

ALLIANCE FOR HEALTHY HOMES

Protecting Children from Lead and Other Environmental Health Hazards



What is needed in an R&R Rule

- ban on unsafe practices;
- mandate for LSWP in high-risk housing;
- post-work clearance;
- widespread access to training and qualifications; and
- a clear, easily enforced policy that can be adopted in model, local, and state codes.

Unsafe practices

- literature is clear

Issues with targeting

- child-occupied units is not a static or finite universe
- restricting requirements to child-occupied units provides incentive to discriminate
- pre-1960 or pre-1950 would be needs-based and risk-driven

Post-work clearance

- need to be as protective as EPA LBP activities and HUD R&R
- this is the performance “safety net” protecting occupants where training requirements and adherence to LSWP fail
- accountability to consumers (owner-occupant, rental property owner, tenant)
- 10 states adopted LST with no direction from EPA – opportunity to expand and diversify the field of practice and lower costs

Training and qualifications: avoid LBP activities programs business model

- remodelers need not have certification (when record of training will suffice)
- LBP programs are not situated to run effective LSWP training delivery system, which needs to offer convenient access and flexible schedule, and be responsive to special needs
- Task of helping R&R businesses/professionals to continue to do their work is very different from enabling entities to enter the LBP field.
- Scale/volume: long-term interests would be served if LBP activities programs would engage local health and licensing/permitting agencies in building capacity and oversight

Enforceability

- state certification programs and regions alone are not up to the task or scope
- first line accountability
 - permitting entities require LSWP
 - sanitary and property maintenance code can cover checking for hazards and responding to complaints
 - model ICC – policy vacuum



- (i) such person has no actual knowledge that the facility or community is not, or will not be, eligible for such exemption; and
- (ii) the facility or community has stated formally, in writing, that the facility or community complies with the requirements for such exemption.

Sec. 808. [42 U.S.C. 3608] Administration**(a) Authority and responsibility**

The authority and responsibility for administering this Act shall be in the Secretary of Housing and Urban Development.

(b) Assistant Secretary

The Department of Housing and Urban Development shall be provided an additional Assistant Secretary.

(c) Delegation of authority; appointment of administrative law judges; location of conciliation meetings; administrative review

The Secretary may delegate any of his functions, duties and power to employees of the Department of Housing and Urban Development or to boards of such employees, including functions, duties, and powers with respect to investigating, conciliating, hearing, determining, ordering, certifying, reporting, or otherwise acting as to any work, business, or matter under this subchapter. The person to whom such delegations are made with respect to hearing functions, duties, and powers shall be appointed and shall serve in the Department of Housing and Urban Development in compliance with sections 3105, 3344, 5372, and 7521 of title 5 [of the United States Code]. Insofar as possible, conciliation meetings shall be held in the cities or other localities where the discriminatory housing practices allegedly occurred. The Secretary shall by rule prescribe such rights of appeal from the decisions of his administrative law judges to other administrative law judges or to other officers in the Department, to boards of officers or to himself, as shall be appropriate and in accordance with law.

(d) Cooperation of Secretary and executive departments and agencies in administration of housing and urban development programs and activities to further fair housing purposes

All executive departments and agencies shall administer their programs and activities relating to housing and urban development (including any Federal agency having regulatory or supervisory authority over financial institutions) in a manner affirmatively to further the purposes of this subchapter and shall cooperate with the Secretary to further such purposes.

(e) Functions of Secretary

The Secretary of Housing and Urban Development shall--

- (1) make studies with respect to the nature and extent of discriminatory housing practices in representative communities, urban, suburban, and rural, throughout the United States;
- (2) publish and disseminate reports, recommendations, and information derived from such

Belton, Keith B.

From: Kevin Bromberg [kevin.bromberg@gmail.com]
Sent: Sunday, December 18, 2005 10:42 PM
To: Hofmann.Angela@epamail.epa.gov
Cc: Belton, Keith B.; Lee, Amanda I.; Johansson, Robert C.; Fraas, Arthur G.; kevin.bromberg@sba.gov; Beck, Nancy; Smith.Peterj@epamail.epa.gov
Subject: R&R Status - Sunday, December 18 - SBA Issues Not Addressed
Attachments: Master File - EPA Edits 12_16.wpd

I just completed my review of the EPA changes in the December 05/13 redline, supplemented by revisions that were sent in individual files on Friday (I have one combined file attached, if that helps anyone from opening all the individual files). Angela advised me to review these because she thought some of SBA's issues had been addressed either on December 13 or Friday, December 16. Unfortunately, EPA has not yet addressed any of these issues raised initially on December 13, and discussed again by brief narrative in Set #2, sent on December 15th at 5 PM.

I was waiting for the new redline on the December 05 version, that would incorporate all the changes, that Angela hoped to complete Friday night, December 16, but I don't see any emails reaching my office as of Sunday night.

We are scheduled to have a Monday 9 AM discussion (tomorrow). Hopefully, EPA will be prepared to discuss these SBA issues pending at least as far back as last Tuesday. (and the RIA issues still pending - presumably to be addressed later).

My goal for the preamble: A fair and objective discussion of the merits of the proposed standard, with proper disclosure of potential significant weaknesses, and certainly without misleading the public through selection omission of relevant facts (such as we need complete disclosure on the phase III study, where there is no statistical evidence supporting increased EBL with regard to activities by persons subject to the rule (as opposed to homeowners and relatives). While EPA naturally is entitled to provide a basis for its proposal, and advocate for its proposal, to solicit informed comments, it needs to improve the discussion. (Two more examples - if the literature does not support the HEPA as being more protective than a non-HEPA vac, EPA needs to say so, and say why EPA prefers the HEPA vac. If EPA believes windowsills can be properly addressed with only a small number of samples in the WC/EC evaluation, it needs to say why.)

Remaining SBA Preamble Issues (Text addressed on 12/13 v.2) :

1. Phase III Study
2. Cleaning Verification
3. HEPA / NonHEPA
4. Windowsills

We don't insist on all the details - only the most relevant, and salient ones.

Did notice that EPA did not address entirely all the OMB edits from 12/13, many of which I agree with.

Kevin

12/19/2005

On page 24, insert the following paragraph before the paragraph that begins on line 906:

For each stage, the requirements of this rule would only apply to those renovations that meet the proposed definition of renovation discussed in Unit IV.B.3. of this preamble and do not qualify for the exceptions discussed in Unit IV.B.4.

On page 48, add this paragraph after the paragraph beginning on line 1934:

EPA requests comment on whether there may be unique situations where some or all of these proposed work practice standards are not necessary to ensure that the primary objective of this proposal, preventing the creation of new lead-based paint hazards from renovation, repair, and painting activities in housing where children under the age of 6 reside, is achieved. For example, it may not be necessary to post warning signs to protect the occupants if the renovation occurs while the housing is vacant.

On page 29, insert this paragraph after the paragraph that begins on line 1113:

EPA requests comment on whether renovation firms should be able to assume that no child under 6 resides in owner-occupied housing. The identification of the residences of children under 6 could be addressed in the same way that EPA is proposing to address children with increased blood lead levels during the first phase of the rule's applicability, discussed in Unit IV.B.1.a. of this preamble. If the renovation firm determined that the renovation activities would occur in owner-occupied housing, the firm could offer the owner-occupant the opportunity to inform the firm that a child under 6 resides in the housing. If the owner-occupant did not provide the firm with any information on children in residence, the firm could assume that no child under 6 resided in the housing, and the provisions of this proposal would not apply. EPA does not prefer this approach because children under 6 could be put at risk unintentionally through mis-directed mail, or a misunderstanding on the part of the owner-occupant as to the information sought by the renovation firm.

On page 33, replace the two paragraphs beginning on line 1293 with the following:

Although EPA believes that increasing the size of the exception from 2 ft² to 5 or 10 ft² would reduce the number of renovations covered by this rule, EPA ~~is unable~~ does not have enough information to determine with any specificity how many estimate the number of renovations that would be affected by such a change. ~~More importantly,~~ EPA is concerned that increasing the size of the exception, particularly for interior projects, would reduce the protections against lead-based paint hazards offered by this proposal. In addition, increasing the exception size would make this proposal inconsistent with the Pre-Renovation Education Rule and likely cause confusion among the regulated community, because renovation firms have been implementing the 2 ft² exception for a number of years.

Finally, HUD's Lead Safe Housing Rule, at 20 CFR 35.1350(d), includes "de minimis" levels of 2 ft² per room for interior projects and 20 ft² on exterior surfaces. If less than this

amount of painted surface is disturbed, HUD's lead-safe work practice requirements do not apply. EPA's lead-based paint abatement regulations also use these as small project exceptions, at 40 CFR 745.65(d). EPA requests comment on incorporating these size limitations into this proposal and is particularly interested in any data regarding the number of renovations that would be affected by a change in the minor maintenance exception and any data that would support a change in this exception.

On page 9, replace the paragraph beginning on line 293 with the following:

Childhood lead exposure continues to be a major public health problem among young children in the United States. ~~During 1999 through 2002, approximately 310,000 children aged 1 to 5 years remained at risk for exposure to harmful lead levels (Ref. 11).~~ Most children with blood lead levels in excess of CDC's current level of concern have been exposed to lead in non-intact paint, interior settled dust, and dust and soil in and around deteriorating older housing (Ref. 11). The nature and extent of the problems associated with residential lead-based paint have been thoroughly investigated. Approximately 40% of all U.S. housing units (about 38 million homes) have some lead-based paint. Use of lead-safe work practices during renovation can advance the goal of primary prevention of lead poisoning (Ref. 12).

On page 52, insert the following paragraph after the paragraph beginning on line 2104:

EPA invites comment on all aspects of its proposed work practice standards. EPA is especially interested in studies showing the effectiveness of each component of its proposed work practices, as well as the effectiveness of these components in combination. As noted in the economic analysis for this proposed rule, discussed in greater detail in Unit VIII.A. of this preamble, the Agency assumes that the specified combination of warning signs, containment barriers, cleaning measures, and the post-renovation cleaning verification process discussed in the next section, taken together, will result in lead dust levels at or below the dust-lead hazard standards established at 40 CFR 745.65(b).

On page 23, replace the paragraph beginning on line 861 with the following:

EPA is therefore proposing to revise existing regulations to extend training, certification, and work practice requirements to certain renovation and remodeling projects in target housing. It is not EPA's intention to merely expand the scope of the current abatement requirements to cover renovation and remodeling activities. Rather, EPA has carefully considered the elements of the existing abatement regulations and revised them as necessary to craft a proposal that is practical for renovation and remodeling businesses and their customers, while taking into account reliability, effectiveness, and safety as directed by TSCA section 402(a). A EPA requests comment on whether EPA should, after this rule is promulgated, EPA may solicit comment on assess the relationship between this rule and the abatement regulations and to determine whether amendments to the abatement regulations may be warranted.

On page 30, replace the paragraph starting on line 1168 with the following:

EPA also considered a single-staged regulation that would cover all renovations in rental target housing built before 1960 and owner-occupied target housing built before 1960 where a child under 6 resides. It should be noted that the Phase I study, which demonstrated lead dust loadings from renovation activities in target housing, did not differentiate housing by age. The measured lead loadings in that study represent an average. This option is not preferred at this time because 24% of the target housing built between 1960 and 1978 contains lead-based paint. A regulation that excludes those homes would not protect the residents of those homes, particularly the children residing in those homes, from potential lead-based paint hazards created by renovation activities. Furthermore, EPA's preferred option takes into account the fact that most target housing built between 1960 and 1978 does not contain lead-based paint by phasing in coverage of those homes after improved test kits are expected to be available. EPA requests comment on this option, and other options tied to the age of the housing and the likelihood that the housing contains lead-based paint.

On page 34, replace the paragraph starting at the top of the page (line 1323) with:

EPA is concerned that local public health organizations may be delayed in responding to a lead-poisoned child if the owner of the building where the child resides is not available to acknowledge receipt of the PYF pamphlet before an interim control project begins. The Pre-Renovation Education Rule allows persons performing renovations to mail a copy of the pamphlet to the owner, but the mailing must occur at least 7 days before the project begins. Exempting these types of projects from the Pre-Renovation Education Rule would enable public health organizations to begin responding to an elevated blood-lead level immediately, without significantly affecting the flow of information to the population at risk. Organizations that intervene in these cases typically provide a great deal of lead-based paint hazard information to the family of the lead-poisoned child. EPA is proposing to limit this provision of the emergency project exception to interim control projects ~~performed within one month of the documentation of an elevated blood-lead level in a resident child, to ensure that only interim control projects performed immediately in~~ that are performed as a direct response to a lead-poisoned child are exempt. EPA requests comment on ~~whether this one-month time limit is a time limit should be placed on projects qualifying for this exception, whether only projects performed within a certain amount of time after a lead-poisoned child has been identified should be exempt, and, if so, what period of time would be adequate for these purposes.~~

On page 37, replace the paragraph starting on line 1492 with the following:

~~However, if the firm submitted an incomplete application for re-certification, and EPA had not received all of the required information and fees before the date the firm's current certification expired, or if the firm did not submit its application until after its certification expired, EPA would disapprove~~ not approve the firm's re-certification application. The firm could not cure any deficiencies in its application package by postmarking missing information or fees by its certification expiration date. All required information and fees would have to be in EPA's possession as of the expiration date for EPA to approve the application. If EPA ~~disapproved~~ did not approve the application, the Agency would provide the applicant with the reasons for not approving the re-certification application. Any fees submitted by the applicant

would not be refunded, but the firm could submit a new application for certification, along with the correct amount of fees, at any time.

On page 95, replace the regulatory text starting on line 3812 with the following:

(iii) ~~EPA will disapprove applications for~~ If the firm fails to obtain re-certification received after before the firm's current certification has expired-expires, the firm may not perform renovations or dust sampling until it is certified anew pursuant to subsection (a) of this section.

On page 55, replace the paragraph starting on line 2223 with the following:

b. *Interior windowsills.* For interior renovations, after the work area has been cleaned and has passed the visual inspection, a certified renovator must wipe ~~the~~each interior windowsills (also known as a stools) in the work area with a wet disposable cleaning cloth. All wet cloths used in the post-renovation cleaning verification process must be at least damp to the touch, and must remain so during the process. After wiping ~~the~~each windowsills with a wet cloth, the certified renovator must compare the cloth to the cleaning verification card. If the cloth matches the card, ~~the~~at windowsills ~~have~~s passed the post-renovation cleaning verification. If the cloth does not match the card, the certified renovator must wipe ~~the~~at windowsills with a new wet cloth, or the same one folded so that an unused surface is exposed, and repeat this process until ~~the~~at cloth ~~that has wiped all of the windowsills in the work area~~ matches the cleaning verification card. Each windowsill in the work area must be verified in the same manner.

On page 92, replace the regulatory text starting on line 3696 with the following:

(A) Wipe ~~the~~each windowsills in the work area with a wet disposable cleaning cloth that is damp to the touch. If any dust or residue is visible on the cloth, either use a new cloth or fold the used cloth in such a way that an unused surface is exposed, and wipe ~~the surfaces at~~ windowsill again. Repeat this procedure until the cloth matches the cleaning verification card. Do the same for each windowsill in the work area.

On page 31, replace the paragraph starting on line 1199 with the following:

EPA considered and requested public comment on various approaches to defining the term "renovation" for the Pre-Renovation Education Rule, including options modeled on a definition in the TSCA asbestos regulations, the construction tasks identified by OSHA in its Lead in Construction Standard, and by the use of Standard Industrial Codes (SIC codes) as a means of defining the subject universe (Ref. 43). The majority of the public comments EPA received in response to its proposal involved the definition of this term. In response to the public comments, EPA crafted a definition that borrows from other sources but focuses on the activities of greatest concern to EPA, activities that disturb lead-based paint (Ref. 20). This definition also covers virtually all of the activities in the renovation and remodeling study that created lead-based paint hazards. ~~(It is possible that, in some cases, HVAC duct work would not involve the disturbance of lead-based paint, and would, therefore, not be covered by the existing definition of~~

~~“renovation” in 40 CFR 745.83.)~~ Conversely, EPA does not believe that this definition is overbroad, *i.e.*, it does not capture a significant number of renovation activities that are not capable of creating lead-based paint hazards. All of the activities monitored in EPA’s renovation and remodeling study which involved the disturbance of lead-based paint created or could reasonably be anticipated to create lead-based paint hazards. The study evaluated common renovation activities likely to disturb lead-based paint, including demolition of structures containing lead-based paint, removal of fixtures containing lead-based paint (window replacement), sawing and drilling into materials containing lead-based paint, and sanding lead-based paint. Because all of these activities are capable of creating lead-based paint hazards, a definition of “renovation” that is primarily based on the disturbance of lead-based paint is well-tailored to regulate the activities of concern.

As noted previously, the Phase I study excluded exterior siding installation and wallpaper removal because the study design team and the individuals consulted in the information-gathering phase generally considered these target activities to be of secondary importance. EPA has no quantitative information on the lead dust loadings generated during such activities in target housing. However, to the extent that these activities disturb paint, these activities would be covered by this proposal. Conversely, the Phase I study did include HVAC duct work, but it is possible that, in some cases, this work would not involve the disturbance of paint, and would, therefore, not be covered by this proposal. EPA seeks additional information on these activities, and is particularly interested in any data regarding the lead loadings generated by these activities.

The panel convened by EPA pursuant to the Regulatory Flexibility Act recommended that the Agency consider exempting certain specialty contractors (e.g., plumbing, electrical) from this rule. More information on this panel and its recommendations can be found in Unit VIII.C.6. of this preamble. EPA is not proposing to exempt such work *per se*, but requests data on the extent to which such specialty contractors engage in work that may create lead-based paint hazards.

On page 7, replace the two paragraphs starting on line 196 with the following:

~~According to the Centers for Disease Control, there is no known safe blood lead level; it can adversely affect virtually every system, it bioaccumulates, (Ref. 1a). Health effects associated with exposure to lead and lead compounds include, but are not limited to, neurotoxicity, developmental delays, hypertension, impaired hearing acuity, impaired hemoglobin synthesis, and male reproductive impairment. Lead bioaccumulates and it is difficult to remove from blood and bones. Lead exposure in young children is of particular concern because children absorb lead more readily than adults and their nervous systems are particularly vulnerable to the effects of lead. Over time, low. Children have a higher risk of exposure because of their more frequent hand-to-mouth behavior. Low levels of lead in a child’s bloodstream can cause learning disabilities, interfere with growth; and cause cognitive impairment, permanent hearing and visual impairment, and cause other damage to the brain and nervous system. The effects of long-term lead exposure or poisoning in children are well-documented: higher school failure rates and reductions in lifetime earnings due to permanent loss of intelligence and increased social pathologies.~~

In large doses, lead can cause blindness, brain damage, convulsions, and even death. Lead exposure before or during pregnancy can affect fetal development and cause miscarriages, as lead can pass from a pregnant woman's bloodstream to the developing child. There is also some indication that lead exposure contributes to high blood pressure and reproductive and memory problems in adults. According to EPA's Integrated Risk Information System (IRIS), by comparison to most other environmental toxicants, the degree of uncertainty about the health effects of lead is quite low and it appears that some effects, particularly changes in the levels of certain blood enzymes as well as changes in aspects of children's neurobehavioral development, may occur at blood levels so low as to be essentially without a threshold (Ref. 2).

Paint that contains lead can pose a health threat through various routes of exposure. House dust is the most common exposure pathway through which children are exposed to lead paint. Dust created during normal lead-based paint wear (especially around windows and doors) can create an invisible film over surfaces in a house. Children, particularly younger children, may also ingest lead-based paint chips from flaking walls, windows, and doors. Lead from exterior house paint can flake off or leach into the soil around the outside of a home, contaminating children's play areas. Cleaning and renovation activities may actually increase the threat of lead-based paint exposure by dispersing fine-lead dust particles in the air and over accessible household surfaces. In turn, both adults and children can receive hazardous exposures by inhaling the fine-dust or by ingesting paint-dust during hand-to-mouth activities.

On page 25, replace the paragraph starting on line 973 with the following:

It is EPA's expectation that the improved test kits will be available before the effective date of the requirements that apply to rental housing built between 1960 and 1978, as well as owner-occupied homes built between 1960 and 1978 where a child under 6 resides. If it appears that these improved test kits will not be available by that effective date, EPA will consider delaying the effective date for the requirements that apply to rental housing built between 1960 and 1978, as well as owner-occupied homes built between 1960 and 1978 where a child under 6 resides. In addition, EPA requests comment on whether EPA should wait to finalize the proposed second stage of this regulation until the new kits are actually commercially available. Waiting would ensure that the improved test kits are available before renovation firms must comply with the training, certification, and work practice requirements of this proposal for renovations in housing that is more likely than not to be free of regulated lead-based paint. ~~On the other hand~~ The proposed rule, by allowing the use of test kits in pre-1960 housing to determine the absence of lead-based paint, may provide an incentive for the development of improved test kits. In addition, an established deadline for coverage of homes built between 1960 and 1978 may also provide an incentive for the private sector to pursue improved test kits.

Starting on page 22, replace the paragraphs between lines 822 and 860 with the following:

As discussed previously, the renovation and remodeling study conducted under TSCA section 402(c) found that the following renovation and remodeling activities, when conducted

where lead-based paint is present, generated lead loadings on floors that exceeded the TSCA section 403 dust-lead hazard standard:

1. Paint removal by abrasive sanding.
2. Window replacement.
3. HVAC duct work.
4. Demolition of interior plaster walls.
5. Drilling into wood.
6. Sawing into wood.
7. Sawing into plaster.

EPA finds that, ~~b~~Because these activities cause lead dust to be deposited on floors in excess of the dust-lead hazard standard for floors, EPA concludes that these activities create lead-based paint hazards. In addition, based on the results of the Phase I study, EPA ~~finds~~concludes that drilling into plaster, where lead-based paint is present, can reasonably be anticipated to create lead-based paint hazards. Moreover, EPA ~~finds~~believes that ~~typical~~certain cleanup methods are not effective or reliable in reducing the lead levels below the hazard standard.

~~This finding is~~ These conclusions are supported by the results of other phases of the renovation and remodeling study. Phase III, *Wisconsin Childhood Blood-lead Study*, found that children who live in homes where renovation and remodeling activities were performed within the past year are 30% more likely to have a blood lead-level that equals or exceeds 10 µg/dL, the level of concern established by CDC, than children living in homes where no such activity has taken place recently.

Phases II and IV of the study, which evaluated worker exposures from renovation and remodeling activities, provide additional documentation of the significant and direct relationship between blood-lead levels and the conduct of certain renovation and remodeling activities. Phase II found a statistically significant association between increased blood lead levels and the number of days spent performing general renovation and remodeling activities, paint removal, and cleanup in pre-1950 buildings in the past month. Phase IV of the study found that persons performing renovation and remodeling activities in old historic buildings are more likely to have elevated blood-lead levels than persons in the general population of renovation and remodeling workers.

Based on the results of Phases I through IV of the renovation and remodeling study, EPA ~~finds~~concludes that any renovation activity that disturbs lead-based paint can create significant amounts of leaded dust. EPA reaches this ~~finding~~conclusion because the study examined renovation activities on a variety of components using a variety of tools and methods, and ~~found~~discovered that each activity that disturbed lead-based paint caused lead dust in amounts that created or could reasonably be anticipated to create lead-based paint hazards. EPA believes that the activities studied are representative of the paint-disturbing activities that typically occur during renovations. —

EPA invites commenters to submit or identify peer-reviewed studies and data, of which EPA may not be aware, that assesses the results of exposure to renovation, repair, and painting

| activities in housing or other facilities that may contain lead-based paint.
