

Renovation, Repair, and Painting Program for the Exterior of Public and Commercial Buildings

Small Business Roundtable Meeting
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Agenda

1. Background
2. Who Will be Affected
3. Requirements Under Consideration
4. Input to be Requested of SERs



Background – Settlement Agreement

- In April 2008, EPA issued the final Renovation, Repair and Painting Rule (RRP Rule) under the authority of section 402(c)(3) of TSCA to address lead-based paint hazards created by renovation, repair, and painting activities that disturb lead-based paint in target housing (housing built before 1978) and child-occupied facilities (COF's).
- Shortly after the RRP Rule was published, several lawsuits were filed challenging the rule.
- On August 24, 2009, EPA entered into a settlement agreement with some of the petitioners. In the settlement agreement, EPA agreed to commence rulemaking to address renovations in public and commercial buildings to the extent those renovations create lead-based paint hazards.



Background – Settlement Agreement

- EPA agreed, at a minimum, to do the following:
- **Exterior Renovations:**
- By December 15, 2011 - Issue a proposal to regulate renovations on the exteriors of public buildings built before 1978 and commercial buildings.
- By July 15, 2013 - Take final action on that proposal.



Background – Settlement Agreement

- EPA also agreed to a separate and future rulemaking which is not the subject of this SBAR panel.
- EPA agreed, at a minimum, to do the following:
- **Interior Renovations:**
- Consult with EPA's Science Advisory Board (SAB) by September 30, 2011, on a methodology for evaluating the risk posed by renovations in the interiors of public buildings built before 1978 and commercial buildings.
- Eighteen months after receipt of the SAB's report, either issue a proposal to regulate renovations on the interiors of public buildings built before 1978 and commercial buildings or conclude that such renovations do not create lead-based paint hazards.



Background – Statutory Authority

- Residential Lead-Based Paint Hazard Reduction Act of 1992--Title X

102nd Congress -- 2nd Session

[H.R. 5334]

102 P.L. 550; 106 Stat. 3672

1992 Enacted H.R. 5334; 102 Enacted H.R. 5334

DATE: OCT. 28, 1992 -- PUBLIC LAW 102-550

<http://www.epa.gov/lead/pubs/titleten.html>



Background – Statutory Authority

- Section 402(c)(3)

- (3) Certification determination. Within 4 years after the enactment of this section, the Administrator shall revise the regulations under subsection (a) to apply the regulations to renovation or remodeling activities in target housing, **public buildings constructed before 1978, and commercial buildings that create lead-based paint hazards***. In determining which contractors are engaged in such activities, the Administrator shall utilize the results of the study under paragraph (2) and consult with the representatives of labor organizations, lead-based paint activities contractors, persons engaged in remodeling and renovation, experts in lead health effects, and others. If the Administrator determines that an category of contractors engaged in renovation or remodeling does not require certification, the Administrator shall publish an explanation of the basis for that determination.

*emphasis added



Background – Current Rulemaking and SBAR Panel

- The rulemaking currently under development and for which we will shortly be convening an SBAR panel will only address public and commercial building renovation jobs on the exteriors of buildings that create lead-based paint hazards.
- Renovation jobs on the interior of public and commercial buildings that create hazards will be addressed by a future rulemaking and a future SBAR panel.
- Impacts on the interiors of the buildings in which the exterior renovations are occurring will also be considered as part of the rulemaking.



Background – Lead Based Paint

- Prior to 1978, paint manufacturers frequently used lead as a primary ingredient in many oil-based interior and exterior house paints. Usage gradually decreased through the 1950's and 1960's as titanium dioxide replaced lead and as latex paints became more widely available.



Background – Lead-Based Paint

- Lead bioaccumulates, and is only slowly removed, with bone lead serving as a blood lead source for years.
- Lead is known for its broad array of deleterious effects on multiple organ systems via widely diverse mechanisms of action.
- EPA has found clear substantiation of neurocognitive decrements being associated in children with mean blood lead levels in the range of 5 to 10 $\mu\text{g}/\text{dL}$, and some analyses indicate lead effects on intellectual attainment of children for which population mean blood lead levels in the analysis ranged from 2 to 8 $\mu\text{g}/\text{dL}$.
- Research has indicated that renovation activities of buildings containing lead-based paint significantly increase the risk of elevated blood lead levels.



Background – Exterior Rulemaking

Regulatory Timeline as Dictated by Settlement Agreement

- Exterior Advanced Notice of Proposed Rulemaking (ANPRM) was published on 5/6/10.
- Comment period for ANPRM closed on 7/6/10.
- SBAR Panel to convene in early 2011
- Notice of Proposed Rulemaking (NPRM) to be signed by EPA Administrator by 12/15/11



Background – ANPRM

- On May 6, 2010 EPA published an advanced notice of proposed rulemaking (ANPRM) with a 60 day comment period:

<http://www.regulations.gov/#!documentDetail;D=EPA-HQ-OPPT-2010-0173-0001>

- The notice informed the public of our intention to consider regulations for the renovation, repair, and painting of public and commercial buildings and asked the public for existing information:
 - Characterization of buildings;
 - Extent of lead-based paint use;
 - Current industry work practices;
 - Quantity of solid waste contamination from exterior renovations;
 - Extent of dust drift to neighboring properties;
 - Waste handling techniques; and
 - Exposure considerations for public and commercial buildings.



Background – ANPRM

- Over 40 written comments received.
- Commenters included
 - Renovation firms;
 - Window installers;
 - Property management firms;
 - Navy;
 - National Institute for Occupational Safety and Health (NIOSH);
 - Trade associations;
 - Environmental advocacy groups; and
 - Individuals.



Small Entities Potentially Subject to Regulation

- Building Construction Contractors
- Specialty Trade Contractors
- Public and Commercial Building Owners, Tenants, and Managers
 - Building owners, tenants, or managers would become subject to the rule only if they or one of their employees performed work that disturbed lead-based paint. Hiring an outside firm to perform the work would not make building owners, tenants, or managers subject to the rule; in such instances, the outside firm would be regulated.
- Facilities Support Services



Building Categorization

- Section 402(c)(3) of the “Residential Lead-Based Paint Hazard Reduction Act of 1992--Title X” specifically refers to the regulation of “public buildings constructed before 1978, and commercial buildings”.
- Congressional intent is not clear in regards to the definition of public and commercial buildings and the logic behind limiting coverage of housing and public buildings to those built before 1978, but not limiting coverage of commercial buildings.
- Congress may have been thinking of the Consumer Product Safety Commission (CPSC) lead-based paint ban when limiting public buildings to pre-1978.
- EPA will discuss possible definitions during the SBAR Panel.



Regulatory Requirements Under Consideration

- De minimis/minor maintenance exemptions
- Presumption of the presence of lead-based paint.
- Ability to test for the presence of lead-based paint.
- Regulation would not apply if no lead-based paint present on the components being renovated, repaired or painted.



Regulatory Requirements Under Consideration

- In determining what requirements should apply to the exterior renovations of public and commercial buildings, the proposal will consider the 2008 RRP requirements and subsets of these requirements.
 - Occupant protection
 - Containment
 - Prohibited and restricted practices
 - Waste disposal
 - Cleaning
 - Firm certification
 - Formal worker training and certification
 - “On-the-job” training for non-certified workers
 - Information distribution requirements
 - Recordkeeping requirements



Regulatory Requirements Under Consideration

- The regulatory requirements in the previous slide, as they pertain to target housing and child-occupied facilities, are explained on page 7-14 of the small entity compliance guide:
<http://www.epa.gov/lead/pubs/sbcomplianceguide.pdf>
- These work practices will be considered in conjunction with data on the extent of lead dust transport to nearby housing and COF's.



Small Business Advocacy Review Panel (SBAR)

- **Criteria for Small Entity Representatives selected for SBAR Panel**
 - Small businesses
 - Meet criteria for small business based on North American Industrial Classification System (NAICS) code.
AND
 - Are expected to be regulated.
 - Trade associations:
 - Primarily or significantly represent small businesses.
AND
 - Membership primarily comprised of those expected to be regulated.



Topics Expected to be Covered in SBAR Panel

- Small Business Input Requested on:
 - Current Industry Work Practices
 - Extent of lead-based paint use
 - Waste handling techniques
 - OSHA compliance
 - Liability insurance requirements
 - Prevalence of firms working in both the residential and the public/commercial building sector



Topics Expected to be Covered in SBAR Panel

- Regulatory alternatives for Defining Public and Commercial Buildings
 - Existing regulatory definitions
 - Access and intended use
 - Ownership and occupancy



Topics Expected to be Covered in SBAR Panel

- Regulatory Alternatives for Work Practices
 - Different work practice requirements based on distance from housing and Child Occupied Facilities.
- Cost of implementing the regulatory requirements under consideration



Topics Expected to be Covered in SBAR Panel

- Regulatory Alternatives for Work Practices
 - “Menu” of potential work practices from 2008 RRP rule and Clearance Proposal
 - Occupant protection
 - Work area containment
 - Vertical containment
 - Prohibited and restricted practices
 - Waste disposal
 - Exterior cleaning
 - Interior requirements (in limited circumstances)
 - Interior cleaning (in limited circumstances)



For More Information

- **RRP Rulemaking for the Exteriors of Public and Commercial Buildings (i.e., the rule which is the subject of this SBAR Panel)**
 - About this rulemaking: <http://yosemite.epa.gov/opei/RuleGate.nsf/byRIN/2070-AJ56?opendocument>
 - About this SBAR Panel: <http://www.epa.gov/sbrefa/lead-pncb.htm>
- **2008 RRP Final Rule**
 - The final rule: Lead; Renovation, Repair, and Painting Program, April 23, 2008, 73 FR 21692, <http://www.regulations.gov/#!documentDetail;D=EPA-HQ-OPPT-2010-0173-0019>.
 - The guide for renovators: *Small Entity Compliance Guide to Renovate Right: EPA's Lead-Based Paint Renovation, Repair, and Painting Program*, <http://www.epa.gov/lead/pubs/sbcomplianceguide.pdf>.
 - The pamphlet for persons affected by work that disturbs lead-based paint: *The Lead-Safe Certified Guide to Renovate Right: Important Lead Hazard Information for Families, Child Care Providers, and Schools*, <http://www.epa.gov/lead/pubs/renovaterightbrochure.pdf>
 - More information about the RRP Program: <http://www.epa.gov/lead/pubs/renovation.htm>, including:
 - o EPA requirements
 - o Information for contractors
 - o Information for property owners
- **Clearance Proposed Rule**
 - The Notice of Proposed Rulemaking: Clearance and Clearance Testing Requirements for the Renovation, Repair, and Painting Program: Lead, May 6, 2010, 75 FR 25038, <http://www.regulations.gov/#!documentDetail;D=EPA-HQ-OPPT-2005-0049-1078>
 - More information about this rulemaking: <http://yosemite.epa.gov/opei/rulegate.nsf/byRIN/2070-AJ57> of rental housing, child-occupied facilities



Questions?

Thank you

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