department. (Section 7 of the Act) If the analysis has been performed at the Department laboratory, or the provider has ascertained that the clinical laboratory where specimens are processed electronically reports all blood lead level results to the Department, then duplicate reporting is not required. Any blood lead test results of 5µg/dL or greater shall be reported to the Department within 48 hours after analysis. All other verified blood lead test results shall be reported to the Department no later than 30 days following the last day of the month in which the test results were analyzed. The information included in the laboratory report on all blood lead test results shall include the blood lead level, the child's or pregnant person's name, date of birth, sex and race, complete address (including street, apartment number, city, state and ZIP code), date of test, test type, date of report, physician or clinic address, Medicaid identification number (if applicable), and the reporting agency. All reports submitted shall identify blood lead test results quantitatively. These requirements shall be the same for all health care providers, hospital administrators and public health officers conducting a blood lead test by venous or capillary blood

draw.

**Comments:**

We recommend section 845.60 reads as follows:

a) Every physician who diagnoses, or health care provider, nurse, hospital administrator, public health officer or director of a clinical laboratory who has verified information of the existence of a **capillary or venous** blood lead test result, **including from a Lead Care II unit or equivalent**, for any child or pregnant person, shall report the result to the Department. (Section 7 of the Act) If the analysis has been performed at the Department laboratory, or the provider has ascertained that the clinical laboratory where specimens are processed electronically reports all blood lead level results to the Department, then duplicate reporting is not required. Any blood lead test results of 5µg/dL or greater shall be reported to the Department within 48 hours after analysis. All other verified blood lead test results shall be reported to the Department no later than 30 days following the last day of the month in which the test results were analyzed. The information included in the laboratory report on all blood lead test results shall include the blood lead level, the child's or pregnant person's name, date of birth, sex and race, complete address (including street, apartment number, city, state and ZIP code), date of test, test type, date of report, **testing health care professional's name and address, the child's and/or pregnant person's primary care provider (PCP) name and address**, Medicaid identification number (if applicable), and the reporting agency. All reports submitted shall identify blood lead test results quantitatively. These requirements shall be the same for all health care providers, hospital administrators and public health officers conducting a blood lead test by venous or capillary blood draw.

We have included the addition of “venous and capillary” for clarification that both blood lead test results are appropriate, reportable test types. In addition, we wanted to clarify that a Lead Care II unit, or its equivalent, are appropriate test types from which verified blood lead test results are to be reported. Through this addition we wanted to ensure that providers understand that they need to send in blood lead test results coming from Lead Care II units or their equivalent, as well as verified tests from offices, clinics, or laboratories.

Finally, we are asking that the laboratory report for all blood lead test results include the testing health care provider's name and address so that records will provide more complete information

and provide the opportunity to connect directly with the health care provider in the case of any needed follow up. We additionally want to include the primary care provider's name and address to help ensure better communication supports between the family and the Department.

#### **845.65 Provision of Data**

##### **Proposed section 845.65 states:**

- a) Only-aggregated medical data from which-it is impossible to identify any patient, reporting entity, or primary caregiver, shall be made available via an annual lead poisoning surveillance report drafted by the Department

##### **Comments:**

We recommend section 845.65 reads as follows:

- a) Only aggregated medical data from which it is impossible to identify any patient, reporting entity, or primary caregiver, shall be made available via an annual lead poisoning surveillance report drafted by the Department. The Department shall also report the number of children and the number of households receiving case management services.  
Data shall also be reported to Centers for Disease Control and Prevention.

We want to commend the Department for including yearly surveillance reporting in the rules as it's a best practice that allows for data transparency so that the state and advocates may better understand the rates of lead poisoning. We recommend the rule to require that data also be reported to Centers for Disease Control and Prevention, even if routinely sent.

##### **Proposed section 845.65 states:**

- b) All requests by researchers for confidential data shall be submitted in writing to the Department. The request shall include a study protocol that contains: objectives of the research; rationale for the research, including scientific literature justifying the current proposal; overall study methods, including copies of forms, questionnaires, and consent forms used to contact facilities, physicians or study subjects; methods for documenting compliance with Department of Health and Human Services – Protection of Identity – Research Subjects; 42 CFR 2a.4(a) through (j), 2a.6(a) and (b), 2a.7(a) and (b)(1); methods for processing data; storage and security measures taken to ensure confidentiality of patient identifying

information; time frame of the study; a description of the funding source of the study (e.g., federal contract); the curriculum vitae of the principal investigator; and a list of collaborators. In addition, the research request must specify what patient identifying information is needed and how the information will be used. Identifying information concerning the reporting entity will not be made available by the Department. Identifying information is defined as any information, collection, or groups of data from which the identity of the patient or reporting entity to which it relates may be discerned, e.g., name, address or ID number.

**Comments:**

We recommend section 845.65 reads as follows:

- b) All requests by researchers for confidential data shall be submitted in writing to the Department. The request shall include a study protocol that contains: objectives of the research; rationale for the research, including scientific literature justifying the current proposal; overall study methods, including copies of forms, questionnaires, and consent forms used to contact facilities, physicians or study subjects; methods for documenting compliance with Department of Health and Human Services – Protection of Identity – Research Subjects; 42 CFR 2a.4(a) through (j), 2a.6(a) and (b), 2a.7(a) and (b)(1); methods for processing data; storage and security measures taken to ensure confidentiality of patient identifying information; time frame of the study; a description of the funding source of the study (e.g., federal contract); the curriculum vitae of the principal investigator; and a list of collaborators. In addition, the research request must specify what patient identifying information is needed and how the information will be used. Identifying information is defined as any information, collection, or groups of data from which the identity of the patient or reporting entity to which it relates may be discerned, e.g., name, address or ID number.

We recommend that the provision of identifying information concerning the reporting entity is allowed for research purposes, as it is very important to know the address and type of provider that orders a test, as well as the Lab that analyzes the sample.

**845.70            Laboratory Fees for Blood Lead Testing**

**Proposed section 845.70 states:**

- a) The fee schedule for a sample of blood submitted to the Department for blood lead analysis and necessary follow-up by the Department shall be in accordance with the

[Laboratory Service Fees](#). The fee shall be assessed to the provider who submits the sample. Statements of fee assessment shall be mailed to the submitter of the specimens on a monthly basis. Payment and/or appropriate information as required in subsections (b) and (c) shall be submitted to the Department upon receipt of the monthly statement.

**Comments:**

We recommend section 845.70 reads as follows:

a) The fee schedule for a sample of blood submitted to the Department for blood lead analysis and necessary follow-up by the Department shall be [in accordance with the Laboratory Service Fees](#). ~~Fees may not be a barrier to the provision of blood lead testing.~~ The fee shall be assessed to the provider who submits the sample. Statements of fee assessment shall be mailed to the submitter of the specimens on a monthly basis. Payment and/or appropriate information as required in subsections (b) and (c) shall be submitted to the Department upon receipt of the monthly statement.

We have included compelling language to ensure that laboratory service fees do not impede or prohibit a health care provider's ability to appropriately conduct blood lead testing.

**Proposed section 845.70 states:**

c) Medically indigent recipients shall be those recipients with family incomes under 185% of the federal poverty guidelines, not eligible for Medicaid, and screened by local health departments, Rural Health Clinics, Federally Qualified Health Centers and facilities designated by the Department of Health and Human Services as look-alike Federally Qualified Health Centers. No fee shall be charged for these recipients.

**Comments:**

We recommend section 845.70 reads as follows:

c) Medically indigent recipients shall be those recipients with family incomes under 185% of the federal poverty guidelines, not eligible for Medicaid, and screened by local health departments, [WIC Clinics](#), Rural Health Clinics, Federally Qualified Health Centers and facilities designated by the Department of Health and Human Services as look-alike Federally Qualified Health Centers. No fee shall be charged for these recipients.

We have included WIC Clinics in the list of appropriate entities for which Medically indigent recipients may be screened. This inclusion reflects WIC clinics as sites where individuals may receive lead testing.

In addition we recommend adding the following language under 845.70:

e) The Department and delegate agencies should bill Medicaid for all appropriate testing and services that are Medicaid reimbursable.

We want to help ensure that the Department and its delegates are supported to bill Medicaid for approved services pertaining to blood level testing and health and environmental follow-up services. This addition is in accordance with the language set forth in 410 ILCS 45/ 7.2.

#### **845.80 Case Management Proposed**

**section 845.80 states:**

a) Case management services shall be provided by the Department or a delegate agency when a confirmed EBL is indicated.

- 1) Interviews shall be conducted with the parent or guardian or with attending physicians as needed to assure the accuracy and completeness of reports and to perform the activities of case follow-up for confirmed EBLs
- 2) The following activities shall be conducted and documented concerning patient or case follow-up:
  - A) Track the case using the Department's surveillance database;
  - B) Counsel the pregnant person, parent or guardian of the case;
  - C) Educate the pregnant person, parent or guardian of the case;
  - D) Conduct a home visit to interview the pregnant person, parent or guardian of the case for purposes of collecting, verifying and completing the Prenatal Risk Evaluation for Lead Exposure form provided by the Department
  - E) Refer the pregnant person, parent or guardian of the case for medical treatment, early intervention services, or early childhood special education, when appropriate; and
  - F) Submit completed reports to the Department as specified in the agreement between the delegate agency and the Department.

## Comments:

We recommend section 845.80 reads as follows:

a) Case management services shall be provided by the Department or a delegate agency when a confirmed EBL is indicated and shall be consistent with the duties set forth in the Department's Lead testing and Case Follow-up Guidelines for Local Health Departments and include conducting home visits.

1) Interviews shall be conducted with the parent or guardian, pregnant person, or with attending physicians as needed to assure the accuracy and completeness of reports and to perform the activities of case follow-up for confirmed EBLs

2) The following activities shall be conducted and documented concerning patient or case follow-up:

A) Track the case using the Department's surveillance database;

B) Counsel the pregnant person, parent or guardian of the case;

C) Educate the pregnant person, parent or guardian of the case;

D) Refer the pregnant person, parent or guardian of the case for medical treatment, services, Early Intervention services, community based support services (e.g., home visiting and Head Start) and/or special education, when appropriate; and

E) Submit completed reports to the Department as specified in the agreement between the delegate agency and the Department.

We believe that “pregnant person” may have inadvertently been left out of 845.80 A.1 as home visits may occur when pregnant person’s have elevated blood lead levels. We added additional appropriate referrals under E) for children who have been lead exposed. We referenced the Department’s Lead Testing and Case Follow-up Guidelines for Local Health Departments as they provide a detailed overview of case management responsibilities. Additionally, we removed paragraph D because the Prenatal Risk Evaluation for Lead Exposure form is used by the physician, like the childhood screening form, to determine if a lead blood test should be done. We moved home visits to paragraph a) and indicated that more than one visit may occur.

**Proposed section 845.80 states:**

b) Any delegate agency may establish fees, according to a reasonable fee structure, to be determined by the delegate agency, to cover the costs of drawing blood for blood lead [testing and evaluation](#) and any necessary follow-up. (Section 7.2 of the Act) Necessary follow-up includes individual case management and environmental [inspection](#). In accordance with federal regulations, fees may not be charged to Medicaid recipients.

(Source: Amended at 42 Ill. Reg. , effective )

**Comments:**

We believe this section is out of place and should be moved into **Section 845.70** as it pertains to fees. As such, the heading for Section 845.70 should be changed to: **Section 845.70 Laboratory Fees for Blood Lead [Testing, Evaluation and Follow-up services](#)**.

**845.85 Environmental Follow-Up**

**Proposed section 845.85 states:**

- a) [Upon notification that a child or pregnant person who is an occupant or frequent visitor of a regulated facility is reported to have a confirmed blood lead level greater than or equal to 10 µg/dL, an EBL inspection shall be conducted.](#)
  - 1) a representative of the Department or a delegate agency is authorized to inspect any regulated facility for the purpose of determining the source of lead poisoning. In the following cases, an [EBL inspection](#) shall be conducted by the Department or delegate agency:

- A) If a child or pregnant person has a confirmed blood lead level greater than or equal to 10 µg/dL; or
  
- B) If a regulated facility is occupied by a child of less than 3 years of age with an elevated blood lead level greater than or equal to 10 µ g/dL, the Department, in addition to all other requirements of the Act, must inspect the dwelling unit of the child and common area of the regulated facility. (Section 8 of the Act)

**Comments:**

We recommend that section 845.85 read as follows:

- a) An EBL inspection to determine the source of lead poisoning shall be conducted under any of the following circumstances:

- 1) If a child or pregnant person who is an occupant or frequent inhabitant of a regulated facility has an elevated blood lead level

- 2) If a regulated facility is occupied by a child or pregnant person with an elevated blood lead level the Department, in addition to all other requirements of the Act, must inspect the dwelling unit of the child and common areas of the regulated facility. -

- 3) If a child's or pregnant person's physician or health care provider requests an investigation based on a reasonable belief, such as information collected in the Childhood Lead Risk Questionnaire and/or other sources, that environmental factors are putting the child or pregnant person at risk of an elevated blood lead level.

- 4) At the request of a parent or guardian of a child or a pregnant person, if they reside in a residential building where mitigation notices have been issued for two or more dwelling

units within a five year period previous to the request.

Overall, we support that an EBL Inspection occurs when a child or pregnant person is reported to have an elevated blood lead level, i.e., greater than or equal to 5 µg/dL, as proposed in the rules, or at the current CDC reference value level, as we recommend. We support this because, as the 2016 IDPH Lead Surveillance Report states, “Reducing a child’s exposure to lead is the best way to treat childhood lead poisoning.”

As Governor Rauner’s Cabinet on Children and Youth has stated, “In Illinois, the primary source of lead poisoning is deteriorating lead-based paint, which is found in many houses and buildings that were built prior to the residential lead paint ban of 1978. An estimated 2 million of the 5.2 million housing units in Illinois have a prevalence of lead-based paint. Children are most likely to ingest lead from paint/dust around old, deteriorating windows, and in Illinois there are an estimated 755,000 housing units with windowsill dust lead hazards.

Without environmental follow-up for all children and pregnant persons with an elevated blood lead level, a significant number of children receiving case management services under the Act will have prolonged unmitigated exposure to lead. In fact, nurse home visitors who have begun making home visits for children with EBLs between 5 and 9 are reporting that environmental inspection is especially needed at lower levels of exposure. This is because the source of exposure is often harder to identify than it is for children who have higher EBLs. Other states that conduct an EBL inspection at 5 µg/dL are Maine, Oregon, New Jersey, and Michigan. Maryland and Nebraska recommend an inspection at 5 µg/dL, and Massachusetts conducts an inspection upon request. At a minimum, if the Department will not modify the environmental inspection EBL trigger, the Department must provide for an environmental inspection when a child or pregnant person has a second EBL at or above 5 µg/dL within 6 months of the first EBL.

In addition, we are very concerned that the Department has eliminated a child’s physician or health care provider’s ability to request an environmental investigation. Currently, a child’s physician or health care provider is able to request an inspection, even if the blood lead level is below the level at which an investigation is required. Providers may determine, through the use of the required Childhood Lead Risk Questionnaire that environmental factors (renovations, remodeling, etc.) are contributing to the elevated blood lead level and therefore should be able to request the investigation. If certain of our recommendations in this section are not accepted, at minimum, the language currently in the rule regarding this matter needs to be maintained.

For similar reasons, we support that the rules should maintain the current language regarding ability of parents and guardians to be able to request an inspection of multifamily housing where they reside that has a history of lead hazards.

Finally, regarding environmental follow-up, we believe the language in the rule should be clear that if a lead hazard is found in a regulated facility, hazards throughout the facility, including common areas, must be mitigated. We recommend this because, for example, in the case of

multifamily residential buildings, other dwelling units in the building could be occupied, or subsequently occupied, by children and/or a pregnant person where lead hazards exist. Overall, the current language in the rule regarding this matter is not as strong as we recommend. HUD's recommended procedures regarding sampling all units and inspecting common areas once a person with an elevated blood lead level has been identified provide a good model.

#### **Additional Comments on Section 845.85:**

- Page 15814. Proposed language: "An interview with the owner or occupant about regulated-facility use patterns and potential lead hazards, including inquiries such as:" Recommended language: An interview with the owner or occupant about regulated facility use patterns and potential lead hazards, including, but not limited to, inquiries such as:
- Page 15814. Proposed language: "Sampling shall be conducted by at least one of the following methods or a combination of these methods:" Recommended language: "Sampling shall be conducted by as many of the following methods as necessary to determine if lead hazards are present in paint, dust, soil and water
- Page 15815. Proposed language: "XRF Testing XRF equipment shall be operated in accordance with work practice standards incorporated in Section 845.15 and the manufacturer's operational manual." Recommended language: "XRF Testing. XRF equipment shall be operated in accordance with work practice standards incorporated in Section 845.15 and the manufacturer's operational manual and the HUD/EPA Performance Characteristics Sheet."
- Page 15816. Proposed language: "State whether any lead-bearing-substances were found in the dwelling unit or regulated facility;" Recommended language: "State whether any lead-bearing-substances were found in the dwelling unit or regulated facility, as well as whether the result of the interview with the owner or occupant about regulated facility use patterns and potential lead hazards provide any evidence that lead hazards may exist that were not tested for as part of the EBL inspection;"
- Page 15817. Proposed language: "The surface identified as the source of the lead hazard is no longer in a condition that produces a hazardous level of lead-chips, flakes, dust or any other form of lead-bearing-substance that can be ingested or inhaled by humans;" Recommended language: "The surface identified as the source of the lead hazard is no longer in a condition that produces a hazardous level of lead-chips, flakes, dust, soil or any other form of lead-bearing-substance that can be ingested or inhaled by humans;"
- Page 15818. Proposed language: "When a mitigation notice is issued for a dwelling unit or regulated facility-inspected as a result of an elevated blood lead level in a pregnant person-or a child, or if the dwelling unit or regulated facility is occupied by a child 6 years of age or younger or a pregnant person, the

owner shall mitigate the hazard within 30 days after receiving the notice.; When no such child or pregnant person occupies the dwelling unit or regulated facility, the owner shall complete the mitigation within 90 days. (Section 9(5) of the Act)”

- Page 15818. Proposed language: An owner may apply to the Department or its delegate agency for an extension of the deadline for mitigation. If the Department or its delegate agency determines that the owner is making substantial progress toward mitigation, or that the failure to meet the deadline is the result of a shortage of licensed lead abatement contractors, or that the failure to meet the deadline is because the owner is awaiting the review and approval of a mitigation plan, the Department or delegate agency may grant an extension of the deadline. (Section 9(6) of the Act) Recommended language: An owner may apply to the Department or its delegate agency for an extension of the deadline for mitigation. If the Department or its delegate agency determines that the owner is making substantial progress toward mitigation, or that the failure to meet the deadline is the result of a shortage of licensed lead abatement contractors, or that the failure to meet the deadline is because the owner is awaiting the review and approval of a mitigation plan, the Department or delegate agency may grant one extension of the deadline. (Section 9(6) of the Act)”

The language in the above bullet points is intended to strengthen and add clarity to the EBL inspection process.

Regarding our recommended language that all EBL investigations include sampling by as many of the methods as necessary to determine if lead hazards are present in paint, dust, soil and water, an inspector should not have discretion to choose not to test for any of these sources of lead. There is no way of knowing where a lead hazard exists without using the available science.

We recommend only one extension be granted for a deadline for mitigation, as we feel it is a reasonable and appropriate limit.

## **SUBPART E: STANDARDS FOR CONDUCTING ENVIRONMENTAL INVESTIGATIONS FOR LEAD**

### **845.205 Regulatory Limits of Lead**

**Proposed section 845.205 states:**

**b)** The regulatory limit of lead in bare soil that is readily accessible to children shall be 400 µg/g (or parts per million or ppm). The regulatory limit of lead in other bare soil areas shall be 1000 µg/.

**Part c)** The regulatory limit of lead in dust shall be:

- 1) 10µg/ft<sup>2</sup> on all interior floors and stair treads;
- 2) 40/ft<sup>2</sup> on all exterior porch floors; and
- 3) 100 µg/ft<sup>2</sup> on all horizontal surfaces.

**Comments:**

We recommend this section reads as follows:

**b)** The regulatory limit of lead in bare soil that is readily accessible to children shall be 400 µg/g (or parts per million or ppm). The regulatory limit of lead in other bare soil areas shall be 1000 µg/g.

**Part c)** The regulatory limit of lead in dust shall be:

- 4) 10µg/ft<sup>2</sup> on all interior-floors and stair treads; ~~and~~
- 5) 40µg/ft<sup>2</sup> on all exterior porch floors; and
- 6) 100 µg/ft<sup>2</sup> on all windows.

In addition, we have changed horizontal surfaces to “windows”, since floors are horizontal surfaces. This clarifies the distinction between windows and horizontal surfaces, while including “windows” in the regulatory limit for lead in dust.

**845.215 Procedures for Lead Risk Assessments in Regulated Facilities**

Proposed section 845.215 states:

- a) Soil samples are discretionary based on the visual assessment and the existence of bare soil. If collected, soil samples shall be collected in accordance with USEPA Residential Sampling for Lead: Protocols for Dust and Soil Sampling and HUD Guidelines methodologies.

**Comments:**

We recommend section 845.215 reads as follows:

- b) Soil samples shall be collected in accordance with USEPA Residential Sampling for Lead: Protocols for Dust and Soil Sampling and HUD Guidelines methodologies.

Soil sampling should be mandatory. Lead does not biodegrade and resides in soil forever so a visual inspection is not useful. Proximity to former lead smelters or secondary smelters, proximity to highways, and age of surrounding housing stock or proximity to previous demolitions (as lead is regularly, currently and especially historically, improperly contained at demo) will all be missed if an inspector is only doing soil sampling based on the proximity to visibly chipping windows or other visual factors.

Also, the procedures in this section should define the requirements for sampling water, as the definition of "Lead Risk Assessor" includes the responsibility for sampling for water.

## **SUBPART F: STANDARDS FOR LEAD MITIGATION AND LEAD ABATEMENT**

### **Section**

#### **845.250 Submissions and Notices**

**Proposed section 845.250 states in relevant part:**

5) The owner of a regulated facility who has received a mitigation notice under Section 9 of the Act shall post notices at all entrances to the regulated facility specifying the identified lead hazards. The posted notices, drafted by the Department and sent to the property owner with the notification of lead hazards, shall indicate the following:

- A) that a unit or units in the building have been found to have lead hazards
- B) that other units in the building may have lead hazards;
- C) that the Department recommends that children 6 years of age or younger receive a blood lead testing;

## Comments:

We recommend section 845.250 reads as follows:

5) The owner of a regulated facility who has received a mitigation notice under Section 9 of the Act shall post notices at all entrances to the regulated facility specifying the identified lead hazards. The posted notices, drafted by the Department and sent to the property owner with the notification of lead hazards, shall indicate the following:

- A) that a unit or units in the building, or the building have been found to have lead hazards;
- B) that other units in the building may have lead hazards;
- C) that the Department recommends that children 6 years of age or younger, and pregnant persons receive blood lead testing;

We have included the term “building” in the description, since regulated facilities include schools and child care buildings. Additionally, we believe it is best practice to recommend both young children and pregnant persons receive blood lead testing in regulated facilities found to have lead hazards.

## SUBPART G: FINES, PENALTIES AND ADMINISTRATIVE HEARINGS

### Section

#### 845.365 Stop Work Orders for Regulated Facilities

#### Proposed section 845.365 states:

Whenever the Department or its delegate agency finds that a situation exists that requires immediate action to protect the public health, it may, without notice or hearing, issue an order requiring that such action be taken as it may deem necessary to protect the public health, including, but not limited to, the issuance of a stop work order, ordering the immediate suspension of any improper activities that may disturb a lead-bearing surface, and requiring that any person found to be improperly conducting such activities immediately cease work.

Notwithstanding any other provision in the Act or this Part, such order shall be effective immediately. The Attorney General, State's Attorney, or Sheriff of the county in which the property is located has authority to enforce the order after receiving notice of the order. Any person subject to such an order is entitled, upon written request to the Department, to

[a hearing to determine the continued validity of the order. \(Section 8.3 of the Act\)](#)

**Comments:**

We would like to commend the Department for reflecting the language as it appears in Section 8.3 of the Act.

**Additional comments on IDPH data collection and reporting outside the scope of rules:**

We realize this is outside the scope of the rules, but in developing our shared comments in the proposed rules, we came to the conclusion that it would be helpful to add some additional information to IDPH's annual Surveillance Report to make it even more useful to understand work being completed in Illinois and to plan future activities. In addition to the data already provided, it would be helpful to report on the following information:

- Number of unduplicated regulated facilities inspected by type (e.g., single family housing, multifamily housing child care centers, schools)— i.e., count initial inspection and follow-up once
- Number of children with reported elevated blood lead level in each type of regulated facility
- Data on number of case closures by reason for closure
- Data on days to complete environmental follow-up (e.g., days to complete initial investigation, days to complete mitigation/abatement projects)

To the extent possible, it would be helpful to report all of the above data by county or region.

Thank you for considering our perspective on the proposed rules. If you would like to contact us regarding these comments, please reach out to Bob Palmer, Policy Director, Housing Action Illinois, 312-939-6075 or [bob@housingactionil.org](mailto:bob@housingactionil.org), and Amy Zimmerman, Director Children & Families Partnerships, Legal Council for Health Justice, 312-605-1963 or [azimmerman@legalcouncil.org](mailto:azimmerman@legalcouncil.org).

Sincerely,

Bob Palmer  
Policy Director  
Housing Action Illinois

Amy Zimmerman  
Director, Children and Families Partnerships  
Kaylan Szafranski, Policy Specialist  
Legal Council for Health Justice

Dr. David Jacobs  
Chief Scientist  
National Center for Healthy Housing  
Adjunct Associate Professor, University of Illinois at Chicago School of Public Health

Anita Weinberg  
Clinical Professor and Director  
ChildLaw Policy Institute at Civitas ChildLaw Center  
Loyola University Chicago School of Law

Terry Mason  
Chief Operating Officer  
Cook County Department of Public Health

Emily Coffey  
Staff Attorney, Housing Justice  
Sargent Shriver National Center on Poverty Law

Anne Evens  
Chief Executive Officer  
Elevate Energy

Ardag Hajinazarian, 2nd Year Law Student  
Isabella Masini, 2nd Year Law Student  
Kate Mitchell, Clinical Professor and Director, Health Justice Project  
Beazley Institute for Health Law & Policy  
Loyola University Chicago School of Law

Alice Setrini  
Medical Legal Partnership Projects Supervisory Attorney  
LAF (Legal Assistance Foundation)

## **Organizational Background Descriptions**

Housing Action Illinois is a statewide coalition that has been leading the movement to protect and expand the availability of quality, affordable housing in Illinois for more than 30 years. Our 160+ member organizations include housing counseling agencies, homeless service providers, developers of affordable housing and policymakers. In 2018, we advocated for Senate Bill 2996, now Public Act 100-0723, providing direction for updating the state rules for the Lead Poisoning Prevention Act to be in accordance with the CDC reference value for elevated blood lead level.

Legal Council for Health Justice (LCHJ) conducts education, outreach, advocacy and direct representation through medical-legal partnerships to address disparities in health and well-being across the lifespan of vulnerable populations. Over 20 years, LCHJ's staff have an extensive childhood lead poisoning prevention track record, spearheading successful legislative and policy efforts, including most recently the Early Intervention (EI) and Lead pilot effort focused on EI automatic eligibility for lead-exposed children and partnering with IDPH on its MCEH COIIN.

The National Center for Healthy Housing (NCHH) is the preeminent national nonprofit dedicated to securing healthy homes for all. Since 1992, NCHH has served as a highly regarded and credible change agent, successfully integrating healthy housing advocacy, research, and capacity building under one roof to reduce health disparities nationwide. NCHH is a 501(c)(3) nonprofit corporation based in Columbia, Maryland.

The ChildLaw Policy Institute at Civitas ChildLaw Center, Loyola University Chicago School of Law, focuses on policy and legislative reform on behalf of underserved and underrepresented children and families. The Institute spearheaded state and local lead poisoning prevention efforts for over 15 years, advocating for policy reform, promoting public awareness, and fostering collaborations to achieve its mission. Efforts included drafting a Benchbook for Housing Court Judges on lead violations, developing curriculum on lead poisoning prevention for pregnant and parenting teens, drafting and working with the City of Chicago on a strategic plan to eliminate lead poisoning, co-chairing and staffing the legislatively established Illinois Lead Safe Housing Advisory Council, drafting the 2006 amendments to the Lead Poisoning Prevention Act and the 2007 CLEAR-Win Act.

The Cook County Department of Public Health was established on December 10, 1945 and is the state certified public health agency for Cook County with the exception of Chicago, Evanston, Skokie, Oak Park and Stickney Township. CCDPH serves approximately 2.5 million residents in 125 municipalities and strives to meet the public health needs of our suburban Cook County jurisdiction through effective and efficient disease prevention and health promotion programs.

At Elevate Energy, we design and implement programs that reduce costs, protect people and the environment, and ensure the benefits of clean and efficient energy use reach those who need them most. We are dedicated to increasing the impact we can have on the affordable

housing sector by improving unsafe conditions in order to ensure healthy housing. We do so by working to increase awareness of the link between health, energy and housing, as well as addressing lead based paint in homes to support homeowners with quality programs and services

The Health Justice Project is part of an interdisciplinary medical-legal partnership between Loyola University Chicago School of Law, LAF, and Erie Family Health Centers. Together, lawyers, healthcare providers, and law students identify and resolve the social and legal issues that negatively affect the health and well-being of vulnerable populations.

LAF is the largest civil legal service provider in Cook County. For more than 50 years, LAF has provided people living in poverty in the Chicagoland area with free legal services. LAF makes equal justice a reality, impacting the lives of over 30,000 of the most vulnerable members of our community each year. At LAF we work together to provide high quality civil legal services to people living in poverty and other vulnerable groups. Through advocacy, education, collaboration, and litigation, we empower individuals, protect fundamental rights, strengthen communities, create opportunities, and achieve justice. In carrying out our mission, we treat everyone with compassion and respect.

The Sargent Shriver National Center on Poverty Law (Shriver Center) provides national leadership in promoting laws and policies that secure justice to improve the lives and opportunities of people living in poverty by using a unique, proven approach of blending grassroots advocacy and innovative legal theory to promote economic and social justice for low-income people on a national, state, and local level. The Shriver Center's Housing Justice Unit advocates for the elimination of lead poisoning and advocated for Public Law 100-0723.