



# **TOOL BOOK FOR INITIATING EFFECTIVE POLICY CHANGE**

**WHAT YOU CAN DO IN YOUR COMMUNITY TO PROTECT  
CHILDREN FROM LEAD POISONING**

**JULY 2008**



## **Acknowledgements**

Understanding the need for effective primary lead poisoning prevention tools at the local level, this guide was written as a tool for local agencies that are looking to eliminate lead poisoning in their communities.

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*Recent studies indicate that dust lead is the strongest predictor of childhood blood lead levels.*

-US Department of Housing and Urban Development

*The source for most lead-poisoned children now is the dust and chips from deteriorating lead paint on interior surfaces. This exposure commonly arises from normal, developmentally appropriate hand-to-mouth behavior in an environment that is contaminated with lead dust.*

-American Academy of Pediatrics

## **Part 1 - So, what is the problem with lead?**

Each year, thousands of toddlers in Michigan communities are irreparably harmed by the very homes in which they live. Specifically, these children are poisoned by ordinary household dust containing high levels of lead from deteriorating lead-based paint. Once children ingest lead, the damage is done. High levels of lead in a child's blood results in permanent brain damage that will affect the child for a lifetime.

While making all Michigan homes lead-safe is a costly proposition, it is an investment that will pay dividends for years to come. As we invest in children's housing, we will save costs in health care, education, social services, and corrections. We will also reap the benefit of a better-prepared work force and the resulting income worker productivity and taxable income.

In the end, it all adds up. The investment of making children's homes lead-safe will save money in the long-run.

### ***How do we fix the problem***

So how do we get started when the cost of abating homes can be high? We begin the same way we do with any large undertaking - one step at a time. Many Michigan communities have already begun by initiating childhood lead poisoning prevention programs within their local public health department. Many others have also begun relief programs to help low-income families repair lead hazards in their homes.

The next step is to engage the private sector in fixing homes by offering incentives and inducements. One strategy that is proving effectiveness is the passage of stronger housing codes and ordinances that seek to protect children *before* they are poisoned - often categorized as the primary prevention technique.

We also get started by learning from our past. One of the biggest obstacles to solving the problem of childhood lead poisoning is that it has traditionally been thought of as a "health care problem." Yet, the real monetary costs of childhood lead poisoning have not been born by the health care system - and as a result, there is no financial incentive within health care system to solve the problem. The same goes for housing.

Effective strategies for ending childhood lead poisoning need to share the costs. Through code and ordinance, the government can begin shaping public policy that shares the cost for remediating lead hazards across society. By engaging the private sector beyond health care, the impact upon any one individual or group will be lessened.

Currently, society as a whole pays the cost for childhood lead poisoning - children who cannot learn to their full potential, increased social services costs, lost worker productivity, and increased juvenile delinquency and adult incarceration.

If we all pay the cost of the problem, why not share in paying for cost-effective solutions?

Using housing codes and housing ordinances are proven strategies for reducing childhood lead poisoning through primary prevention. The State of Maryland, Cerro

Gordo County in Arizona, the City of Rochester in New York, and many other communities have effectively used housing codes and ordinances to reduce the burden of childhood lead poisoning.

This guide will help your community wade through various strategies, decide which step is the right step for your community, and examine the capacity of your organization and community to tackle this problem.

This guide will help you answer many of those questions so that you and your community can take the next step. To help you get started, this guide provides resources through the following chapters:

**Community Assessment** - Methods to help you realistically assess whether your community is ready for policy change.

**Addressing Environmental Justice Issues** - Finding and relating to disenfranchised stakeholders.

**Coalition Assessment** - Building effective policy requires more than a handful of smart people. Who should be involved and are they ready for action?

**How Local and Regional Governments Work** - Understanding governmental structure and opportunities for impact.

**Existing Federal Law and Policy** - Getting familiar with federal regulations concerning lead.

**Existing State Law and Policy** - Understanding current Michigan legislation, how it fits within federal laws and helps local primary prevention efforts.

**Options for Policy Change** - You do not have to reinvent the wheel. Studying this work grid of model practices may help you chose what is best for your community.

**Model Policies and Limitations** - Best practice examples of legislation and predicting barriers and unforeseen implementation issues.

**Strategy Development** - How do you decide which model is right for your community, enlist the support you will need, and get the ordinance passed? Use these tools to formulate your plan.

**Presenting the Issue** - How do you communicate with the various audiences in your community effectively? How do educate, get buy-in, and work with the media?

**Leveraging your Victories** - Learning to celebrate small victories and accept compromise while sustaining your work long-term.

## Part 2 - Community Assessment

Undoubtedly, successful projects are much more satisfying than unsuccessful ones; and though your first instinct may be to jump-right-in and just-get-the-job-done, be under advisement that winning results require a bit of planning and forethought. Before getting started, ask yourself some important questions.

- Is your community ready for change?
- Do you anticipate a considerable amount of resistance to the idea?
- Is there enough evidence to convince resisters to change their minds?
- Do you have the time and resources to implement this project?
- Are there community resources to help sustain your project over long term?

If your answer is “no” to a majority of these questions, you may not want to attempt a project such as this right now; however, do not be discouraged. With long-term community education and persistence, your answers may change over time. Pick up this guidebook in six months or in a year and reassess your position - the environment may have changed.

Even if you answered “yes” to a majority of the questions, be realistic; without a crystal ball, it is very difficult to really know what obstacles and challenges are ahead. If success is your objective, you should be willing to take a closer look at your project by exploring who or what resources are, identify project champions, understand how to best use them to promote your objective, how to handle nay-sayers along the way, and steer clear of pitfalls.



### ***Asset Mapping***

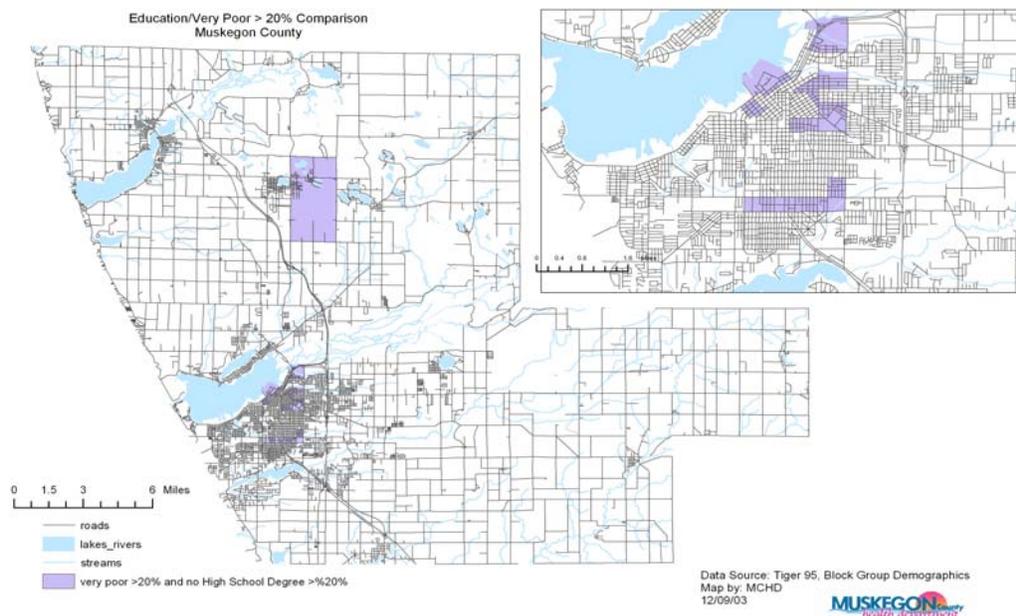
One of the techniques used to explore community resources is the Asset Mapping process. Often used by social scientists, Asset Mapping is a unique method of graphically representing current and potential resources for your project - an inventory of sorts.

Asset maps can include a number of different types of resources. Assets (sometimes called building blocks) can be people, organizations, and or material goods. An asset can be local, regional, national, or global in scale.

In addition, asset maps can be simple in form or extremely detailed. Traditional asset maps include primary, secondary, and tertiary community resources. Primary being those assets that are the most easily accessible and are locally controlled. Secondary assets are those easily accessible, but controlled elsewhere; and Tertiary assets are those building blocks or assets located elsewhere and controlled elsewhere (McKnight, et al, 1990). We will speak more of asset types later in this section.

In addition, with the introduction of GIS (Geographic Information Systems), a sophisticated computer-mapping program, an asset map can now include graphic information such as population distribution, road networks, school district boundaries, and location of health care facilities (Sharpe et al., 2000).

## Muskegon County Demographics



The major benefit of asset mapping is that it will give you a point of reference in which to discern whether all interested parties, or stakeholders, have been engaged, called to action, and/or informed. It also may bring to light some resources that have not previously been identified.

Often, a needs assessment, which will identify community detriments, is completed in conjunction with an asset map; however, because empirical evidence has already established the need for primary lead poisoning prevention, a needs assessment is more than likely not necessary for your primary prevention project.

Furthermore, concentrating on assets instead of detriments keeps everyone focused. Even when looking for community strengths, most will undervalue potential building blocks. Dwelling on the “bad” could actually discourage civic action (Walker, 2008).

Though rare, there may be situations where resources have already been identified and an official asset map may not be required. This type of situation may occur in an extremely small community or in a place where few resources are known to exist. Generally speaking, however, it is a good idea to at least develop a simple asset map. Often resources that were not previously known will be discovered.

When putting together an asset map you are essentially asking yourself and others the following:

- What would you say are some community strengths that could assist in this project?
- What are some of the gifts and talents of the people (young, old, multicultural) in the community that could aid the project?
- Who are the people in the community who take care of others when it is not part of their job? Would these people be interested in this project?
- What groups, clubs, or associations in the community make a difference in the well-being of the community that may find interest in this project?
- What regulations or ordinances already exist that can help our cause?

Information included in an asset map can be collected through key informant interviews, coalition meetings and other community forums, windshield and walking tours, archival data from the city, county or state government, existing community directories, and inventories and research (Sharpe, et. al., 2000).

Special attention should be paid to established assets such as long standing community clubs or service organizations. This type of group is often already heavily integrated and well networked. In addition, they may harbor a significant amount of influence in the community.

- Men’s Groups
- Outdoor Groups
- Social Cause Groups
- Women’s Groups
- Charitable Groups
- Collectors Groups
- Ethnic Associations
- Local Government
- Self-Help Groups
- Political Organizations
- Sports Leagues
- Youth Groups
- Block Clubs
- Artistic Organizations
- Church Groups
- Community Support Groups
- Health & Fitness Groups
- Local Media
- Neighborhood Associations
- School Groups
- Veteran Groups
- Business Organizations
- Civic Events
- Elderly Groups
- Interest Clubs

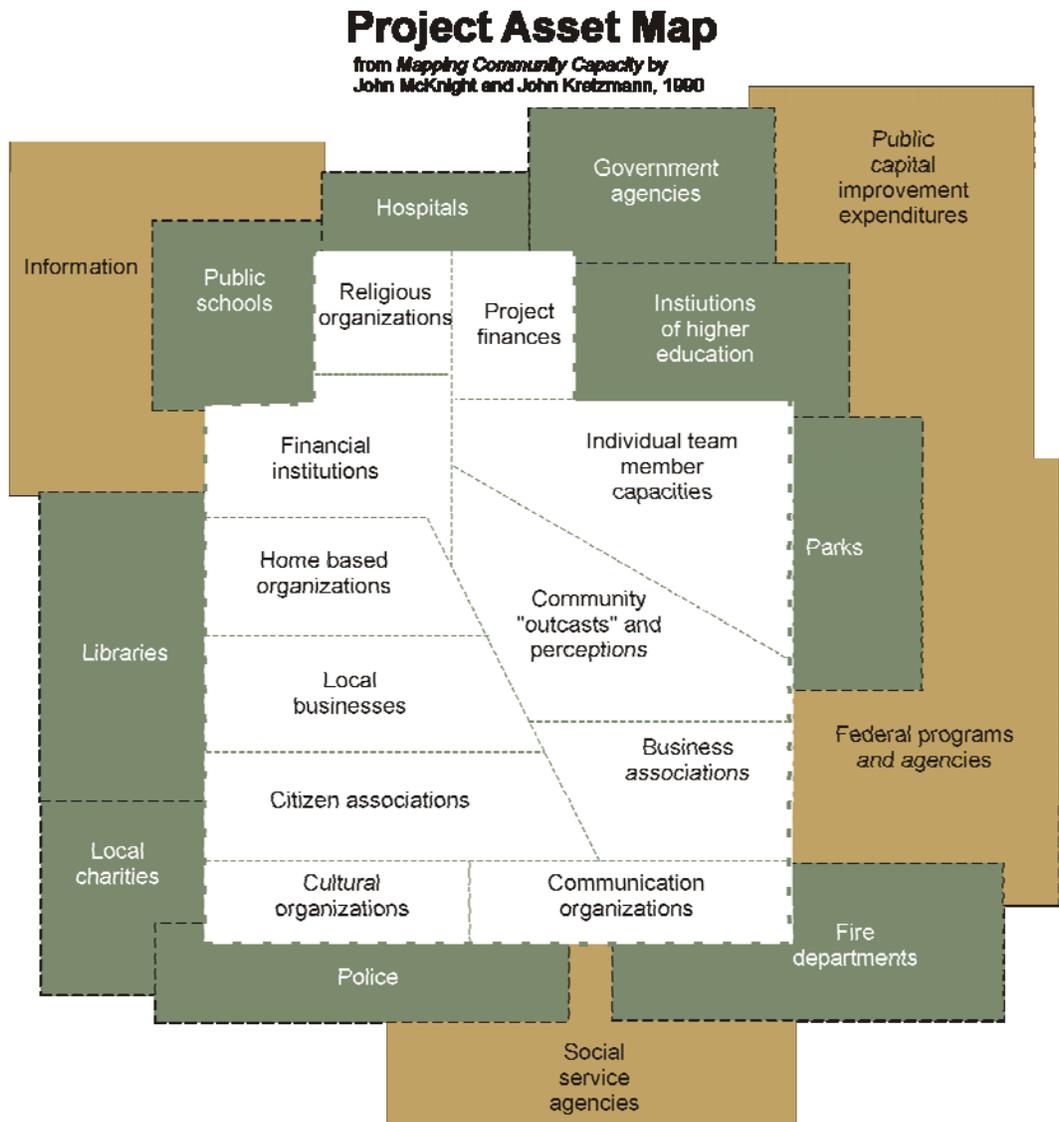
As mentioned previously, assets can also be divided into three categories. Each of these categories further distinguishes the energy that will need to be expended to involve them in your project - the further the asset from the core of your project, the more difficult to access (McKnight, et al, 1990).

Primary Assets	Examples:
<p>Assets and capacities located within the community and largely under community control.</p> <p><i>Individual and or Organizational Assets</i></p>	<ul style="list-style-type: none"> <li>• Individual team member capacities</li> <li>• Project finances</li> <li>• Community “outcasts” and perceptions</li> <li>• Local businesses and associations</li> <li>• Home-based and citizen organizations</li> <li>• Financial institutions</li> <li>• Cultural or religious organizations</li> <li>• Communication organizations</li> </ul>

Secondary Assets	Examples:
<p>Assets are capacities located within the community but largely controlled by outsiders.</p> <p><i>Private, Public and Physical Assets</i></p>	<ul style="list-style-type: none"> <li>• Institutions of higher education</li> <li>• Hospitals or public schools</li> <li>• Government agencies</li> <li>• Police or fire departments</li> <li>• Libraries</li> <li>• Parks</li> <li>• Local charities</li> <li>•</li> </ul>

Tertiary Assets	Examples:
<p>Resources originating outside the community and controlled by outsiders.</p> <p><i>Major Public Assets</i></p>	<ul style="list-style-type: none"> <li>• Public capital improvement expenditures</li> <li>• Information not normally released to public (demographics, economic/health data)</li> <li>• Federal programs and agencies</li> <li>• Social service agencies</li> </ul>

A simply completed asset map may look somewhat like the following graphic. In this particular map, Primary assets are in the center of the drawing. Secondary Assets are in green. Tertiary Assets lay on the outside borders of the map in tan—representing the most far-reaching assets for the community.



## Networking - Increasing your Social Capital



Now that you have determined resources in and out side of your community that could be very valuable to your project, the question becomes, are they tangible? Do you or someone you know have contact with that person or resource? Do you know how to tap the resource? How do you get them on your team? Do you have a trustworthy relationship built already? What are their values? Does this project conflict with interests? How do you build those needed relationships?

If you work in local government, you may have specialized training in communicating and relating across cultural, educational, or socioeconomic boundaries and you may consider yourself well connected; however it is very possible that you do not have access to some of the resources realized in your asset mapping exercise, unless you are a rarity. Then again, you might know how to reach an organization - just not who in the organization. The best connection, your most valuable asset within that organization.

This is where the skills you learned through specialized training come into play. If you are lucky, some of the skills will come naturally; however, in most cases you will need to overcome your reservations and make that cold call or develop a network to begin building those important relationships.

If you do not have the natural ability or are a bit “skittish,” you will need to find someone who is at least willing to try reaching and gaining buy-in from as many of the potential assets as possible. At worst case scenario, you may need to hire a professional, but in most cases, it is possible to find a volunteer who has mastered the particular required traits.

If you are thinking that this may be a good opportunity for you to build your own skills, you should consider specialized training in one of the following areas:

Cultural sensitivity  
Diversity  
Overcoming language barriers  
Facilitation

Classes are widely available in all of these areas. Check with your local university, school system, or local government for opportunities.

Meanwhile, there are some simple things you can do to begin gathering that much-needed network of allies.

- ✓ Begin looking at how your own local government works. Who is influential? How has your municipality passed ordinances or regulations in the past?
- ✓ Begin researching the interests of your stakeholders, the influential, and the powerful in your community. What are their passions and goals? What kinds of projects have they supported in the past? How could you get them to support your project? Why would they want to support your project?
- ✓ Begin joining and actively participating in community collaboratives. Many community activists belong to multiple collaboratives and task forces making it possible for you to gain knowledge about other organizations that may also benefit your project. In addition, you may find common problems and concerns as it relates to your community – leading to development of natural champions for your cause.



Notes:

## Part 3 - Environmental Justice Issues

One of the problems encountered in projects such as this is the inclusion of the underserved. While community driven organizations thrive on such input, such groups and individuals are often reluctant to participate, with the reasons for non-participation varying from intimidation and under-awareness to life priorities and apathy.



Regardless of the reason, input from groups that otherwise remain un-engaged in civic activity, may be important to your project. The question here is how do you find the underserved and engage them?

Stopping short of writing an entire chapter (in which the reasons for and implications of disengagement could be discussed at length), a short overview of some of the basic techniques to assist in identification and engagement of the underrepresented follow.

### ***Finding Unrealized Stakeholders***

**Demographics** - Though it only provides a general description of the local population, use of information provided by the U.S. Census, U.S. Bureau of Labor Statistics, local economic agencies, and school districts can give you a start on figuring out who the stakeholders might be in your project.

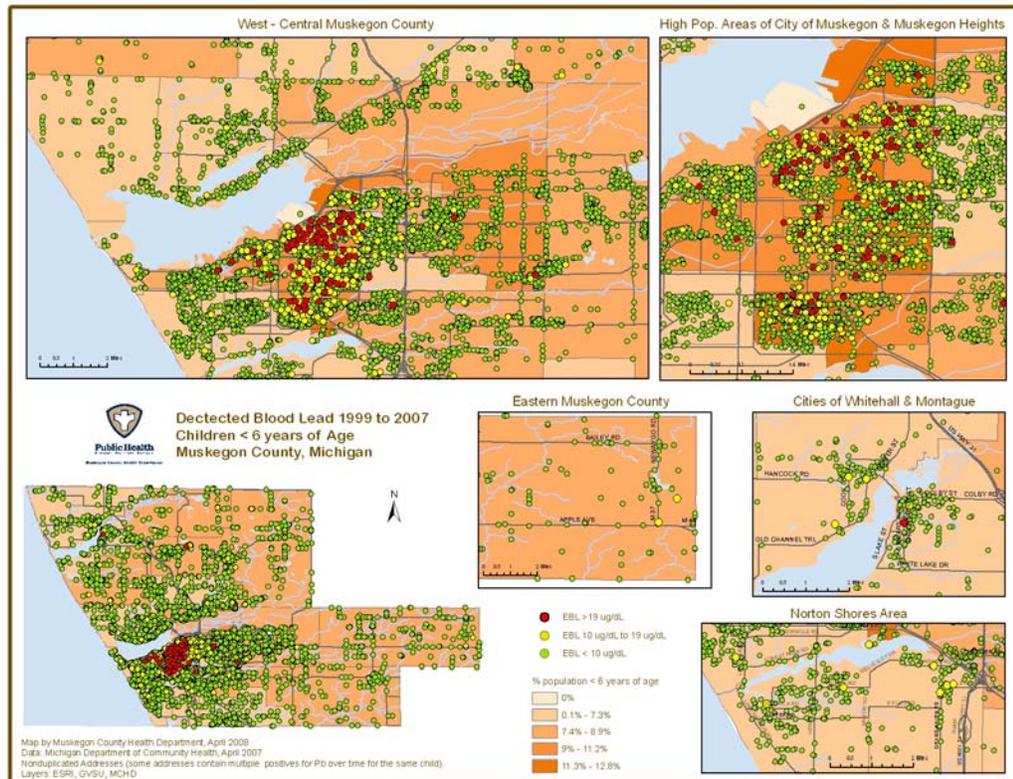
Information such as race, gender, age, education level, median household income, languages spoken, mode(s) of transportation, and household economics can be found, down to the block group, at the U.S. Census Bureau ([www.census.gov](http://www.census.gov)). Information collected by the Census Bureau will help you understand how to best relate to your target populations. For instance, educational attainment numbers can help you decide the proper reading level for your advertising, meeting announcements, and educational information distribution. It can also help you identify potential cultural barriers such as spoken languages and spiritual belief systems.

The U.S. Bureau of Labor Statistics (BLS) can also assist in your quest for identification of possible interested persons and organizations. The BLS collects information on the workforce such as the number of unemployed, types of occupations, and the numbers of persons in your target area employed in various occupations. This can give you a hint of what businesses or types of industry may be of the most help in reaching underrepresented populations. Also, it may help to identify whether local organizations such as unions, teachers associations, or particular business groups could be of benefit to your project.

While often not as reliable, local demographic data is also available from a number of resources such as school districts, hospitals, and local government agencies. Though methods of collection are not as sophisticated as federal resources, local data is collected on a more frequent basis. Types of useful information collected locally include free and reduced lunch rates, to preventable hospitalization and rental property identification.

Geographic Information Systems (GIS) – becoming more popular in recent years, GIS offers the user a visual representation of statistical data collected globally, nationally, statewide, and/or locally. Through a highly sophisticated system, GIS is able to match data with satellite photographs, streets, and other geographic identifiers, resulting in an actual graphical map of the information. Include a demographic map here.

As in the old cliché, a picture speaks a thousand words. A GIS map can prove to be invaluable, often leading to the discovery of important information that is difficult to



identify from just looking at numbers and charts. For example, a map showing health disparities in poorer areas are highly effective tools in demonstrating health and social inequity. If your organization is not suited for GIS, state and local government agencies quite frequently provide the service.

Using Your Network & “Connections” – While you may feel somewhat a gossip at first, taking advantage of the connections you have already built in the community can be your greatest resource for identifying underrepresented populations. People belong to multiple organizations and communicate in a variety of circles whether through volunteerism, advocacy, or civic responsibility. Simply explaining your project to your peers and asking them to identify potentially interested parties can often lead to a great list of resources. As mention in the prior section, however, you still must have the courage, time, and commitment to make that recruitment “cold call” or set up that first meeting.

### ***Engaging the Underserved***

Face-to-Face Introductions – Question. Through your hard work of networking and tapping your connections, you discover someone in the community that could be very valuable asset to your project. So, you make that “cold call” only to find that they do not want to participate because they do not know anyone in your group or they do not see how they fit in the picture. How do you persuade them to participate? Try a face-to-face

introduction – on their turf, if possible.

As we all know, meeting someone face to face always improves a relationship – especially where trust is necessary. Sometimes knowing just one person can make a great deal of difference in their willingness to participate. Meeting them in their neighborhood, at their favorite restaurant, or at their local church can always ease tensions as well.

If possible, enquire as to why the person feels uncomfortable or why they do not feel their opinion is important. Taking the time to understand a person's point of view and explaining why you feel their participation is critical may change their mind.

Use of Incentives – Gifts are always fun, right? We think everyone would agree; however, appropriate incentives are always best – and sometimes end up not being the most fun items.



Good incentives include items that:

- 1) Fit the objectives and or goals of your project
- 2) Are of valuable to everyone in your target audience
- 3) Are practical
- 4) Are reasonable in price

Incentives are an important attractor or thank you to those who get involved in your project. Face it – everyone's time is valuable – and more often than not worthy of a token of appreciation. When asked, most professional facilitators will immediately tell you that two types of incentives nearly always work – food or money; but others, depending on the situation, may be far more appropriate.

Providing and Improving Access – Sometimes the lack of participation is due to something as seemingly simple as transportation or childcare problems. While these reasons may appear minor to some, do not discount them because they are often quite critical reasons to others.

Providing a bus pass, car pooling opportunity, allowing children, or changing the time of your meetings to account for “family time” may be enough to get that person there.



Notes:

## Part 4 – Coalition Assessment



Margaret Mead once said, “Never Doubt that a small group of thoughtful committed individuals can change the world. In fact, it’s the only thing that ever has.”

In this chapter we will discuss how to organize a local collaborative to improve childhood lead poisoning legislation. Using Mead’s quote as a guide to empowerment, let’s look at how it can be both

helpful and limiting in one’s efforts to organize a powerful local collaborative capable of changing local ordinance and policy to protect children from lead poisoning.

**Helpful.** First, some thoughts on how this quote can be helpful:

Small Group. To begin with, communities need to have a group of individuals who are committed to pushing for change, often referred to as champions. This “small group” will most likely be the same people who will be your initial leadership, and must be committed enough to get the ball rolling by calling meetings and proposing some initial strategies. But most importantly, this “small group” must be ready to engage and listen to others.

Thoughtful. Your leadership must be willing to lend time to both study the problem and be creative. Good leaders do their homework and know the issues—from *all* sides. Good leaders can also be creative and willing to think of new, innovative solutions. Thoughtfulness also implies an ability to listen deeply to others and to learn from their experiences. The ability to work together and respect other partners’ values and tactics is paramount. Groups that have a proven ability to work collaboratively and who are willing to accept other partners’ ideas and strategies are the most effective.

Committed. Your leadership must demonstrate commitment to the wider membership. They must be reliable. They must be persistent. They must be bold.

**Limiting.** Now some thoughts on the limitations of the quote:

Small Group. The “small group” phrase is the most problematic of Margaret Mead’s quote. Ultimately, it is not the small groups that lead to the most important changes in our communities, but it is big groups. Small groups must become big groups. Good campaigns look to grow beyond the founding members and seek to listen to and involve the wider community, *especially those most directly affected*. If your coalition remains an insular, small group, you’ll only reap small change.

Thoughtful. Thoughtfulness alone is not enough. Being smart helps, but when it comes to changing public policy, thoughtful people have only as many votes as the rest of us. Truly smart and thoughtful organizers will see the limitation of just

knowing their content area, and will also take the time to learn how to mobilize people for change. When seeking changes to public policy, time spent mobilizing people usually pays much greater dividends than time spent doing research. Both are helpful, but thoughtfulness alone will not change the world. Large groups of well-organized voters will.

Margaret Mead's quote is full of paradox, but the basics of organizing people for change is not. Organizing is simple math. Numbers count - and bigger numbers count more than smaller numbers.

As you organize your coalition, be thinking about which groups represent large numbers of voters and influential people. In American society, it is ultimately the will of large numbers of voters that will shape public policy. Your job is to build that large number of organized voters.

In diverse, urban communities, it is difficult to build a large base if your group is too homogenous. Our urban communities are diverse in many ways; therefore, those organizing a coalition need to be up to the challenge of organizing diverse points of view.

Disagreement and opposing points of view are not inherently bad and can contribute to the group's creativity and strength. More important than initial agreement, is your partners' abilities to handle disagreement in such a way that deliberating differences contributes to the strength of the coalition. Broad-based coalitions have much more clout than those who represent a narrow interest.

One of the most effective ways to build large numbers of organized voters is by forging a local coalition that can work, in unison, for specific change.

Below is a checklist of groups that are often effectively engaged to change lead poisoning statutes.

#### **Community and Faith Based Partners**

- Churches
- Ecumenical Organizations
- Parish Nursing programs
- Neighborhood Associations, Ethnic Organizations and Coalitions
- Junior League, Kiwanis and other Service Organizations
- Community-Based Direct Service Organizations (Community Centers)

#### **Early Childhood Development**

- Head Start, Early Head Start, and other early childhood programs
- Child Abuse and Neglect Council
- Child Advocacy Coalitions and Initiatives
- Healthy Start, Parenting Programs
- Local 4-C group, Coordinated Child Care
- Private and Public Schools

#### **Higher Education**

- Cooperative Extension (nutrition)
- Medical Research Organizations (Higher Education)
- Nursing schools

#### **Housing**

- Non-Profit Tenant Advocacy Organizations
- Rental Property Owners' Associations
- Community Development Corporations and government agencies
- Non-Profit and Faith-Based Housing Providers
- Home Ownership Programs and Advocates

## **Health Care**

- Health Care Consumer Organizations
- Local Health Coalitions
- Federally Qualified Health Centers
- Low cost prevention clinics
- School-based clinics
- Department of Human Services
- Managed Care Providers
- Hospitals and ambulatory sites
- Local Public Health Department
- State Departments of Health

## **Funders**

- Elected Officials
- Local Philanthropists
- Community Foundations

## **Advocacy and Community Organizers**

- Environmental Justice Organizations
- Parent Advocacy Organizations
- Racial Justice Organizations
- Community Problem Solving Initiatives
- Environmental protection agencies and organizations

## ***Seeking agreement and building a coalition***

In most cases, it is probably most productive for advocates and other outside stakeholders (such as landlords, housing advocates, labor unions, and community groups) to come to some level of basic agreement about what policy changes should be requested. Typically a coalition will be built around the proposed solution.

Advocates need to weigh the odds of a controversial proposal that seeks sweeping change against the odds of a reasoned proposal that has achieved a greater level of consensus, albeit which may be more limited in scope. If some of this analysis can be done before local government is engaged, the coalition will more likely attract the support of top bureaucrats and elected officials.

Sometimes it is not possible to get 100% consensus in the community. In those cases, leaders need to decide if the emerging coalition has enough clout without all of the stakeholders being in agreement. It may be possible that those who are opposed to the solution have enough clout to derail the process. Perhaps the solution needs to be amended to get more agreement. By exploring such power dynamics, the coalition can come up with a reasoned and winning proposal.



Notes:

*It is common sense to take a method and try it. If it fails, admit it frankly and try another. But above all, try something.*

Franklin D. Roosevelt

*Power consists in one's capacity to link his will with the purpose of others, to lead by reason and a gift of cooperation.*

Woodrow Wilson

## Part 5 – How Local and Regional Governments Work

### *Working with Government*

There is broad agreement throughout the community that children should be protected from the harms of lead poisoning. Regardless of their politics, people overwhelmingly agree that children should not be poisoned and that the community should not have to bear the costs of the negative impact childhood lead poisoning. The challenge begins when the community begins seeking solutions. It is in finding solutions where disagreements arise and need to be settled.



- Who pays for prevention?
- What are the limits of reasonable and just regulation?
- How much of prevention is the responsibility of the parent or caregiver?
- What is the role of the private market?
- If lead poisoning has negative health and educational outcomes, why should landlords, the housing sector, or local government pay the cost?
- Whose responsibility is the solution?

It's easy to say that all of us, as a community, should share responsibility for the solution. Yet when we begin implementation, we find the proverbial "devil of disagreement" in the details.

Too often, the complexity of disagreement is enough to cause people to give up the fight. Are the challenges of working through disagreement so daunting that their avoidance is more important than protecting children from the life-long negative outcomes of lead poisoning?

Instead, leaders need to take a deliberate, careful approach to change. A leader needs to understand how government works, both in terms of its structure and politics.

Leaders need to build consensus and a base of supporters who are both willing to make their concern known and who are persistent in their call for solutions. Then supporters can work through the political process to bring lasting, systemic changes to local policy. Together, they can work to protect the community.

### Background – Legal Authority

The Michigan constitution sets the ground rules for county government, but the legal authority for county government is dictated by several state statutes and court decisions.

There are two major roles that government fulfills:

1. County government exists to extend some powers of state government throughout the state. For example, the state requires county prosecutors to enforce the state criminal laws.
2. County government must carry out programs that benefit primarily the local population, such as health and welfare activities. There are not required, but rather are ‘permissive’ functions. For example, county parks and recreation programs are supported by counties because of the want in need in the community.

Although counties act as agents of the state for required functions, they remain separate and with their own legal identity. They have the right to sue and be sued, enter into their own contracts, hold real and personal property, borrow money for legal purposes, and perform acts necessary to safeguard property and conduct county affairs.

### Structure of County Government

There are 83 counties in Michigan. Fourteen are single county governments with their own county health departments, while the other 69 are multi-county health departments.

Each county has a Board of Commissioners that serves as the legislative body. The Board has limited authority as it relates to budgets and ordinance-making powers (ordinances are normally set at the city level). The Commissioners have responsibility for setting policy, usually by passing resolutions, the main device for stating their policies.

The County Board does not have police powers unless specifically stated in state statutes. Each county Board may have no fewer than 5 members, or more than 35 members. County boards are mandated to meet a minimum of four times per year. The meetings must be open to the public, be conducted in a public place and be in compliance with the open meetings requirements. The public must be informed a minimum of ten days prior to the meeting and must be able to offer testimony at the meetings.

### The Local Health Department

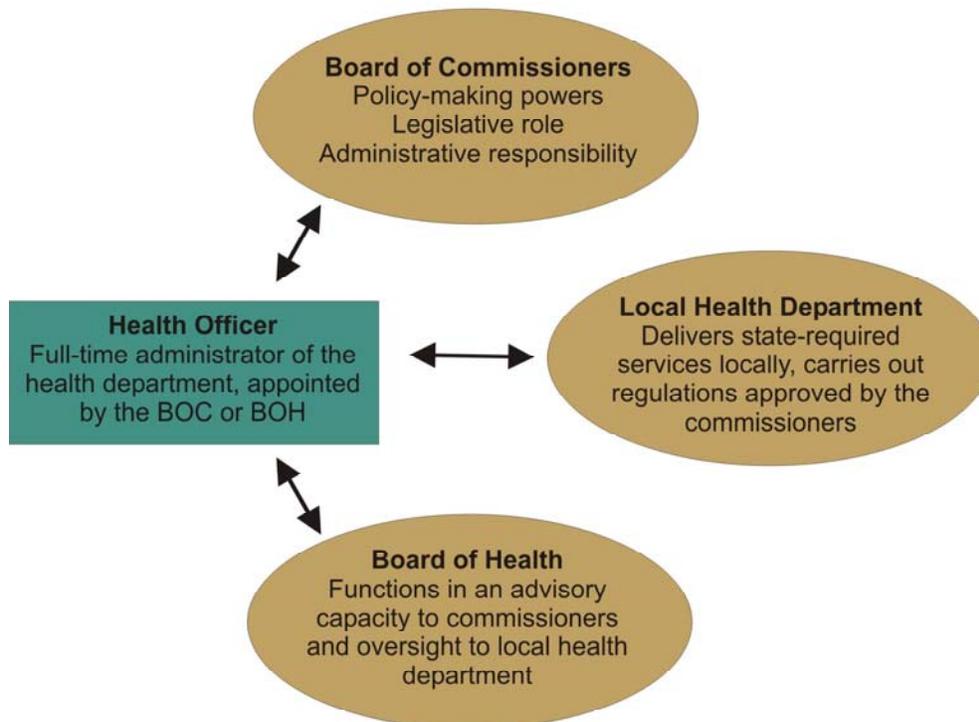
Local health departments in Michigan are governmental entities that deliver state-required services locally. They also function as extensions of the states health department. They have the legal responsibility to ensure the public’s health by carrying out regulations approved by the Board of Commissioners.

The health officer is a full-time administrator of the local health department, appointed by the Board of Commissioners or the Board of Health and functions as the top administrator of the local health department. He or she is responsible to the commissioners for overseeing the duties and functions of the health department.

The Board of Health is a required entity in multi-district health departments and optional in single county departments. The Board of Health is made up of two commissioners in each county, and functions in an advisory capacity to the board of commissioners. Getting changes at the local, municipal level is a relatively simple process. Yet because of the familiarity of the players - many of whom we may already consider colleagues, neighbors and friends - the possibility of needing to work through

disagreement can be off putting. As a result, it often works best to start by seeking an inclusive, collaborative process where all stakeholders are called together in good faith. By doing so, communities have the opportunity to achieve well-reasoned policies without a great deal of controversy.

Of course, things do not always go so smoothly, but by seeking dialogue first, advocates are better positioned in the public eye if and when push comes to shove and more aggressive strategies need to be employed to overcome those who would rather



avoid the difficult conversation than protect children.

### ***How Local (Municipal) Governments Work***

One of the first considerations in working with municipal government is to determine the decision-making process. Each city has its own process for how proposals for changes to local procedure, policy, rules and ordinances are vetted and acted upon.

Part of this process requires advocates to know if their local municipality is a “strong mayor” or “strong city manager” form of government. If it is the latter, time will need to be spent gaining the understanding and agreement of city staff. In effective strong city manager communities, elected officials will not typically act upon policy until it has been reviewed and commented on by management staff. As a result, management staff has a unique, often powerful, position to support or oppose the coalition’s agenda.

If your community has a strong mayor form of government, getting management support up-front will be less of a concern; however, your coalition can still strengthen its position by getting some support from staff. No functional mayor or city council enjoys enacting policy that will be met by a great deal of resistance by staff.

If your city has a strong city manager style of government, staff can help you get your policy change requests onto the City Council’s agenda. Sometimes this will require review by a subcommittee of the Council, such as a legislative committee.

If your city is a strong mayor community, elected officials (the mayor or other council members) are often empowered to request that policy change proposal be considered. Again, review may begin in committee.

Each municipality has its nuances and the details can be different community to community. The bottom line is that it's best to ask about your community's process before you begin advocating for policy change. Finding an insider who thoroughly understands your community's processes and norms can be invaluable. A good strategy is to consider enrolling a sympathetic, well-received elected official or a staff person who knows the community's decision-making process in your coalition.

### ***Making and supporting your case***

When your proposed changes get to the point that they are soon to be reviewed by the City Council, request the opportunity to present your case as a special order of business (typically a 5-10 minute presentation with time for questions from the Council following). This will give you the opportunity to explain the technical details and environmental realities of your proposal.



If there is opposition, this will also give you an opportunity to make the Council aware of the opposition's position from an advocate's frame of reference. Ideally, you will also be able to inform the Council that you have attempted to get to agreement with the opposition, and you will be able to explain why complete agreement was not possible. Elected officials always prefer to be provided advance notice of a potential conflict rather than being surprised by a strident reaction. By anticipating opposition, your position will gain credibility.

When it is time for the City Council to act upon your proposal, you will want to make sure that your coalition demonstrates broad-based support for the plan. *A simple letter from the coalition asking for the Council's endorsement is not enough.* It is just one simple letter and can be overwhelmed by other concerns.

Now is the time to have each of your members, as well as other supporters, make contact with the City Council to signify their support.

In terms of impact, the following steps have greater and greater impact:

1. Petitions have minimal impact. It is easy for people to sign (even forge) names.
2. Form letters and postcards are a little better than petitions, but take little commitment from those who sign them.
3. Letters have more impact. Elected officials assume that for every letter they receive, there are at least another ten constituents who share the concern. Letters should be from individual people and organizations, not just the coalition. The strategy here is many letters.
4. Phone calls often carry more weight than letters. Elected officials assume that for every phone call they receive, there are at least 100 constituents who share the concern. Phone calls demonstrate to the elected official that people are concerned enough about the issue to risk dialogue. *But be careful, some elected officials are turned off by too many phone calls. Know ahead of time what they like and use a blended strategy with certain strategic people making phone calls—such as those who have existing relationships with the elected officials.*

5. Providing public testimony during the public comment portion of the City Council's meeting has the greatest impact. Elected officials assume that for every public comment they receive, there are 1,000 more constituents who share the concern. It shows people are committed enough to take the time to prepare, show up, and stand up publicly for what they believe. Know that often such testimony will be limited to 2-3 minutes. If there is a lot of support and the Council seems to be getting impatient with the testimony, it sometimes makes more sense for a limited number of predetermined people to speak, and then for someone to ask during their presentation for a show of hands of those in attendance who are willing to speak in support if the Council desires.

### ***The Council's decision***

After all committee meetings, presentations, public hearings and deliberations, the Council will have to act on the proposal.

They have three options:

- They may pass your proposal as written,
- They may reject it outright, or
- They may pass a modified version.

Frequently elected officials will modify the proposal. It is important to recognize that this *not* defeat. Your proposal, although modified, has passed! The objective here is progress, and some change is better than none. If you've done your homework, used an inclusive process that identifies the concerns of the opposition, and provide the opportunity for dialogue, any changes made should not come as a big surprise.

As the quote from FDR at the beginning of this chapter suggests, it is important that we begin movement and do something. Not all legislation is perfect in its initial form, and often it is not perfect when it is passed. But the new policy will give your coalition a new position from which to work forward toward the ultimate change you desire. Consider each change a positive step along the way.



Notes:

## Part 6 – Existing Federal Law and Policy

Three federal agencies enforce existing federal law regarding lead-based paint in residential housing: the US Department of Housing and Urban Development (HUD), the Environmental Protection Agency (EPA), and the US Department of Labor - Occupational Safety & Health Administration. The role of the first two agencies is the most notable for community advocates.

### *Disclosure*

Jointly, HUD and EPA enforce Title X Regulations, also known as the Residential Lead-Based Paint Hazard Act. The most familiar portion of Title X is Section 1018, which requires the disclosure of known lead-based paint and/or lead-based paint hazards in housing.

This is the rule that requires that landlords and sellers disclose all that they know about lead-based paint at the time of lease or sale of a property, and requires the distribution of the familiar blue booklet, “Protect Your Family from Lead in the Home.” For more information on this rule, see the following documents in the appendix:

- A Simple Fact Sheet from the Healthy Homes Coalition of West Michigan to help landlords take a few simple steps to comply.
- HUD/EPA Fact Sheet: Disclosure of Lead-Based Paint Hazards in Housing.
- HUD/EPA Questions & Answers on the Disclosure Rule.

### *Safe Work Practices*

The EPA oversees regulation regarding the Lead Renovation, Repair and Painting Program Rule, establishing standards for renovation activities in homes with lead-based paint.

This rule primarily focuses upon standards for individuals and firms conducting renovation activities that create lead-based paint hazards in target housing and child-occupied facilities. This work includes oversight of the training and certification requirements of contractors conducting lead hazard remediation activities. Authority for this rule may be delegated to states for implementation, which is the case in the State of Michigan.

The EPA also provides oversight for the Pre-Renovation Education Rule, which is designed to ensure that owners and occupants of pre-1978 housing are provided information concerning potential hazards of lead-based paint exposure before certain renovations are begun on that housing.

EPA also provides accreditation for lead laboratories, sets hazard standards regarding lead in housing, and regulates the disposal of lead-based paint debris.



### ***Pending EPA Renovation, Repair and Painting Rule (April 2010)***

Common renovation activities like sanding, cutting, and demolition can create hazardous lead dust and chips by disturbing lead-based paint, which can be harmful to adults and children.

To protect against this risk, on March 31, 2008, EPA issued a rule requiring the use of lead-safe practices and other actions aimed at preventing lead poisoning. Under the rule, beginning in April 2010, contractors performing renovation, repair and painting projects that disturb lead-based paint in homes, child care facilities, and schools built before 1978 must be certified and must follow specific work practices to prevent lead contamination.

Beginning in December 2008, the rule will require that contractors performing renovation, repair and painting projects that disturb lead-based paint utilize prescribed lead-safe work practices. This will require contractors to make sure all staff is fully trained in lead-safe work practices.

Contractors will also be required to provide an EPA-approved lead hazard information pamphlet to owners and occupants of childcare facilities and to parents and guardians of children under age six that attend childcare facilities built prior to 1978.

The rule will affect paid renovators who work in pre-1978 housing and child-occupied facilities, including:

Renovation contractors  
Maintenance workers in multi-family housing  
Painters and other specialty trades

The rule does not apply to minor maintenance or repair activities where less than six square feet of lead-based paint is disturbed in a room or where less than 20 square feet of lead-based paint is disturbed on the exterior. Window replacement is not minor maintenance or repair.

### ***Public Housing***

HUD also has extensive regulation regarding lead-based paint and lead hazards in public housing that is provided with federal funds, including Section 8 tenant-based assistance. This regulation extends to all federally owned residential property as well as any housing receiving federal assistance, including that in the private sector. This regulation focuses upon the evaluation, notification and reduction of lead-based paint hazards and is of primary concern to housing providers and tenant's rights advocates.

### ***Limited Scope of Federal Laws***

While federal laws are important, it should be recognized that they are limited in scope. Disclosure only comes into play at the time of property sale or lease-up. Safe work practices requirements only apply when work is being conducted. HUD's requirements to evaluate, notify, and reduce hazards are only applicable to housing receiving federal assistance. As a result, it is important for local communities

to augment these existing laws with local ordinances that fill in the gaps.



Some examples of the limitations of federal regulations include:

- Disclosure does not apply if a landlord discovers lead hazards on hi or her property *after* the lease has been signed. In this situation, the landlord is *not* required to inform the tenant of the hazard (although civil liability and local laws and ordinance may encourage disclosure).
- If a risk assessment or paint inspection has *not* been conducted and federal funds are *not* being used for the project, federal regulations do not currently require a property owner to use lead-safe work practices when re-painting the exterior of a turn-of-the-century home which is likely to have lead-based paint because of its age. Federal regulations do not prohibit this owner from power-washing or power-sanding the exterior of the home.
- Federal law does not require the owner of a deteriorated rental property built in 1910 to have the property inspected for lead hazards before he rents or sells the property unless federal funding is involved in the transaction. If he sells the home to a low-income family with conventional financing, not inspection is required.

*See appendix for supporting materials*



Notes:

## Part 7 – Existing State Law and Policy

The State of Michigan has a number of ordinances pertaining to lead-based paint in housing. The primary set of rules is called the Michigan Lead Abatement Act (MLAA). In addition to the regulations for worker training, certification, and work practices included in the MLAA, the State of Michigan has also passed a prohibition upon knowingly renting apartments with lead hazards under certain conditions and has instituted a Lead-Safe Housing Registry.



### *Michigan Lead Abatement Act*

The MLAA describes the rules used by the State of Michigan to administer the EPA's requirements to worker training, certification and use of lead-safe work practices. The MLAA is included in the appendix of this guide.

Here is a brief summary of its contents:

- Defines lead-based paint activities.
- Defines certification and accreditation requirements for the various persons engaged in lead-based paint activity (risk assessors, inspectors, clearance technicians, supervisors, abatement workers and project designer).
- Defines training requirements.
- Sets fees and application requirements (such as insurance) for licensing.
- Defines the notification procedure and all related filings with the State to ensure oversight of abatement projects.
- Gives enforcement ability.
- Defines rules to govern various legislative initiatives.

The MLAA also includes prescriptive rules addressing various bills passed by the Michigan legislature.

Most of the MLAA is focused upon activities related to addressing known hazards. It does *not* hold forth any requirements for property to be inspected nor does it give the State any authority to inspect property. It simply governs inspection and remediation activities to make sure that they are conducted in a safe manner.

### *Rental Units with Lead-Based Paint Hazards*

In 2004, the Michigan legislature authorized Public Act 434, which empowers local prosecutors to bring a civil action against landlords who rent units with lead-based paint hazards. In order to be prosecuted under this act, certain conditions must apply:

- The landlord must have prior knowledge that the rental unit contains a lead-based paint hazard.
- Ninety days must have passed since the landlord was made aware of the hazard.
- The landlord must not have acted in good faith to address the hazard.
- There must be a resident child residing in the unit with an elevated blood lead level of 10.0 ug/dL or greater

While this is a state law, enforcement responsibilities lie with the local county prosecutor and require the assistance of the local county health department in preparing the evidence (typically providing blood lead level evidence and inspecting the violating unit).

***Lead-Safe Housing Registry***

Also in 2004, the legislature required the Michigan Department of Community Health to establish a lead-safe housing registry. This registry *only* includes rental property, and *only* includes properties that have been made lead-safe. This registry does *not* include properties known to have lead hazards.

Most of the properties included in the registry include those remediated with state or federal funds. It is also possible for an owner to register his or her own property if it has been established as lead-safe at a given point in time.

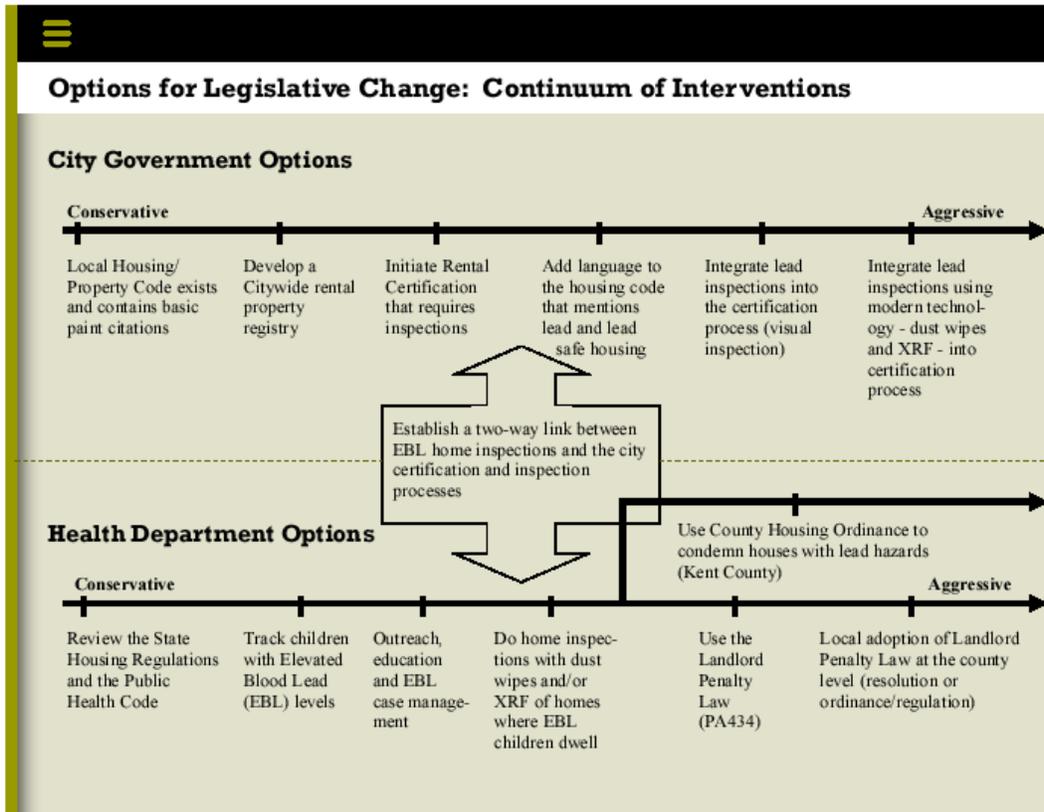
There are currently efforts to introduce legislation to improve the registry, including the addition of owner-occupied housing.

The registry can be viewed at [mylicense.mdch.state.mi.us:8888/Registry/lshr.jsp](http://mylicense.mdch.state.mi.us:8888/Registry/lshr.jsp)

***See appendix for supporting materials***

## Part 8 – Options for Policy Change

The next few pages of this guide provide an overview of a number of options for procedural and policy change. The options provided in the overview are backed-up with full examples provided in the appendix of this guide.



The first set of options is listed under the heading **Capacity Building**. Most of these options are procedural changes, rather than policy changes, and are therefore likely to be easier to implement. To strengthen a procedural change’s potential for successful implementation, communities are encouraged to seek a resolution calling for its adoption.

The Capacity Building options in this guide include:

- Compiling State and Local Laws to Expedite Lead Safety
- Consolidating Childhood Lead Poisoning Prevention and Code Enforcement Activities
- Creating a Special Lead Court
- Enabling Tenants and Community-Based Organizations to Take Action to Address Substandard Housing Conditions
- Equipping Code Officials to Identify Lead Hazards and Pursue Enforcement
- Creating a Lead-Safe Housing Registry
- Requiring Agencies to Disseminate Lead Poisoning Prevention Information

The second set of options involves **Disclosure**. As mentioned earlier, federal law requires the disclosure of lead hazards in certain circumstances. These options take that concept a step further and broaden or strengthen disclosure activities.

The Disclosure options in this guide include:

- Attaching Property-Specific Lead Hazard Information to Property Deeds
- Informing Rental Property Owners of Federal Lead Hazard Disclosure Requirements
- Reporting Problem Rental Property Owners to HUD and EPA for Disclosure Enforcement

The third set of options look at **Inspections**. Many of these options are ideal for implementation by local housing code enforcement agencies.

The Inspections options include:

- Banning Unsafe Work Practices
- Citing Properties in Response to a Child with an EBL
- Conducting Periodic Housing Code Inspections
- Enforcing Chipping and Peeling Paint Violations
- Requiring an Inspection for Lead-Based Paint Hazards at Tenant Turnover
- Requiring Rental Property Registration/Licensing
- Screening Homes During Code Inspection
- Targeting Enforcement to High-Risk Neighborhoods, Recalcitrant Landlords
- Abating Lead Hazards and Recover Costs when Owners Fail to Act

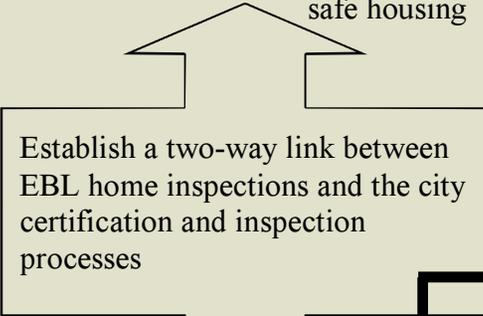
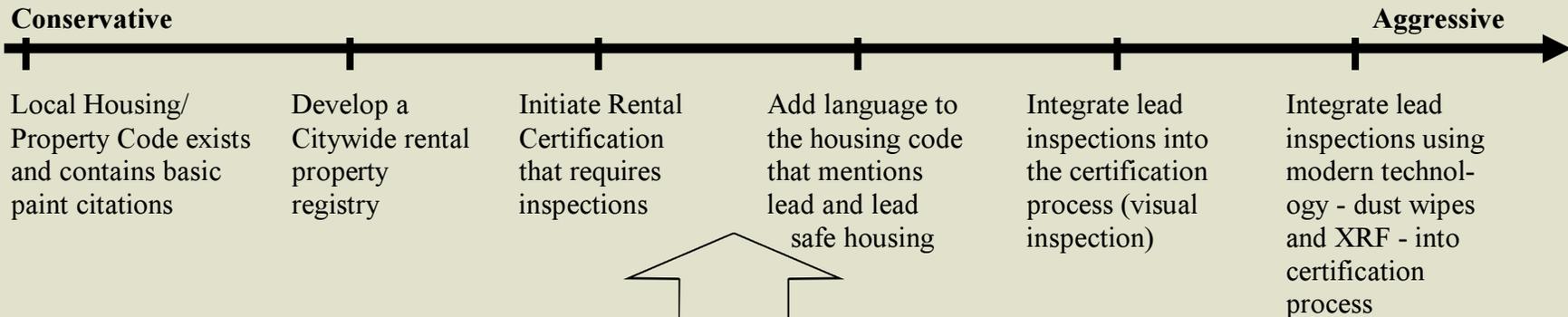
For each of these options, the guide provides an overview that lists model programs suggested primary actors for implementation, key partners for success, needed capacity (staff needed, financial resources, and institutional requirements), barriers and limitations to implementation (including political will), and the ability to measure outcomes. These details should help your local community with selecting the options that are best for you.

*See appendix for supporting materials*



# Options for Legislative Change: Continuum of Interventions

## City Government Options



## Health Department Options



**CAPACITY BUILDING MODELS**

	<b>Compile State and Local Laws to Expedite Lead Safety</b>	<b>Consolidate Childhood Lead Poisoning Prevention and Code Enforcement Activities</b>	<b>Create a Special Lead Court</b>	<b>Enable Tenants and Community-Based Organizations to Take Action to Address Substandard Housing Conditions</b>	<b>Equip Code Officials to Identify Lead Hazards and Pursue Enforcement</b>	<b>Lead-Safe Housing Registry</b>	<b>Require Agencies to Disseminate Lead Poisoning Prevention Information</b>
<b>Models</b>	<ul style="list-style-type: none"> <li>Building Blocks</li> <li>Indiana "Bench Book" (IKE)</li> </ul>	<ul style="list-style-type: none"> <li>Building Blocks</li> <li>Cleveland</li> <li>Philadelphia LAST (NACCHO)</li> </ul>	<ul style="list-style-type: none"> <li>Building Blocks</li> </ul>	<ul style="list-style-type: none"> <li>Building Blocks</li> </ul>	<ul style="list-style-type: none"> <li>Building Blocks (see "Equip Community-Based Organizations and Service Providers")</li> <li>Ten Effective Strategies</li> </ul>	<ul style="list-style-type: none"> <li>Ten Effective Strategies</li> </ul>	<ul style="list-style-type: none"> <li>Building Blocks</li> </ul>
<b>Primary Actor(s)</b>	<ul style="list-style-type: none"> <li>Community coalition</li> <li>Advocates</li> <li>Local public health</li> <li>Municipal code enforcement</li> </ul>	<ul style="list-style-type: none"> <li>Local Public Health</li> <li>Municipal Code Enforcement</li> </ul>	<ul style="list-style-type: none"> <li>Court System</li> </ul>	<ul style="list-style-type: none"> <li>CBOs</li> </ul>	<ul style="list-style-type: none"> <li>Municipal code enforcement</li> </ul>	<ul style="list-style-type: none"> <li>Municipal code enforcement</li> <li>Community Development Office</li> </ul>	<ul style="list-style-type: none"> <li>Community Coalition or Local Public Health to facilitate/coordinate</li> </ul>
<b>Key Partners</b>	<ul style="list-style-type: none"> <li>Judges, prosecutors, and attorneys</li> <li>Landlords</li> <li>CBOs</li> </ul>	<ul style="list-style-type: none"> <li>Prosecutor</li> <li>City Attorney</li> </ul>	<ul style="list-style-type: none"> <li>Judges, prosecutors, attorneys</li> <li>Municipal code enforcement</li> <li>Local public health</li> <li>Advocates</li> </ul>	<ul style="list-style-type: none"> <li>Local public health</li> <li>Municipal code enforcement</li> <li>Prosecutors, City Attorney</li> <li>Landlords</li> <li>Housing advocates</li> <li>Elected officials</li> </ul>	<ul style="list-style-type: none"> <li>Training providers</li> <li>MDCH</li> <li>Community Development Office</li> <li>Community coalitions</li> </ul>	<ul style="list-style-type: none"> <li>Local public health</li> <li>Housing programs</li> </ul>	<ul style="list-style-type: none"> <li>Local public health</li> <li>Municipal code enforcement</li> <li>Community Development</li> <li>Section 8</li> <li>Assessor</li> <li>Medicaid providers</li> <li>Public Water Utility</li> <li>Early childhood programs</li> </ul>
<b>Capacity (staff, fiscal, institutional)</b>	<ul style="list-style-type: none"> <li>Legal competency.</li> <li>Printing costs.</li> <li>Staff costs to produce and maintain.</li> <li>Must have standing in the courts, legal community.</li> </ul>	<ul style="list-style-type: none"> <li>Staff cross-trained and motivated to collaborate.</li> <li>Inter-agency operational details are worked out.</li> <li>Training costs.</li> <li>Ability to take on increased case-load and/or responsibilities.</li> <li>Administration must support due to cross-agency work.</li> <li>Operational details must be supported.</li> <li>May require some statutory considerations.</li> </ul>	<ul style="list-style-type: none"> <li>Prosecutors, attorneys and judges must understand lead regulations (ie: MLAA).</li> <li>Statutes to support court action.</li> <li>Procedures.</li> <li>Dedicated judges, legal staffing</li> </ul>	<ul style="list-style-type: none"> <li>Strong organizer/advocate familiar with local statutes and procedure.</li> <li>Must be capable of organizing constituents committed to action.</li> <li>Financial support for organizer.</li> <li>Ability to organize and lobby.</li> <li>Coalition-building abilities.</li> <li>Must be trusted by consumers.</li> </ul>	<ul style="list-style-type: none"> <li>Ability and motivation to participate in training and implement new knowledge.</li> <li>Ability to engage organized labor in new activities.</li> <li>Ability to change procedure.</li> <li>Training resources.</li> <li>Statute must exist.</li> </ul>	<ul style="list-style-type: none"> <li>Data management capacity.</li> <li>Resources for data management hardware, software, programming.</li> <li>Might be paid for with fees.</li> <li>Data management capacity.</li> <li>Linked data helpful (i.e. assessor).</li> </ul>	<ul style="list-style-type: none"> <li>Must have strong collaboration skills.</li> <li>Respected by other agencies and strong knowledge of subject matter.</li> <li>Limited time needed to develop approach and materials.</li> <li>Marketing budget – printing could be significant, might include design services, postage costs.</li> <li>Staff time.</li> <li>Additional staff time needed to orient agencies and assist with implementation/hold accountable to objectives.</li> <li>Some statutory authority may be helpful.</li> </ul>
<b>Barriers (including political will, limitations)</b>	<ul style="list-style-type: none"> <li>Standing with Judges.</li> <li>Ability to maintain over time.</li> <li>Desirable to be linked to case law, and little may exist.</li> </ul>	<ul style="list-style-type: none"> <li>Ability to collaborate with other jurisdictions.</li> <li>Limited political will is required.</li> <li>Difficult in Michigan communities as local public health deals with CLP prevention and municipal inspections tend to be responsible for code enforcement.</li> <li>Ability to collaborate cross-agency.</li> <li>Requires significant investment of time/knowledge to design functional, agreeable system.</li> <li>Strategy focuses primarily upon EBLs, not primary prevention.</li> </ul>	<ul style="list-style-type: none"> <li>Judicial support.</li> <li>Local relief resources may be needed to improve housing incomes rather than just fines, jail time, transfer of property.</li> </ul>	<ul style="list-style-type: none"> <li>CBO must be capable of building political will in support of their agenda.</li> <li>Unreceptive institutions.</li> <li>May require the amendment of existing or passage of new statutes.</li> <li>Limited existing statutes.</li> <li>Limited institutional capacity.</li> </ul>	<ul style="list-style-type: none"> <li>Limited existing statutes.</li> <li>Elected officials must be supportive of needed statutes.</li> </ul>	<ul style="list-style-type: none"> <li>Political will required due to concerns about property rights, privacy.</li> <li>Much more political will is needed if including unsafe housing is desirable.</li> <li>Design of registry can limit its effectiveness (rental only? safe only?)</li> <li>Point-in-time information only.</li> <li>Can be difficult to maintain over time.</li> </ul>	<ul style="list-style-type: none"> <li>Little political will needed.</li> <li>Messaging is open-ended.</li> </ul>
<b>Ability to Measure Outcomes</b>	Low	High	High	Low-Medium	High	Low	Low

**DISCLOSURE MODELS**

	<b>Attach Property-Specific Lead Hazard Information to Property Deeds</b>	<b>Inform Rental Property Owners of Federal Lead Hazard Disclosure Requirements</b>	<b>Report Problem Rental Property Owners to HUD and EPA for Disclosure Enforcement</b>
<b>Models</b>	<ul style="list-style-type: none"> <li>▪ Building Blocks</li> </ul>	<ul style="list-style-type: none"> <li>▪ Building Blocks</li> </ul>	<ul style="list-style-type: none"> <li>▪ Building Blocks</li> </ul>
<b>Primary Actor(s)</b>	<ul style="list-style-type: none"> <li>▪ Municipal code enforcement (or other municipal department)</li> <li>▪ Local Public Health,</li> <li>▪ Michigan Dept. of Community Health</li> </ul>	<ul style="list-style-type: none"> <li>▪ Community Coalition</li> <li>▪ Local public health</li> <li>▪ Rental Property Owners Assoc.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Local public health</li> <li>▪ CBOs</li> </ul>
<b>Key Partners</b>	<ul style="list-style-type: none"> <li>▪ Registrar of Deeds</li> </ul>	<ul style="list-style-type: none"> <li>▪ HUD</li> <li>▪ EPA</li> </ul>	<ul style="list-style-type: none"> <li>▪ Municipal code enforcement</li> <li>▪ Community Development Office</li> <li>▪ HUD</li> <li>▪ EPA</li> <li>▪ Tenants</li> </ul>
<b>Capacity (staff, fiscal, institutional)</b>	<ul style="list-style-type: none"> <li>▪ Little additional capacity needed.</li> <li>▪ Clerical capacity.</li> <li>▪ May require filing fees.</li> <li>▪ Registrar should be given statutory authority.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Familiarity with the specifics of Title X and its enforcement.</li> <li>▪ Ability to instruct others.</li> <li>▪ Some ability to provide follow-up assistance.</li> <li>▪ Support for training events.</li> <li>▪ Support for targeted outreach, mailings.</li> <li>▪ Respect within RPO community.</li> <li>▪ Ability to maintain role as expert in this area.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Must have available time to collect the detail necessary to document non-compliance.</li> <li>▪ Must gain trust of tenants.</li> <li>▪ Must have strong working knowledge of landlord/tenant law to assure tenants housing is not at-risk.</li> <li>▪ Must be well versed in Title X and its enforcement.</li> <li>▪ Support for staff time.</li> <li>▪ Must be comfortable with federal prosecution.</li> <li>▪ Access to EBL, lead inspection and housing inspection data helpful.</li> </ul>
<b>(including political will, limitations)</b>	<ul style="list-style-type: none"> <li>▪ Some modest political will is probably needed.</li> <li>▪ This strategy may be a disincentive for assessing hazards if not limited to code enforcement or health orders.</li> <li>▪ Must be mindful of HIPAA.</li> <li>▪ Protects buyers, not tenants.</li> </ul>	<ul style="list-style-type: none"> <li>▪ No political will needed.</li> <li>▪ Difficult to engage owners of high-risk housing.</li> <li>▪ Real estate community may be reluctant.</li> <li>▪ Lack of motivation to participate if no local enforcement.</li> <li>▪ Only addresses disclosure, but not hazard remediation.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Must be comfortable with federal prosecution.</li> <li>▪ Tenant fear, non-compliance.</li> <li>▪ Requires follow-up monitoring.</li> <li>▪ Requires support from HUD/EPA, who may not be able to handle all referrals.</li> <li>▪ Lengthy process that may lose interest of local partners.</li> </ul>
<b>Ability to Measure Outcomes</b>	Low	Low	High

INSPECTION MODELS

	<b>Ban Unsafe Work Practices</b>	<b>Citing Properties in Response to a Child with an EBL</b>	<b>Conduct Periodic Housing Code Inspections</b>	<b>Enforce Chipping and Peeling Paint Violations</b>	<b>Require an Inspection for Lead-Based Paint Hazards at Tenant Turnover</b>	<b>Require Rental Property Registration/Licensing</b>	<b>Screen Homes During Code Inspection</b>	<b>Target Enforcement to High-Risk Neighborhoods, Recalcitrant Landlords</b>	<b>Abate Lead Hazards and Recover Costs when Owners Fail to Act</b>
<b>MODEL</b>	<ul style="list-style-type: none"> <li>Ten Effective Strategies</li> <li>California AB-2861</li> <li>Cleveland</li> <li>Guilford county</li> <li>Indiana Model (IKE)</li> <li>Milwaukee</li> <li>Rochester</li> <li>San Diego</li> <li>Hamtramck</li> </ul>	<ul style="list-style-type: none"> <li>Kent County</li> <li>Building Blocks</li> <li>Ordinance 45A Cerro Gordo County</li> <li>Cleveland</li> <li>Guilford County</li> <li>Indiana Model (IKE)</li> <li>Wauwatosa, WI</li> </ul>	<ul style="list-style-type: none"> <li>Building Blocks</li> <li>Indiana Model (IKE)</li> <li>New Jersey</li> <li>Hamtramck</li> </ul>	<ul style="list-style-type: none"> <li>Ten Effective Strategies</li> <li>City of Grand Rapids</li> <li>Cleveland</li> <li>Indiana Model (IKE)</li> <li>Connecticut</li> <li>Rochester</li> <li>San Diego</li> <li>Hamtramck</li> </ul>	<ul style="list-style-type: none"> <li>Building Blocks</li> <li>Ten Effective Strategies</li> </ul>	<ul style="list-style-type: none"> <li>Building Blocks</li> <li>Ten Effective Strategies</li> <li>Cleveland</li> <li>Greensboro</li> <li>Indiana Model (IKE)</li> <li>New Jersey</li> <li>Rochester</li> <li>Hamtramck</li> </ul>	<ul style="list-style-type: none"> <li>Building Blocks</li> <li>Ten Effective Strategies</li> <li>Rochester</li> <li>Hamtramck</li> </ul>	<ul style="list-style-type: none"> <li>Ten Effective Strategies</li> <li>Rochester</li> </ul>	<ul style="list-style-type: none"> <li>Building Blocks</li> <li>Ordinance 45A Cerro Gordo County</li> <li>Cleveland</li> <li>Milwaukee</li> <li>Wauwatosa, WI</li> </ul>
<b>Primary Actor(s)</b>	<ul style="list-style-type: none"> <li>Municipal code enforcement</li> </ul>	<ul style="list-style-type: none"> <li>Local public health</li> </ul>	<ul style="list-style-type: none"> <li>Municipal code enforcement</li> </ul>	<ul style="list-style-type: none"> <li>Municipal code enforcement</li> </ul>	<ul style="list-style-type: none"> <li>Municipal code enforcement</li> </ul>	<ul style="list-style-type: none"> <li>Municipal code enforcement</li> </ul>	<ul style="list-style-type: none"> <li>Municipal code enforcement</li> </ul>	<ul style="list-style-type: none"> <li>Municipal code enforcement</li> </ul>	<ul style="list-style-type: none"> <li>Municipality or county code enforcement agency</li> </ul>
<b>Key Partners</b>	<ul style="list-style-type: none"> <li>Community coalitions</li> <li>Rental property owners</li> <li>Tenants</li> <li>CBOs</li> <li>Repair and remodeling professionals</li> </ul>	<ul style="list-style-type: none"> <li>Community coalitions</li> <li>Rental property owners</li> <li>Tenants</li> <li>Relief programs</li> <li>Municipal code enforcement</li> </ul>	<ul style="list-style-type: none"> <li>Community coalitions</li> <li>Local public health</li> <li>City Attorney</li> <li>Housing Advocates</li> <li>Tenants</li> <li>Landlords</li> </ul>	<ul style="list-style-type: none"> <li>Rental property owners</li> <li>CBOs</li> <li>Neighboring residents</li> </ul>	<ul style="list-style-type: none"> <li>Rental property owners</li> <li>Tenants</li> <li>Community Coalition</li> <li>MDCH</li> </ul>	<ul style="list-style-type: none"> <li>Rental property owners</li> <li>CBOs</li> <li>City Attorney</li> <li>Assessor</li> <li>MDCH</li> </ul>	<ul style="list-style-type: none"> <li>Community Coalition</li> <li>Rental property owners</li> <li>Tenants</li> <li>CBOs</li> <li>MDCH</li> </ul>	<ul style="list-style-type: none"> <li>Community Coalition</li> <li>Local public health</li> <li>CBOs</li> <li>Rental property owners assoc.</li> </ul>	<ul style="list-style-type: none"> <li>Abatement vendors</li> <li>Legal Dept.</li> <li>Accounting</li> </ul>
<b>Capacity (staff, fiscal, institutional)</b>	<ul style="list-style-type: none"> <li>Knowledge of prohibited practices</li> <li>Statute.</li> </ul>	<ul style="list-style-type: none"> <li>Must be trained/certified EBL Risk Assessor (minimum) by MDCH.</li> <li>Clerical assistance helpful.</li> <li>Must be able to maintain files, re-inspect, etc.</li> <li>Can bill Medicaid for two inspections (if local public health and resident child on Medicaid).</li> <li>Some additional resources are needed for staff time.</li> <li>Must have Housing Regulation.</li> <li>Must have the will to regulate.</li> <li>Cooperation of Health Officer.</li> <li>Capacity to collect fees.</li> <li>The existence of relief organizations makes gaining compliance easier.</li> </ul>	<ul style="list-style-type: none"> <li>Must have consistent protocols established, system for documenting action.</li> <li>Depending upon nature of the law, must have some inspection training and/or certification.</li> <li>Need to support staff time, which can be accomplished in part through fees but will likely require additional revenue.</li> <li>Some activities might easily be integrated with activities currently receiving support.</li> <li>Buy-in from administration to ensure cooperation between Inspections and City Attorney.</li> <li>Statutory authority.</li> <li>Training.</li> </ul>	<ul style="list-style-type: none"> <li>Basic inspection responsibility.</li> <li>Awareness of how paint violations contribute to lead hazards in older housing (ie: friction surfaces).</li> <li>Motivation.</li> <li>Training program.</li> <li>Good labor relations.</li> <li>Statute.</li> <li>Basic housing inspection program must be in place.</li> </ul>	<ul style="list-style-type: none"> <li>Must be trained in lead inspections (certified with State).</li> <li>Must be motivated to look at lead.</li> <li>Must have access to tools (possible XRF, lab supplies).</li> <li>Significant resources needed, some of which might be gained by fee structure.</li> <li>Must have existing rental registry and certification process.</li> <li>Statute.</li> <li>Adequate staffing.</li> </ul>	<ul style="list-style-type: none"> <li>Varies. More capacity needed if strict enforcement (rather than voluntary compliance) is desired.</li> <li>Ability to keep records, track changes in property ownership/use.</li> <li>If strict enforcement, concerns are similar to "Require an Inspection for Lead-Based Paint Hazards at Tenant Turnover"</li> <li>Modest to significant fiscal need, much of which could be covered by registration and inspection fees for simple registration program.</li> <li>Statute.</li> <li>Protocol.</li> <li>Electronic data management.</li> <li>Adequate staffing.</li> </ul>	<ul style="list-style-type: none"> <li>Training in lead hazard inspection.</li> <li>Motivation to conduct thorough inspections using unique methodology.</li> <li>Materials costs (sampling supplies).</li> <li>Training costs.</li> <li>Additional staff time.</li> <li>Some costs could be paid for with penalties for those who require in-depth inspections.</li> <li>Statute.</li> <li>Strict protocol for both screening and how to handle properties that fail the screen.</li> </ul>	<ul style="list-style-type: none"> <li>Varies depending upon extent of enforcement.</li> <li>See other entries for capacity needs relevant to level of enforcement.</li> <li>Some dedicated resources needed; could be paid for in part by fees.</li> <li>Ability to navigate selective enforcement.</li> <li>Must have good statute and procedure in place.</li> <li>Training capacity if lead-specific enforcement.</li> </ul>	<ul style="list-style-type: none"> <li>Need high capacity in multiple departments: enforcement, legal, accounting.</li> <li>Enforcement staff must be able to identify hazards, write specs, and see through to clearance.</li> <li>Need resources to implement repairs prior to collection of fees.</li> <li>Some fees may go unpaid, but lien can be placed on home.</li> <li>Coordination between departments needed.</li> <li>Needs buy-in from top administration.</li> </ul>
<b>Barriers (including political will, limitations)</b>	<ul style="list-style-type: none"> <li>Should not require significant will, since alternative work practices are available.</li> <li>Complaints from repair and remodeling community about new requirements (change).</li> <li>Must have informed tenant community to catch violators.</li> <li>Only addresses new hazards created by remodeling, does not address existing hazards.</li> <li>Hard to catch violators.</li> </ul>	<ul style="list-style-type: none"> <li>Desire to regulate housing.</li> <li>No funding to manage cash flow.</li> <li>Poor coordination between local public health and municipal enforcement can cause confusion/turf.</li> <li>No relief organization makes enforcement daunting.</li> <li>MDCH EBL/RA protocol is a point in time minimum standard and may necessitate re-inspection.</li> </ul>	<ul style="list-style-type: none"> <li>Significant task, so considerable political will is required.</li> <li>Must be able to withstand potential objection from landlords, property rights advocates, possibly also affordable housing advocates.</li> <li>Need for somewhat complex coordination to initiate.</li> <li>This strategy of often restricted to rental housing.</li> </ul>	<ul style="list-style-type: none"> <li>No political will needed if the statute is already on the books.</li> <li>Inadequately financed inspection program.</li> <li>Limited to visual hazards.</li> </ul>	<ul style="list-style-type: none"> <li>Significant will needed to combat potential opposition from rental property owners.</li> <li>MLAA does not allow for cost-effective inspections.</li> <li>Voluntary compliance of rental property owners and/or educated tenant population (enforcement does not know when property is vacated).</li> <li>Only addresses tenant housing.</li> </ul>	<ul style="list-style-type: none"> <li>Significant will needed to combat potential opposition from rental property owners.</li> <li>Lack of enthusiasm of code enforcement leadership and staff.</li> <li>MLAA barriers to strict enforcement.</li> <li>Disinterest in strict enforcement has been demonstrated to limit the effectiveness of the strategy (M. Brown).</li> </ul>	<ul style="list-style-type: none"> <li>Significant will needed to combat potential opposition from rental property owners.</li> <li>MLAA does not allow for sampling.</li> <li>Lack of resources for low-income families to abate hazards.</li> <li>Sampling is hit-or-miss and not comprehensive.</li> </ul>	<ul style="list-style-type: none"> <li>Significant will needed to combat potential opposition from rental property owners.</li> <li>Political will to target high-risk communities, which are often also low-income.</li> <li>Delivery must be equitable - perception of bias.</li> <li>"Worst first" approach.</li> </ul>	<ul style="list-style-type: none"> <li>Must be able to withstand "property rights" opposition.</li> <li>Right to entry.</li> <li>Occupant relocation during hazard control.</li> </ul>
<b>Ability to Measure Outcomes</b>	Low	High	High	High	High	Low-High	High	High	High

## **Part 9 – Model Policies and Limitations**

There are a wide variety of opportunities for counties to promote the prevention of childhood lead poisoning through the adoption of regulations and rules. Two of the most promising, proven models come from Michigan. Kent County (Grand Rapids) has been using their Housing Regulation for more than ten years to order hazardous housing vacated and condemned for occupancy. More recently, the Wayne County Prosecutor's Office has been utilizing Michigan Public Act 434 to bring civil action against landlords who knowingly rent housing units with lead hazards to families with children with elevated blood lead levels. PA-434 allows the County to seek up to 93 days in jail and up to \$10,000 in fines.

Both of these model regulations are included in the appendix of this guide, along with the excerpt from the State of Michigan's Housing Law that permits local jurisdictions to implement a housing regulation similar to Kent County's.

### ***Kent County Housing Regulation***

Kent County's Housing Regulation is straightforward in its treatment of the existence of lead hazards as rationale for condemning a housing unit for occupancy. Section 210 defines "Lead Poisoning hazard" as lead present in any form within, upon, or about a dwelling, which, because of its location, condition, or concentration, may be injurious to the health and safety of occupants of the dwelling.

Section 606 then sets forth the requirement to keep homes free from lead poisoning hazards, "It shall be the responsibility of the owner of any dwelling or dwelling unit to correct or eliminate existing or potential lead poisoning hazards as directed by the Health Officer."

The regulation subsequently describes how inspections, notification and enforcement shall be conducted. In Kent County, condemnation orders are placed on the housing unit, requiring it to be vacated until all violations are addressed.

Use of this regulation is triggered by an EBL investigation conducted by the Kent County Health Department. Due process is provided as the property owner is notified of the violations and given a reasonable amount of time to respond. Often owners are notified more than once to ensure adequate process.

This ordinance has been utilized for both rental and owner-occupied housing with equal success. The existence of the regulation typically results in the violations being addressed as landlords do not want to forego rent and owner-occupants do not want to be displaced. In recent years, only a handful of enforcement cases have resulted in actual condemnation, many of them rentals that have already been vacated.

There are three primary limitations to this ordinance. The first is ensuring that the condemnation orders remain in place and that the unit not be occupied. This requires staff to routinely re-inspect condemned housing units to ensure the condemnation order has not been ignored by new owners or tenants. The second limitation to this approach is that, unlike PA-434, this approach can only be used to correct the violations in the unit with cited hazards, and cannot leverage wider remediation activity by the property owner. Lastly, like PA-434, this approach is only used for intervention where a child has already been poisoned, and prevention is limited to re-occurrence (tertiary prevention).

### ***Working with the Prosecutor's Office***

PA-434 allows local public health departments to work with their county prosecutor to take civil action against the owners of buildings where a child has been lead poisoned. Like the Kent County housing regulation, PA-434 is used following an EBL investigation to seek intervention. The EBL investigation report can provide the basis for the complaint if it is provided to the property owner in such a way that its receipt is documented (served or sent via certified mail signature required). Once the EBL investigation report has been received, the owner has 90 days to make repairs. If the

owner does not initiate repairs during this time, the assistance of the county prosecutor is sought.

In Wayne County, the prosecutor's office has found that the threat of jail time and fines are significant enough to leverage an agreement from the property owner to not only repair the housing unit in question, but also to have other properties in his or her inventory assessed and repaired

Unlike the Kent County housing regulation, PA-434 places the burden of follow-up on the property owner by requiring him or her to report progress to the prosecutor.

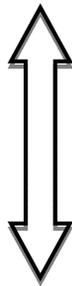
Both of these models provide opportunities for communities to make sure that the homes that poison children are repaired. While each option requires the completion of an EBL investigation or similar activity, they have different capacity requirements for final implementation. Which approach will work best will depend largely upon local situations and desire.

***Model City Housing Code Regulations  
Rochester, New York  
Hamtramck, Michigan***

In 2006, the City of Rochester, New York adopted what is arguably the nation's most aggressive local housing code language dealing with lead-based paint hazards. In early 2008, the City of Hamtramck, Michigan integrated Rochester's model code into their local ordinance.

Local housing codes can be viewed on a continuum from the most conservative to the most aggressive.

**Conservative**



**Aggressive**

1. Local Housing/ Property Code exists and contains basic paint citations.
2. Develop a Citywide rental property registry.
3. Initiate Rental Certification that requires inspections.
4. Add language to the housing code that mentions lead and lead-safe housing.
5. Integrate lead inspections into the certification process (visual inspection).
6. Integrate lead inspections using modern technology (dust wipes and XRF) into certification process.

Under Rochester's new ordinance, City Housing Inspectors visually inspect properties for deteriorated paint or bare soil. These inspections occur at the time a Certificate of Occupancy is first sought or renewed, upon complaint, and at a few other times unique to local situations. Housing which has been certified as having no lead paint by a certified inspector is exempt from visual inspection, as is housing required to be safe from lead paint hazards under federal law.

Rochester's code presumes that all deteriorated paint in pre-1978 housing contains lead, and requires that defined lead-safe work practices be used when making all repairs. An exemption is made for properties where a certified inspector, paid for by the property owner, has determined that the paint contains no lead.

Properties in high-risk "Neighborhood Empowerment Team" (NET) areas that pass the visual inspection are also required to undergo a dust wipe test (following EPA

dust sampling protocols) to find out if lead paint hazards unseen by the naked eye are present. This dust wipe test must be conducted by a certified third party and paid for by the property owner.

NET areas are established by the Mayor and include, at a minimum, the Census block groups where 90% of the homes that received county environmental investigations in response to an EBL child are located.

Following repairs of cited lead hazard items, a dust wipe test is required to provide clearance. These dust wipe tests are paid for at the owner's expense, utilizing private, certified inspection firms.

A one-year, independent evaluation of the Rochester program revealed the following findings:

- 94% of inspected units passed the visual inspection.
- 85% of units undergoing a dust wipe test passed.
- 430 units that failed the dust wipe test passed visual inspection, *and therefore would have not been identified as having lead hazards had technology not been used.*
- 506 home interiors were made lead-safe as a direct result of the new ordinance.
- An additional 832 homes are under orders to be made lead-safe.
- One third of landlords responding to a survey said they did not spend *any* money preparing for an inspection or making repairs. 37% spend between \$1 and \$1,000. 30% spent more than \$1,000.

The evaluation pointed to various recommendations for improvement. Two of the more notable recommendations are:

- Increased emphasis upon supports and relief for landlords (training, \$100 grants to defray the cost of private clearance testing, grant or tax credit programs for proven effective repairs like replacing windows).
- Requiring all ordered dust wipe tests to be completed within 60 days.

The Rochester and Hamtramck codes make full use of technology in the form of dust wipe sampling and/or clearance testing to ensure that visual inspections are not insufficient to detect hazards in high-risk housing. These tools not only allow for increased capacity beyond what can be seen during a visual inspection, but they also serve as a system of checks and balances for the quality of visual inspections—a creative way in which the code itself ensure high-quality enforcement.

Rochester also utilized local public health surveillance data to focus its efforts, making sure that code enforcement targeted the areas with historically problematic housing stock. This combination of using technology and surveillance data is a reasoned, evidence-based approach that goes beyond the lesser standards employed by the vast majority of housing code programs. As a result of using proven methodologies in a targeted manner, resources have been used efficiently to achieve maximum outcomes without unduly burdening those landlords less likely to own properties with lead hazards.

*See appendix for supporting materials*

Notes:

*[Strategies are] general programs of action and deployment of emphasis and resources to attain comprehensive objectives; the program of objectives of an organization and their changes, resources used to attain these objectives, and policies governing the acquisition, use, and disposition of these resources; the determination of the basic long-term objectives of an enterprise and the adoption of course of action and allocation of resources necessary to achieve these goals (1980).*

Heinz Wehrich  
Professor of Management  
University of San Francisco, 1980

## Part 10 – Strategy Development

What is strategy, exactly? Why is it important to a project's success?

The term strategy is originally derived from the Greek word 'strategos' meaning "a general set of maneuvers carried out to overcome an enemy." While we are not asking the user of this document to literally prepare for battle, we are encouraging the user to:



- Be aware of the environment politically, culturally, economically, and socially;
- Know who your project champions are;
- Understand what institutions and regulations are already in place that can help your cause; and,
- Know who and what can possibly stand in the way of your success and how to best minimize the risk of failure.

### ***SWOT (Strengths, Weaknesses, Opportunities, Threats)***

Inventor unknown, the SWOT process has aided in the strategic planning and marketing analysis process since the late 1960's. Even though this method is widely used today and is considered a good starting point tool, it does lack some of the aspects of modern strategic analysis.

Words to the wise about SWOT:

- The SWOT methodology is intended to follow other types of analysis such as Asset Mapping; and other initial assessments should be completed before it is used.
- In addition, it is best to only list 5-6 items in each category (often this will require a ranking or prioritization process). Otherwise, the method may become cumbersome.
- The SWOT process does not allow for detailed development of next steps, or strategies, to resolve issues.
- To begin the process, begin by listing project Strengths, Weaknesses, Opportunities, and Threats of your project – group settings work best.

**S – Strengths (Internal Factor)** - Determine your project’s strong points – from your perspective as well as those outside the project. These are things that you can control. Remember that a Strength is not a Strength unless it actually makes your project stronger.

**W – Weaknesses (Internal Factor)** - Determine your project’s weak points – from your perspective as well as those outside the project. Like Strengths, these are things that you can control. Remember that a weakness is not a weakness unless it actually makes your project weaker. A weakness can also be political, language related, geographical, socioeconomic, or educational in nature.

**O – Opportunities (External Factor)** - What are the changes in the environment which you and your project can take advantage of?

**T – Threats (External Factor)** - What are the changes in the environment, which may harm or threaten your activity? Like a Weakness, a Threat can also be political, cultural, geographical, socioeconomic, or educational in nature.

The “wizardry” of SWOT is matching specific internal and external factors, which creates a matrix, enabling the user to make comparison of the categories.

**\*COMPARING/CONTRASTING SWOT CATEGORIES**

**Maxi/maxi (S/O)** - shows the strengths and opportunities of the project. In order to be successful, the group should capitalize on new opportunities.

**Maxi/mini (S/T)** - shows the project's strengths in consideration of the potential external threats. The group should always use the project's strengths to minimize threats.

**Mini/maxi (W/O)** - shows the project's weaknesses along with the opportunities it creates. Again, the group should capitalize on opportunities to minimize the weaknesses.

**Mini-mini (W/T)** - shows the project weaknesses by comparing with external threats. By comparing these categories, the group can better defend the project and avoid threats to success.

\* Wehrich (1982)

***Taking SWOT A Couple Steps Further***

Because using SWOT itself is considered an incomplete method of analysis and lacks steps to account for modern strategic theories, such as the concept of “trade-offs” (some will deliberately disallow certain regulations or hinder specific projects in order to satisfy others), it is wise to further analyze SWOT outcomes through a complimenting methodology.

To overcome limitations, scholars have developed many techniques to help refine the SWOT process. While some methodologies are extremely detailed and cater to specific industries, the following method of analysis is relatively simple and is pliable enough to meet this project’s needs.

After the initial SWOT exercise is complete, the user should employ the following table to further examine outcomes; essentially developing action steps to address SWOT results.

## \*SWOT STRATEGY DEVELOPMENT

		Internal	
		Strengths	Weaknesses
External	Opportunities	Quadrant 1 Possible Strategies	Quadrant 2 Possible Strategies
	Threats	Quadrant 3 Possible Strategies	Quadrant 4 Possible Strategies

\* Dr. Marcia J. Simmering (2005)

Completing Quadrants 1 through 4 will help the user to identify strategies that both minimize project hazards and accentuate the positive.

Quadrant 1 - the user is matching the project's strengths and its perceived external opportunities. A strategy from this quadrant may be to protect the project's strengths by recruiting external resources to champion the project.

Quadrant 2 - the user would be matching the project weaknesses with external opportunities. This would allow the group an opportunity to decide whether to improve the weaknesses to turn them into strengths or perhaps changing the loss of those external opportunities.

Quadrant 3 - matches the project strengths and external threats. Strategies in the quadrant may aim to transform external threats into opportunities by using its resources or strengths.

Quadrant 4 - matches project weaknesses with external threats. Strategies in this quad may involve using resources in other quadrants to exploit opportunities to the point that other treats are minimized (Simmering, 2005).

### ***Assessment of Possible Strategies***

Compiling possible strategies to overcome pitfalls and highlight advantages is a plus to any project. Of course, some of the developed strategies will be better than others or may be perceived as more important by some.

What happens if your group has a particularly vocal day and you end up with too many strategies? Also, some strategies are naturally going to be easier to develop, administer, and fund than others. Some strategies might also have better outcomes. How do you decide which strategies to implement?

The following method is one way to determine, rank, or eliminate strategies, helping make the project more manageable. Other tools are also available; however, though the tool is somewhat simplistic, it can change initial judgments and perceptions, and can broaden viewpoints.

**PMI (Plus, Minus, Implications) \***

Create a Plus, Minus, and an Implications column on a medium where a number of people can look on (flipchart, dry erase board, etc.)

As a group, discuss each Possible Strategy, listing any pluses and/or minuses. Then discuss the implications of the strategy, beginning by asking questions such as these:

- What are the long-term benefits of this strategy?
- Can using this strategy assist us in other projects?
- What happens if we use this strategy and are less than successful? What kind of outcome could result?
- Is this strategy costly? Could we accomplish the same task by taking another route?

If a stalemate is reached, ask individuals to rate the strategy on a scale from -10 to +10. The total of the scores may assist in giving a clearer indication of the appropriateness of the solution. A negative score may be an indication that the strategy should be abandoned or that a different approach should be adopted.

\*This particular version of this decision making tool was adapted from MindTools, Inc. (2008). A description of this and other useful tools are available on their website at [www.mindtools.com](http://www.mindtools.com).

**PROJECT READINESS CHECKLIST**

Before moving on to the next section of this guide, *Presenting the Issue*, it is important to assure that your project will be as successful as possible. Take a minute to examine the following checklist. If your answer is no to any of the statements, you may want to consider reevaluating the readiness of your project.

Yes	No	
<input type="checkbox"/>	<input type="checkbox"/>	We have examined our community and identified supporting individuals, organizations, resources, and legislation.
<input type="checkbox"/>	<input type="checkbox"/>	We have identified people with networking skills that are willing to assist in the recruitment of potential stakeholders.
<input type="checkbox"/>	<input type="checkbox"/>	We have a plan in place that addresses how we are going to work with the leading government agency
<input type="checkbox"/>	<input type="checkbox"/>	We are aware of existing laws, ordinances, and regulations that affect our community (local, state, and federal).
<input type="checkbox"/>	<input type="checkbox"/>	We have selected a model practice(s) that fits our community needs and are using it as a guide.
<input type="checkbox"/>	<input type="checkbox"/>	We have identified the limitations of the desired regulation(s) and identified foreseeable implementation problems.
<input type="checkbox"/>	<input type="checkbox"/>	We have developed a plan that identifies and addresses potential roadblocks, takes advantage of community strengths, and minimizes the risk of failure.

## Part 11 – Presenting the Issue

Now that you have decided what it is you want to accomplish, and you have developed a plan of how to get there, you need to share your plan with everyone and anyone who could possibly help you. This is advocacy.

Advocacy is simply speaking up for something you believe in. Lobbying, which is one form of advocacy, is communicating with an elected official about a position on a pending piece of legislation.

Anyone can be a policy advocate who is willing to:

- Speak up
- Help others get services to which they are entitled (like a healthy home)
- Challenge government systems when they do not work
- Work for, and vote for, laws, budgets, and policies that do work
- Be a voice for others – especially those in hard times – with policy makers

Lobbying to change local policy is made easier because your target audience is local. Local leaders are often people you see at work, school or out at dinner. Because the issue is local, you can solicit your friends, neighbors and co-workers to solicit with you. Convey the message to them – chances are they will feel just as passionately as you do because the issue affects their community as well.

### *Five Steps to Mastering Advocacy*

**Know the system(s).** Find out which organizations, government units, and agencies set policies that could affect lead, housing and health. Besides the city and county council and mayor or city manager, this might include the parks department and commission, the school board and department, the department of inspections, and the planning department.

Learn how each works, how policies and decisions are made, and who or what influences decision makers. In some communities elected officials have more power than the city or county manager or other staff, while in other communities the professional staff might have a great deal of clout.

**Develop allies.** Develop personal contacts with key staff and officials. Be sure you put their names on your mailing list and schedule informal visits often so that they come to know you not only when you are asking or complaining about something. Ideally they will come to rely on you as a friend, trustworthy contact, or resource person on whom they can count.

It is a good practice to publicly recognize officials and other decision makers for their support. Don't overlook key support staff. They can be allies or detractors depending on how they're handled, and they may have the ear of their boss.

In addition, Establish communication with other organizations and coalitions that are working on related issues or toward compatible goals.

**Establish a network.** The ability to generate calls, letters and/or email to decision makers or the press is the backbone of most advocacy campaigns. An organization's political clout is often measured in relation to the number of constituents it can activate in a short amount of time. Everyone has heard stories of how officials count letters and calls to gauge constituent interest and opinion. The objective is to be sure that, within eight to twenty-four hours, you can mobilize supporters to make contact with decision makers.

Email list serves and a phone tree are key elements of any good advocacy effort. You should be organized to mobilize your board, members, and audiences. Keeping in regular communication with your advocates will make them feel connected with your

cause and ready to act on your behalf. A local organization's advocacy network can be an asset when used to assist allies and elected officials in their own fundraising and advocacy efforts.

**Track issues.** It is a good idea to designate coalition members as liaisons to key commissions and/or agencies. Monitoring such things as the budget development process or the availability of an underutilized funding may prepare you to act early and informally on your own behalf.

It is important to be strategic about how and when you make the public aware of issues. Consider the general climate of the community when planning the launch of any kind of campaign. Be aware of events and activities happening on the local, state and national front, and put this knowledge into play when making public announcements.

**Be Prepared to Tell Your Story.** When you have something to say, you will need to **deliver the message clearly and concisely** as possible. Telling the right stories and substantiating with statistics can increase the impact of your case. Facts, not hype, are key to establishing your credibility. In advocacy it is critical to connect with the relevant issues and concerns of the community.

Try to always stay on a positive note. Keep your message focused on positive results and mutual benefits. For instance, fixing homes in the city would not only benefit the children but would help attract more people to move to the area – all of which benefit the entire community.

Adapted from  
the article “Preparing For Local Advocacy” by Barbara Schaffer Bacon  
Arts Extension Service *Fundamentals of Local Arts Management*

For more on setting specific goals see **EPA’s Environmental Justice Collaborative Problem-Solving Model.**

*See appendix for supporting materials*

## Part 12 – Leveraging Your Victories

### Congratulations!!!

Maybe you have passed a new local ordinance in your community that requires homes to be inspected for lead... or maybe you have successfully implemented the Landlord Penalty Law for the first time... or maybe you simply have had your first lead coalition meeting. Whatever it is, all victories are to be celebrated!

### **Small Victories**

A “small victory” is a powerful tool that can help make a lasting improvement. Small victories are small steps in the process of continuous improvement. Celebrating small victories is a great way to stretch out of your comfort zone and make lasting changes.

The power of the small victories tool comes from the fact that it’s not the magnitude of the change you have created that is important, but your perception of the size of the change: The bigger the perceived change, the stronger the impact you experience and the easier it becomes to move forward to the next goal.

In *An Inconvenient Truth*, Al Gore’s film about global warming, he uses the “boiling frog” story to illustrate the point that gradual change is sometimes hard to notice. The story goes like this... If you try to boil a frog by throwing it into a pot of boiling water, it will react immediately and jump out. If, however, you put the frog into a pot of lukewarm water and slowly raise the temperature, the frog will not react in time and will boil to death.

While the story is a little gross, it does illustrate that gradual change is more difficult to notice than sudden change because it gives us time to adapt and acclimate to the new conditions.

This concept can be put to very good use through the small victories tool. Even the smallest of changes moves you along the path to success. Small changes allow those impacted to get used to little adaptations before the next improvement occurs.

So celebrate even the smallest of victories. This is extremely empowering to the coalition. Always visit past success to show how far the group has come, and visit past difficulties to learn from your mistakes.

Use small victories as an opportunity for education and advocacy. Write a press release and alert the media to your success. This will ‘bring along the crowd’ and grow your pool of advocates.



Notes:

## **APPENDIX**

### **Documents**

#### **Existing Federal Law and Policy**

- EPA Fact Sheet - EPA and HUD move to protect children from lead-based paint poisoning; disclosure of lead-based paint hazards in housing
- EPA and HUD real estate notification and disclosure rule questions and answers
- Disclosure fact sheet – Healthy Homes Coalition of West Michigan
- EPA 40 CFR Part 745 – Lead; Renovation, Repair, and Painting Program Final rule – April 2008

#### **Existing State Law and Policy**

- Michigan Lead Abatement Act Part 54A
- Housing Law of Michigan Act 167 of 1917 (125.485)
- State of Michigan Act No. 434 of the Public Acts of 2004

#### **Options for Policy Change**

- Preventing Childhood Lead Poisoning through Code Enforcement: ten Effective Strategies: Alliance to End Childhood Lead Poisoning
- Lead-Safe Housing Policy Guidance: Alliance for Healthy Homes

#### **Model Policies and Limitations**

- Housing Regulations for Kent County Michigan
- Wayne County Prosecutors' Office Childhood Lead Poisoning Prevention Unit - Landlord Penalty Law Enforcement Procedural Manual
- Municipal Code of the City of Rochester, New York – Chapter 90 Article III
- An Evaluation of the City of Rochester's Lead Law Year One Report
- Ordinance 2008-3 City of Hamtramck, Michigan

#### **Presenting the Issue**

- Policy Advocacy: The Ten Minute Version by Nancy Amidei

## Contributing Agencies

With the assistance of the National Association of County and City Health Officials, a number of local and state government agencies came forward, contributing current ordinances, housing codes, public health codes, and best practice techniques for project review. We would like to thank all of the agencies for the time and energy it took to communicate their local practices as well as answering a number of follow up questions.

The following table lists the agency contact, their geographical location, and a short list of their contributions and/or comments concerning lead paint regulations and ordinances in their area.

If you are interested in examining these documents, please check with the municipality. Contact numbers for all levels of government agencies can be found quite easily online.

Akron Health Department State law---Ohio Revised Code, Chapter 3742; Lead abatement Local law---Akron Municipal Code, Title 9, Chapter 94, Article 4; Lead poisoning hazards Local law—Akron Municipal Code, Title 15, Chapter 150---Environmental Health Housing Code	Akron, OH
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City of Cedar Rapids City Code Chapter 21	Cedar Rapids, IA
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Department of Public Health Lead Ordinance - 45A	Cerro Gordo County, IA
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Clark County Combined Health District Ohio Revised Code Chapter 3742 - Ohio Administrative Code Chapters 3701-32 and 3701-30	Clark County, OH
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Department of Public Health Part Two- Health Code Title 1 Nuisances and General Provisions Chapter 240 - Lead Hazards	Cleveland, OH
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State of Connecticut State of Connecticut Public Health Code Section 19a-111-1 thru 11	Connecticut, MA
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Cortland County Environmental Health Cortland County Sanitation Code	Cortland County, NY
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City of Greensboro Greensboro Municipal Codes: Chapter 11 Housing Code	Greensboro, NC
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City of Hamtramck Ordinance 2008-3 Controlling lead hazards in pre -1978 structures including establishing minimum standards for inspections and providing penalties for violation of the provisions.	Hamtramck, MI
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City of Houston Nuisance Ordinance	Houston, TX
State of Indiana Lead-Based Paint: The Law in Indiana - a manual for Judges, Lawyers, Advocates, State and Local Officials, Landlords, Tenants, and Contractors.	Indiana
Indiana State Department of Health Model Housing Code Provisions Related to Lead Hazards	Indiana
City of Junction City City Code	Junction City, KS
Linn County Public Health Board of Health Regulations	Linn County, IA
District Board of Health No local housing codes to enforce primary lead prevention	Mahoning County, OH
Maplewood Health Department Lead Paint Removal Ordinance	Maplewood Twp, NJ
Milwaukee Health Department Charter and Code of Ordinances Chapter 66.10 Subchapter 2 Toxic and Hazardous Substances	Milwaukee, WI
State of New Jersey Assembly No. 3263 - Lead paint inspection requirement to dwelling units in single-family and two-family properties.	New Jersey
City of Philadelphia Primary Prevention Tools	Philadelphia, PA
City of Rochester Chapter 90 Municipal Code	Rochester, NY
Tacoma-Pierce County Health Department No local housing codes to enforce primary lead prevention	Tacoma-Pierce County, WA
Tulsa Health Department Boca National Property Maintenance Code – 1993	Tulsa, OK
City of Wauwatosa Title 8 Health and Sanitation: Chapter 8.10 Human Health Hazards	Wauwatosa, WI

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# FACT SHEET

## EPA and HUD Move to Protect Children from Lead-Based Paint Poisoning; Disclosure of Lead-Based Paint Hazards in Housing

### SUMMARY

The Environmental Protection Agency (EPA) and the Department of Housing and Urban Development (HUD) are announcing efforts to ensure that the public receives the information necessary to prevent lead poisoning in homes that may contain lead-based paint hazards. Beginning this fall, most home buyers and renters will receive known information on lead-based paint and lead-based paint hazards during sales and rentals of housing built before 1978. Buyers and renters will receive specific information on lead-based paint in the housing as well as a Federal pamphlet with practical, low-cost tips on identifying and controlling lead-based paint hazards. Sellers, landlords, and their agents will be responsible for providing this information to the buyer or renter before sale or lease.

### LEAD-BASED PAINT IN HOUSING

Approximately three-quarters of the nation's housing stock built before 1978 (approximately 64 million dwellings) contains some lead-based paint. When properly maintained and managed, this paint poses little risk. However, 1.7 million children have blood-lead levels above safe limits, mostly due to exposure to lead-based paint hazards.

### EFFECTS OF LEAD POISONING

Lead poisoning can cause permanent damage to the brain and many other organs and causes reduced intelligence and behavioral problems. Lead can also cause abnormal fetal development in pregnant women.

### BACKGROUND

To protect families from exposure to lead from paint, dust, and soil, Congress passed the Residential Lead-Based Paint Hazard Reduction Act of 1992, also

known as Title X. Section 1018 of this law directed HUD and EPA to require the disclosure of known information on lead-based paint and lead-based paint hazards before the sale or lease of most housing built before 1978.

### WHAT IS REQUIRED

Before ratification of a contract for housing sale or lease:

- Sellers and landlords must disclose known lead-based paint and lead-based paint hazards and provide available reports to buyers or renters.
- Sellers and landlords must give buyers and renters the pamphlet, developed by EPA, HUD, and the Consumer Product Safety Commission (CPSC), titled *Protect Your Family from Lead in Your Home*.
- Home buyers will get a 10-day period to conduct a lead-based paint inspection or risk assessment at their own expense. The rule gives the two parties flexibility to negotiate key terms of the evaluation.
- Sales contracts and leasing agreements must include certain notification and disclosure language.
- Sellers, lessors, and real estate agents share responsibility for ensuring compliance.



## WHAT IS NOT REQUIRED

- This rule does not require any testing or removal of lead-based paint by sellers or landlords.
- This rule does not invalidate leasing and sales contracts.

## TYPE OF HOUSING COVERED

Most private housing, public housing, Federally owned housing, and housing receiving Federal assistance are affected by this rule.

## TYPE OF HOUSING NOT COVERED

- Housing built after 1977 (Congress chose not to cover post-1977 housing because the CPSC banned the use of lead-based paint for residential use in 1978).
- Zero-bedroom units, such as efficiencies, lofts, and dormitories.
- Leases for less than 100 days, such as vacation houses or short-term rentals.
- Housing for the elderly (unless children live there).
- Housing for the handicapped (unless children live there).

- Rental housing that has been inspected by a certified inspector and found to be free of lead-based paint.

- Foreclosure sales.

## EFFECTIVE DATES

- For owners of more than 4 dwelling units, the effective date is September 6, 1996.
- For owners of 4 or fewer dwelling units, the effective date is December 6, 1996.

## THOSE AFFECTED

The rule will help inform about 9 million renters and 3 million home buyers each year. The estimated cost associated with learning about the requirements, obtaining the pamphlet and other materials, and conducting disclosure activities is about \$6 per transaction.

## EFFECT ON STATES AND LOCAL GOVERNMENTS

This rule should not impose additional burdens on states since it is a Federally administered and enforced requirement. Some state laws and regulations require the disclosure of lead hazards in housing. The Federal regulations will act as a complement to existing state requirements.

### FOR MORE INFORMATION

- For a copy of *Protect Your Family from Lead in Your Home* (in English or Spanish), the sample disclosure forms, or the rule, call the National Lead Information Clearinghouse (NLIC) at (800) 424-LEAD, or TDD (800) 526-5456 for the hearing impaired. You may also send your request by fax to (202) 659-1192 or by Internet E-mail to [ehc@cais.com](mailto:ehc@cais.com). Visit the NLIC on the Internet at <http://www.nsc.org/nsc/ehc/ehc.html>.
- Bulk copies of the pamphlet are available from the Government Printing Office (GPO) at (202) 512-1800. Refer to the complete title or GPO stock number 055-000-00507-9. The price is \$26.00 for a pack of 50 copies. Alternatively, persons may reproduce the pamphlet, for use or distribution, if the text and graphics are reproduced in full. Camera-ready copies of the pamphlet are available from the National Lead Information Clearinghouse.
- For specific questions about lead-based paint and lead-based paint hazards, call the National Lead Information Clearinghouse at (800) 424-LEAD, or TDD (800) 526-5456 for the hearing impaired.
- The EPA pamphlet and rule are available electronically and may be accessed through the Internet.

#### Electronic Access:

**Gopher:** [gopher.epa.gov:70/11/Offices/PestPreventToxic/Toxic/lead\\_pm](http://gopher.epa.gov:70/11/Offices/PestPreventToxic/Toxic/lead_pm)

**WWW:** <http://www.epa.gov/opptintr/lead/index.html>  
<http://www.hud.gov>

**Dial up:** (919) 558-0335

**FTP:** [ftp.epa.gov](ftp://ftp.epa.gov) (To login, type "anonymous." Your password is your Internet E-mail address.)

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# **EPA and HUD Real Estate Notification and Disclosure Rule Questions and Answers**

## **The Rule**

### **What is the purpose of this rule and who is affected?**

To protect the public from exposure to lead from paint, dust, and soil, Congress passed the Residential Lead-Based Paint Hazard Reduction Act of 1992, also known as Title X. Section 1018 of this law directed HUD and EPA to require disclosure of information on lead-based paint and lead-based paint hazards before the sale or lease of most housing built before 1978. The rule would ensure that purchasers and renters of housing built before 1978 receive the information necessary to protect themselves and their families from lead-based paint hazards.

### **When does the rule take effect?**

The rule's effective date depends on the number of housing units owned.

! For owners of more than 4 dwelling units, the effective date is September 6, 1996.

! For owners of 4 or fewer dwelling units, the effective date is December 6, 1996.

## **Affected Housing**

### **What type of housing is affected by this rule?**

This rule applies to all housing defined as target housing, which includes most private housing, public housing, housing receiving federal assistance, and federally owned housing built before 1978.

### **What type of housing is not affected by this rule?**

Housing that is not affected by this rule includes:

! 0-bedroom dwellings, such as lofts, efficiencies, and studios.

! Leases of dwelling units of 100 days or fewer, such as vacation homes or short-term rentals.

! Designated housing for the elderly and the handicapped unless children reside or are expected to reside there.

! Rental housing that has been inspected by a certified inspector and is found to be free of

lead-based paint.

## **How does this rule apply to housing common areas such as stairwells, lobbies, and laundry rooms?**

Common areas are those areas in multifamily housing structures that are used or are accessible to all occupants. The rule requires that sellers and lessors disclose available lead information about common areas so that families can be informed about preventive actions.

## **Why doesn't this rule affect housing built after 1978?**

Congress did not extend the law to housing built after 1978 because the Consumer Product Safety Commission banned the use of lead-based paint in housing in 1978.

## **Is my home unsafe if it contains lead-based paint?**

Approximately three-quarters of the nation's housing built before 1978 contains some lead-based paint. This paint, if properly managed and maintained, poses little risk. If allowed to deteriorate, lead from paint can threaten the health of occupants, especially children under 6 years old. If families and building owners are aware of the presence of lead-based paint and the proper actions to take, most lead-based paint hazards can be managed. The EPA pamphlet *Protect Your Family From Lead in Your Home* provides important information for families and home owners to help them identify when lead-based paint is likely to be a hazard and how to get their home checked.

## **Seller & Lessor Responsibilities**

### **What if I'm selling target housing?**

Property owners who sell target housing must:

- ! Disclose all known lead-based paint and lead-based paint hazards in the housing and any available reports on lead in the housing.
- ! Give buyers the EPA pamphlet *Protect Your Family from Lead in Your Home*.
- ! Include certain warning language in the contract as well as signed statements from all parties verifying that all requirements were completed.
- ! Retain signed acknowledgments for 3 years, as proof of compliance.
- ! Give buyers a 10-day opportunity to test the housing for lead.

### **What if I'm renting target housing?**

Property owners who rent out target housing must:

- ! Disclose all known lead-based paint and lead-based paint hazards in the home and any available

reports on lead in the housing.

- ! Give renters the EPA pamphlet *Protect Your Family From Lead in Your Home*.
- ! Include certain warning language in the lease as well as signed statements from all parties verifying that all requirements were completed.
- ! Retain signed acknowledgments for 3 years, as proof of compliance.

### **Am I required to give the EPA pamphlet *Protect Your Family From Lead in Your Home* to existing tenants?**

No, but when tenants renew their leases, you must give them the pamphlet and any available reports. In other words, you must give them the same information that you are required to provide new tenants.

### **What if the buyers/renters don't speak English?**

In cases where the buyer or renter signed a purchase or lease agreement in a language other than English, the rule requires that the disclosure language be provided in the alternate language. The EPA pamphlet *Protect Your Family From Lead in Your Home* is printed in English and Spanish and will be made available to the public. EPA and HUD are considering publishing the pamphlet in other languages as well.

### **Must I check my house for lead prior to sale?**

No. The rule does not require that a seller conduct or finance an inspection or risk assessment. The seller, however, is required to provide the buyer a 10-day period to test for lead-based paint or lead-based paint hazards.

### **Is the seller required to remove any lead-based paint that is discovered during an inspection?**

No. Nothing in the rule requires a building owner to remove lead-based paint or lead-based paint hazards discovered during an inspection or risk assessment. In addition, the rule does not prevent the two parties from negotiating hazard reduction activities as a contingency of the purchase and sale of the housing.

### **What if I know there is lead-based paint in my home?**

If you know there is lead-based paint in your home, you are required to disclose this information to the buyer or renter along with any other available reports on lead.

### **What if the lessor knows that there is no lead-based paint in my rental**

## **housing?**

If your rental housing has been found to be free of lead-based paint by a certified inspector, this rule does not apply. However, landlords seeking an exclusion to this rule must use state certified inspectors. If your state does not have a certification program, you may use a certified inspector from another state. In addition, EPA is developing certification requirements for individuals and firms conducting lead-based paint inspections, risk assessments, and abatements.

## **Agent Responsibilities**

### **What are my responsibilities as an agent?**

Agents must ensure that:

- ! Sellers and landlords are made aware of their obligations under this rule.
  
- ! Sellers and landlords disclose the proper information to lessors, buyers, and tenants.
  
- ! Sellers give purchasers the opportunity to conduct an inspection.
  
- ! Lease and sales contracts contain the appropriate notification and disclosure language and proper signatures.

### **What is the responsibility of an agent if the seller or landlord fails to comply with this rule?**

The agent is responsible for informing the seller or lessor of his or her obligations under this rule. In addition, the agent is responsible if the seller or lessor fails to comply. However, an agent is not responsible for information withheld by the seller or lessor.

## **Purchaser & Renter Rights**

### **As a purchaser, am I required to conduct and finance an inspection?**

No. The rule simply ensures that you have the opportunity to test for lead before purchase.

### **Can the inspection/risk assessment period be waived?**

Yes. The inspection or risk assessment period can be lengthened, shortened, or waived by mutual written consent between the purchaser and the seller.

### **If I am renting, do I have the same opportunity to test for lead?**

Under the law, the 10-day inspection period is limited to sales transactions, but nothing prevents

the renter from negotiating with the lessor to allow time for an inspection before rental.

### **Where can I find a qualified professional to conduct an inspection?**

State agencies can provide helpful information for locating qualified professionals in your area. The EPA pamphlet *Protect Your Family From Lead in Your Home* provides the phone numbers of these state agencies. It is important to verify the qualifications of individuals and firms before hiring them.

### **Must inspectors be certified?**

Some cities and states have their own rules concerning inspector certification. These requirements, which may be administered at the state or federal level, may not be in place for several years. Once these requirements are in place, professionals who offer to perform lead-based paint inspections must be certified. The certification requirements that EPA is developing will ensure that inspectors engaged in lead-based paint activities have completed an EPA-certified training program or an EPA-approved state program. Meanwhile, EPA and HUD recommend that people inspect the qualifications and training of individuals and firms before hiring them to conduct risk assessments, inspections, or abatements.

## **Liability**

### **Does this rule increase my liability for future lead poisoning on my property?**

In some cases, disclosure may actually reduce the owner's liability since occupants may be able to prevent exposure from the beginning. Under this rule, however, sellers, landlords, or agents who fail to provide the required notices and information are liable for triple the amount of damages.

### **Are mortgage lenders liable under these rules if the seller or lessor fails to disclose?**

Under the disclosure regulation, the rule does not identify mortgage lenders as liable parties. This rule does not affect other state and federal provisions regarding the obligations and responsibilities of lenders.

### **What if a seller or lessor fails to comply with these regulations?**

A seller, lessor, or agent who fails to give the proper information can be sued for triple the amount of damages. In addition, they may be subject to civil and criminal penalties. Ensuring that disclosure information is given to home buyers and tenants helps all parties avoid misunderstandings before, during, and after sales and leasing agreements.

## WHAT IS REQUIRED

Before ratification of a contract for housing lease:

- Landlords must give renters the *Protect Your Family from Lead in Your Home* pamphlet.
- Leasing agreements must include certain notification and disclosure language.
  - See the attached disclosure form.
- Landlords must disclose known lead-based paint and lead-based paint hazards and provide ALL available reports to renters.
  - This includes past hazards that have been remediated.
  - This includes ALL reports for the home, including inspections, risk assessments, and clearance reports. Even if a clearance report has been provided, all other previous reports must still be provided. This includes results from do-it-yourself testing and citations from public health.
  - All reports must be provided in full. Summary reports are acceptable only if they are provided by the third-party that conducted the risk assessment or inspection in keeping with the Michigan Lead Abatement Act; and in these cases, full documentation must be made available upon request. When in doubt, provide the paper.
  - It is not sufficient to make the reports available for review. Copies of the reports must be provided to the tenant in advance of signing the lease.
- Lessors and real estate agents share responsibility for ensuring compliance.
- The disclosure statement MUST be signed the same day or prior to signing the lease.
- The disclosure form MUST be dated and signed by both parties.
- If a new lease is executed, disclosure must be repeated. Examples of when disclosure must be repeated include adding a new person's name to the lease or moving the tenant between units. The only exception to this is when the lease is simply renewed by the same tenant(s) for the same unit.

## WHAT IS NOT REQUIRED

- This rule does not require any testing or removal of lead-based paint by landlords.

## TYPE OF HOUSING COVERED

- Private housing, public housing, federally owned housing, and housing receiving federal assistance built before 1978. This includes housing that has had lead-hazards remediated without full abatement, such as those participating in the City of Grand Rapids *Get the Lead Out!* Lead Hazard Control program.

## TYPE OF HOUSING NOT COVERED

- Housing built after 1977 (Congress chose not to cover post-1977 housing because the CPSC banned the use of lead-based paint for residential use in 1978).
- Zero-bedroom units, such as efficiencies, lofts, and dormitories.
- Non-renewable leases for less than 100 days, such as vacation houses (month-to-month leases *must* disclose).
- Housing for the elderly (unless children live there).
- Housing for the handicapped (unless children live there).
- Rental housing that has been inspected by a certified inspector and found to be free of lead-based paint. *There is a difference between free of "lead hazards" and free of "lead-based paint." The latter means that ALL lead-based paint has been removed and does not include treatment such as covering over lead-based paint with vinyl siding or encapsulant paint.*
- Foreclosure sales (aka "sheriff sales")



## CHECKLIST

- Prepare disclosure statement (attached) by filling out the “Lessor’s Disclosure” section.
- Ensure that you have TWO copies of all reports and documentation. One set of the copies must be attached to the disclosure statement provided to the tenant. The other must be saved and filed with the signed disclosure statement.
- Secure a copy of *Protect Your Family from Lead in Your Home* (the “blue book”).
- Provide prospective tenant with ALL reports and documentation.
- Provide prospective tenant with a copy of *Protect Your Family from Lead in Your Home*.
- Have the tenant initial, sign and date the disclosure statement prior to signing the lease. Make sure the disclosure statement is signed and dated for the same date (or earlier date) than the lease.
- Retain the original copy of the disclosure statement in your files indefinitely. Attach copies of all reports provided.
- If the lease is altered in the future (new tenants added, change of unit, etc.), you must re-disclose.

***TIP!*** Keep electronic copies of your files so that they can be readily accessible and printed out when you need them. Most risk assessors and government agencies keep these records on file electronically. Documents can also be scanned at Kinko’s and other copy centers.



# Federal Register

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**Tuesday,  
April 22, 2008**

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**Part II**

## **Environmental Protection Agency**

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**40 CFR Part 745**

**Lead; Renovation, Repair, and Painting  
Program; Lead Hazard Information  
Pamphlet; Notice of Availability; Final  
Rule**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 745

[EPA-HQ-OPPT-2005-0049; FRL-8355-7]

RIN 2070-AC83

### Lead; Renovation, Repair, and Painting Program

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is issuing a final rule under the authority of section 402(c)(3) of the Toxic Substances Control Act (TSCA) to address lead-based paint hazards created by renovation, repair, and painting activities that disturb lead-based paint in target housing and child-occupied facilities. "Target housing" is defined in TSCA section 401 as any housing constructed before 1978, except housing for the elderly or persons with disabilities (unless any child under age 6 resides or is expected to reside in such housing) or any 0-bedroom dwelling. Under this rule, a child-occupied facility is a building, or a portion of a building, constructed prior to 1978, visited regularly by the same child, under 6 years of age, on at least two different days within any week (Sunday through Saturday period), provided that each day's visit lasts at least 3 hours and the combined weekly visits last at least 6 hours, and the combined annual visits last at least 60 hours. Child-occupied facilities may be located in public or commercial buildings or in target housing. This rule establishes requirements for training renovators, other renovation workers, and dust sampling technicians; for certifying renovators, dust sampling technicians, and renovation firms; for accrediting providers of renovation and dust sampling technician training; for renovation work practices; and for recordkeeping. Interested States, Territories, and Indian Tribes may apply for and receive authorization to administer and enforce all of the elements of these new renovation requirements.

**DATES:** This final rule is effective June 23, 2008.

**ADDRESSES:** EPA has established a docket for this action under docket identification (ID) number EPA-HQ-OPPT-2005-0049. All documents in the docket are listed in the docket index available in regulations.gov. To access the electronic docket, go to <http://www.regulations.gov>, select "Advanced Search," then "Docket Search." Insert the docket ID number where indicated

and select the "Submit" button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at <http://www.regulations.gov>, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566-1744, and the telephone number for the OPPT Docket is (202) 566-0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

**FOR FURTHER INFORMATION CONTACT:** *For general information contact:* Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 554-1404; e-mail address: [TSCA-Hotline@epa.gov](mailto:TSCA-Hotline@epa.gov).

*For technical information contact:* Mike Wilson, National Program Chemicals Division (7404T), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 566-0521; e-mail address: [wilson.mike@epa.gov](mailto:wilson.mike@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Does this Action Apply to Me?

You may be potentially affected by this action if you perform renovations of target housing or child-occupied facilities for compensation or dust sampling. "Target housing" is defined in section 401 of TSCA as any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child under age 6 resides or is expected to reside in such housing) or any 0-bedroom dwelling.

Under this rule, a child-occupied facility is a building, or a portion of a building, constructed prior to 1978, visited regularly by the same child, under 6 years of age, on at least 2 different days within any week (Sunday through Saturday period), provided that each day's visit lasts at least 3 hours and the combined weekly visits last at least 6 hours, and the combined annual visits last at least 60 hours. Child-occupied facilities may be located in public or commercial buildings or in target housing. Potentially affected entities may include, but are not limited to:

- Building construction (NAICS code 236), e.g., single family housing construction, multi-family housing construction, residential remodelers.
- Specialty trade contractors (NAICS code 238), e.g., plumbing, heating, and air-conditioning contractors, painting and wall covering contractors, electrical contractors, finish carpentry contractors, drywall and insulation contractors, siding contractors, tile and terrazzo contractors, glass and glazing contractors.
- Real estate (NAICS code 531), e.g., lessors of residential buildings and dwellings, residential property managers.
- Child day care services (NAICS code 624410).
- Elementary and secondary schools (NAICS code 611110), e.g., elementary schools with kindergarten classrooms.
- Other technical and trade schools (NAICS code 611519), e.g., training providers.
- Engineering services (NAICS code 541330) and building inspection services (NAICS code 541350), e.g., dust sampling technicians.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in Unit III. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

##### II. Background

###### A. What Action is the Agency Taking?

EPA is issuing a final rule under the authority of section 402(c)(3) of the

Toxic Substances Control Act (TSCA) to address lead-based paint hazards created by renovation, repair, and painting activities (hereinafter also referred to as renovation activities or renovation projects) that disturb lead-based paint in target housing and child-occupied facilities. "Target housing" is defined in TSCA section 401 as any housing constructed before 1978, except housing for the elderly or persons with disabilities (unless any child under age 6 resides or is expected to reside in such housing) or any 0-bedroom dwelling. Under this rule, a child-occupied facility is a building, or a portion of a building, constructed prior to 1978, visited regularly by the same child, under 6 years of age, on at least two different days within any week (Sunday through Saturday period), provided that each day's visit lasts at least 3 hours and the combined weekly visits last at least 6 hours, and the combined annual visits last at least 60 hours. Child-occupied facilities may be located in public or commercial buildings or in target housing. This rule establishes requirements for training renovators, other renovation workers, and dust sampling technicians; for certifying renovators, dust sampling technicians, and renovation firms; for accrediting providers of renovation and dust sampling technician training; for renovation work practices; and for recordkeeping. Interested States, Territories, and Indian Tribes may apply for and receive authorization to administer and enforce all of the elements of these new renovation requirements.

1. *Information on lead and its health effects.* Lead is a soft, bluish metallic chemical element mined from rock and found in its natural state all over the world. Lead is virtually indestructible, is persistent, and has been known since antiquity for its adaptability in making various useful items. In modern times, it has been used to manufacture many different products, including paint, batteries, pipes, solder, pottery, and gasoline. Through the 1940's, 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.

Lead has been demonstrated to exert "a broad array of deleterious effects on multiple organ systems via widely diverse mechanisms of action." This array of health effects, the evidence for which is comprehensively described in EPA's Air Quality Criteria for Lead document (Ref. 1), includes heme

biosynthesis and related functions; neurological development and function; reproduction and physical development; kidney function; cardiovascular function; and immune function. There is also some evidence of lead carcinogenicity, primarily from animal studies, together with limited human evidence of suggestive associations.

Of particular interest for present purposes is the delineation of lowest observed effect levels for those lead-induced effects that are most clearly associated with blood lead less 10  $\mu\text{g}/\text{dL}$  in children and/or adults and are, therefore, of greatest public health concern (Ref. 1, at 8-60). As evident from the Criteria Document, neurotoxic effects in children and cardiovascular effects in adults are among those best substantiated as occurring at blood-lead concentrations as low as 5 to 10  $\mu\text{g}/\text{dL}$  (or possibly lower); and these categories of effects are currently clearly of greatest public health concern. Other newly demonstrated immune and renal system effects among general population groups are also emerging as low-level lead-exposure effects of potential public health concern. (Ref. 1, at 8-60)

The overall weight of the available evidence provides clear substantiation of neurocognitive decrements being associated in young children with blood lead concentrations in the range of 5–10 micrograms per deciliter ( $\mu\text{g}/\text{dL}$ ), and possibly somewhat lower. Some newly available analyses appear to show lead effects on the intellectual attainment of preschool and school age children at population mean concurrent blood-lead levels ranging down to as low as 2 to 8  $\mu\text{g}/\text{dL}$ . A decline of 6.2 points in full scale IQ for an increase in concurrent blood lead levels from 1 to 10  $\mu\text{g}/\text{dL}$  has been estimated, based on a pooled analysis of results derived from seven well-conducted prospective epidemiologic studies (Ref. 1, at E-9).

Epidemiologic studies have consistently demonstrated associations between lead exposure and enhanced risk of deleterious cardiovascular outcomes, including increased blood pressure and incidence of hypertension. A meta-analysis of numerous studies estimates that a doubling of blood lead level (e.g., from 5 to 10  $\mu\text{g}/\text{dL}$ ) is associated with  $\sim 1.0$  mm Hg increase in systolic blood pressure and  $\sim 0.6$  mm Hg increase in diastolic pressure. (Ref. 1, at E-10).

Both epidemiologic and toxicologic studies have shown that environmentally relevant levels of lead affect many different organ systems (Ref. 1, at E-8). Please see Ref. 1 for further information.

The nervous system has long been recognized as a target of lead toxicity, with the developing nervous system affected at lower exposures than the mature system. While blood lead levels in U.S. children ages 1 to 5 years have decreased notably since the late 1970's, newer studies have investigated and reported associations of effects on the neurodevelopment of children at population mean concurrent blood lead levels ranging down to as low as 2 to 8  $\mu\text{g}/\text{dL}$  (Ref. 1, at E-9). Functional manifestations of lead neurotoxicity during childhood include sensory, motor, cognitive and behavioral impacts. Investigating associations between lead exposure and behavior, mood, and social conduct of children has been an emerging area of research (see Ref. 1, at 6.2.6). Early studies indicated linkages between lower-level lead toxicity and behavioral problems (e.g., aggression, attentional problems, and hyperactivity) in children.

Effects of lead on neurobehavior have been reported with remarkable consistency across numerous studies of various designs, populations studied, and developmental assessment protocols. The negative impact of lead on IQ and other neurobehavioral outcomes persist in most recent studies following adjustment for numerous confounding factors including social class, quality of caregiving, and parental intelligence. Moreover, these effects appear to persist into adolescence and young adulthood. Cognitive effects associated with lead exposures that have been observed in some studies include decrements in intelligence test results, such as the widely used IQ score, and in academic achievement as assessed by various standardized tests as well as by class ranking and graduation rates. Associations between lead exposure and academic achievement observed in the above-noted studies were significant even after adjusting for IQ, suggesting that lead-sensitive neuropsychological processing and learning factors not reflected by global intelligence indices might contribute to reduced performance on academic tasks (Ref. 1, at 8–29).

Other cognitive effects observed in studies of children have included effects on attention, executive functions, language, memory, learning and visuospatial processing with attention and executive function effects observed. The evidence for the role of lead in this suite of effects includes experimental animal findings. These animal toxicology findings provide strong biological plausibility in support of the concept that lead may impact one or more of these specific cognitive

functions in humans (Ref. 1, at 8–30). Further, lead-induced deficits observed in animal and epidemiological studies, for the most part, have been found to be persistent in the absence of markedly reduced environmental exposures. It is additionally important to note that there may be long-term consequences of such deficits over a lifetime. Studies examining aspects of academic achievement related to lead exposure indicate the association of deficits in academic skills and performance, which in turn lead to enduring and important effects on objective parameters of success in real life (Ref. 1, at 6–76).

Lead bioaccumulates, and is only slowly removed, with bone lead serving as a blood lead source for years after exposure and may serve as a significant source of exposure. Bone accounts for more than 90% of the total body burden of lead in adults and 70% in children (Ref. 1, at 4–42). In comparison to adults, bone mineral turns over much more quickly in children as a result of growth. Changes in blood lead concentration in children are thought to parallel more closely to changes in total body burden. Therefore, blood lead concentration is often used in epidemiologic and toxicological studies as an index of exposure and body burden for children.

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-based paint hazards. 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, are at risk for high exposures of lead-based paint dust via hand-to-mouth exposure, and may also ingest lead-based paint chips from flaking paint on 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 lead dust particles in the air and over accessible household surfaces. In turn, both adults and children can receive hazardous exposures by inhaling the dust or by ingesting lead-based paint dust during hand-to-mouth activities.

**2. Statutory and regulatory background.** In 1992, Congress found that low-level lead poisoning was widespread among American children, affecting, at that time, as many as 3,000,000 children under age 6; that the ingestion of household dust containing

lead from deteriorating or abraded lead-based paint was the most common cause of lead poisoning in children; and that the health and development of children living in as many as 3,800,000 American homes was endangered by chipping or peeling lead paint, or excessive amounts of lead-contaminated dust in their homes. Congress further determined that the prior Federal response to this threat was insufficient and enacted Title X of the Housing and Community Development Act of 1992, Public Law 102–550 (also known as the Residential Lead-Based Paint Hazard Reduction Act of 1992) (“the Act” or “Title X”). Title X established a national goal of eliminating lead-based paint hazards in housing as expeditiously as possible and provided a leadership role for the Federal government in building the infrastructure necessary to achieve this goal.

Subsequently, President Clinton created the President's Task Force on Environmental Health Risks and Safety Risks to Children. Co-chaired by the Secretary of the Department of Health and Human Services (HHS) and the Administrator of EPA, the Task Force consisted of representatives from 16 Federal departments and agencies. The Task Force set a Federal goal of eliminating childhood lead poisoning by the year 2010 (Ref. 2). In October 2001, President Bush extended the work of the Task Force for an additional 18 months beyond its original charter. Reducing lead poisoning in children was the Task Force's top priority. Although more work remains to be done, significant progress has been made towards reducing lead poisoning in children. The estimated percentage of children with blood lead levels above the CDC level of concern declined from 4.4% between 1991 and 1994 to 1.6% between 2003 and 2004. More information on Federal efforts to address lead poisoning, including the responsibilities of EPA and other Federal Agencies under Title X, can be found in Units III.A. and III.B. of the preamble to the 2006 Lead; Renovation, Repair, and Painting Program Proposed Rule (“2006 Proposal”) (Ref. 3).

The Act added a new title to TSCA entitled “Title IV—Lead Exposure Reduction.” Most of EPA's responsibilities for addressing lead-based paint hazards can be found in this title, with section 402 of TSCA being one source of the rulemaking authority to carry out these responsibilities. TSCA section 402(a) directs EPA to promulgate regulations covering lead-based paint activities to ensure persons performing these activities are properly trained, that training programs are

accredited, and that contractors performing these activities are certified. These regulations must contain standards for performing lead-based paint activities, taking into account reliability, effectiveness, and safety. On August 29, 1996, EPA promulgated final regulations under TSCA section 402(a) that govern lead-based paint inspections, lead hazard screens, risk assessments, and abatements in target housing and child-occupied facilities (also referred to as the Lead-based Paint Activities Regulations). These regulations, codified at 40 CFR part 745, subpart L, contain an accreditation program for training providers and training and certification requirements for lead-based paint inspectors, risk assessors, project designers, abatement supervisors, and abatement workers. Work practice standards for lead-based paint activities are included. Pursuant to TSCA section 404, provision was made for interested States, Territories, and Indian Tribes to apply for and receive authorization to administer their own lead-based paint activities programs.

On June 9, 1999, the Lead-based Paint Activities Regulations were amended to include a fee schedule for training programs seeking EPA accreditation and for individuals and firms seeking EPA certification (Ref. 5). These fees were established as directed by TSCA section 402(a)(3), which requires EPA to recover the cost of administering and enforcing the lead-based paint activities requirements in unauthorized States. The most recent amendment to the Lead-based Paint Activities Regulations occurred on April 8, 2004, when notification requirements were added to help EPA monitor compliance with the training and certification provisions and the abatement work practice standards (Ref. 5).

Another of EPA's responsibilities under Title X is to require that purchasers and tenants of target housing and occupants of target housing undergoing renovation are provided information on lead-based paint and lead-based paint hazards. As directed by TSCA section 406(a), the Consumer Products Safety Commission (CPSC), the Department of Housing and Urban Development (HUD), and EPA, in consultation with the Centers for Disease Control and Prevention (CDC), jointly developed a lead hazard information pamphlet entitled *Protect Your Family From Lead in Your Home* (“PYF”) (Ref. 7). This pamphlet was designed to be distributed as part of the disclosure requirements of section 1018 of Title X and TSCA section 406(b), to provide home purchasers, renters,

owners, and occupants with the information necessary to allow them to make informed choices when selecting housing to buy or rent, or deciding on home renovation projects. The pamphlet contains information on the health effects of lead, how exposure can occur, and steps that can be taken to reduce or eliminate the risk of exposure during various activities in the home.

TSCA section 406(b) directs EPA to promulgate regulations requiring persons who perform renovations for compensation in target housing to provide a lead hazard information pamphlet to owners and occupants of the home being renovated. These regulations, promulgated on June 1, 1998, are codified at 40 CFR part 745, subpart E (Ref. 8). The term "renovation" is not defined in the statute, but the regulation, at 40 CFR 745.83, defines a "renovation" as the modification of any existing structure, or portion of a structure, that results in the disturbance of painted surfaces. The regulations specifically exclude lead-based paint abatement projects as well as small projects that disturb 2 square feet or less of painted surface per component, emergency projects, and renovations affecting components that have been found to be free of lead-based paint, as that term is defined in the regulations, by a certified inspector or risk assessor. These regulations require the renovation firm to document compliance with the requirement to provide the owner and the occupant with the PYF pamphlet. TSCA section 404 also allows States to apply for, and receive authorization to administer, the TSCA section 406(b) requirements.

TSCA section 403 directs EPA to promulgate regulations that identify, for the purposes of Title X and Title IV of TSCA, dangerous levels of lead in paint, dust, and soil. These regulations were promulgated on January 5, 2001, and codified at 40 CFR part 745, subpart D (Ref. 9). These hazard standards define lead-based paint hazards in target housing and child-occupied facilities as paint-lead, dust-lead, and soil-lead hazards. A paint-lead hazard is defined as any damaged or deteriorated lead-based paint, any chewable lead-based painted surface with evidence of teeth marks, or any lead-based paint on a friction surface if lead dust levels underneath the friction surface exceed the dust-lead hazard standards. A dust-lead hazard is surface dust that contains a mass-per-area concentration of lead equal to or exceeding 40 micrograms per square foot ( $\mu\text{g}/\text{ft}^2$ ) on floors or 250  $\mu\text{g}/\text{ft}^2$  on interior windowsills based on wipe samples. A soil-lead hazard is bare soil that contains total lead equal to or

exceeding 400 parts per million (ppm) in a play area or average of 1,200 ppm of bare soil in the rest of the yard based on soil samples.

TSCA section 402(c) addresses renovation and remodeling. For the stated purpose of reducing the risk of exposure to lead in connection with renovation and remodeling activities, section 402(c)(1) of TSCA requires EPA to promulgate and disseminate guidelines for the conduct of such activities that may create a risk of exposure to dangerous levels of lead. In response to this statutory directive, EPA developed the guidance document entitled *Reducing Lead Hazards when Remodeling Your Home* in consultation with industry and trade groups (Ref. 10). This document has been widely disseminated to renovation and remodeling stakeholders through the National Lead Information Center, EPA Regions, and EPA's State and Tribal partners and is available at <http://www.epa.gov/lead/pubs/rrpamph.pdf>.

TSCA section 402(c)(2) directs EPA to study the extent to which persons engaged in various types of renovation and remodeling activities are exposed to lead during such activities or create a lead-based paint hazard regularly or occasionally. EPA conducted this study in four phases. Phase I, the Environmental Field Sampling Study (Ref. 11), evaluated the amount of leaded dust released by the following activities:

- Paint removal by abrasive sanding.
- Removal of large structures, including demolition of interior plaster walls.
- Window replacement.
- Carpet removal.
- HVAC repair or replacement, including duct work.
- Repairs resulting in isolated small surface disruptions, including drilling and sawing into wood and plaster.

Phase II, the Worker Characterization and Blood Lead Study (Ref. 12), involved collecting data on blood lead and renovation and remodeling activities from workers. Phase III, the Wisconsin Childhood Blood-Lead Study (Ref. 13.), was a retrospective study focused on assessing the relationship between renovation and remodeling activities and children's blood-lead levels. Phase IV, the Worker Characterization and Blood-Lead Study of R&R Workers Who Specialize in Renovations of Old or Historic Homes (Ref. 14), was similar to Phase II, but focused on individuals who worked primarily in old historic buildings. More information on the results of these peer-reviewed studies can be found in Unit

III.C.1. of the preamble to the 2006 Proposal.

3. *Summary of 2006 Proposal.* TSCA section 402(c)(3) directs EPA to revise the Lead-based Paint Activities Regulations to apply to renovation or remodeling activities that create lead-based paint hazards. In the 2006 Proposal, EPA proposed to conclude that any renovation activity that disturbs lead-based paint can create significant amounts of leaded dust, that most activities created lead-based paint hazards, and that some activities can be reasonably anticipated to create lead-based paint hazards. Accordingly, on January 10, 2006, EPA issued a Notice of Proposed Rulemaking covering renovation performed for compensation in target housing (Ref. 3). The 2006 Proposal contained requirements designed to address lead-based paint hazards created by renovation, repair, and painting activities that disturb lead-based paint. The 2006 Proposal included requirements for training renovators, other renovation workers, and dust sampling technicians; for certifying renovators, dust sampling technicians, and renovation firms; for accrediting providers of renovation and dust sampling technician training; for renovation work practices; and for recordkeeping. The 2006 Proposal would have made the rule effective in two stages. Initially, the rule would have applied to all renovations for compensation performed in target housing where a child with an increased blood lead level resided and rental target housing built before 1960. The rule would also have applied to owner-occupied target housing built before 1960, unless the person performing the renovation obtained a statement signed by the owner-occupant that the renovation would occur in the owner's residence and that no child under age 6 resided there. As proposed, the rule would take effect 1 year later in all rental target housing built between 1960 and 1978 and owner-occupied target housing built between 1960 and 1978. EPA also proposed to allow interested States, Territories, and Indian Tribes the opportunity to apply for and receive authorization to administer and enforce all of the elements of the new renovation provisions.

4. *Summary of 2007 Supplemental Proposal.* EPA received approximately 250 comments on its 2006 Proposal. These comments came from a wide variety of commenters, including State and local governments, industry groups, and local governments, industry groups, advocacy groups, renovation contractors, training providers, and individuals. A significant number of these commenters observed that the

proposal did not cover buildings where children under age 6 spend a great deal of time, such as day care centers and schools. Commenters noted that the risk posed to children from lead-based paint hazards in schools and day care centers is likely to be equal to, if not greater than, the risk posed from these hazards at home. These commenters suggested that EPA expand its proposal to include such places, and several suggested that EPA use the existing definition of "child-occupied facility" in 40 CFR 745.223 to define the expanded scope of coverage. EPA felt that these comments had merit, and, because adding child-occupied facilities was beyond the scope of the 2006 Proposal, an expansion of the 2006 Proposal was necessary to give this issue full and fair consideration. Accordingly, on June 5, 2007, EPA issued a Supplemental Notice of Proposed Rulemaking (2007 Supplemental Proposal) to add child-occupied facilities to the universe of buildings covered by the 2006 Proposal (Ref. 15).

EPA proposed to use the definition of "child-occupied facility" from 40 CFR 745.223 with some modifications to make it consistent with the statutory focus on children under age 6 and to better describe the applicability of the term in target housing and in public or commercial buildings. The 2007 Supplemental Proposal would apply all of the accreditation, training, certification, work practice, and recordkeeping requirements to renovations in child-occupied facilities in the same way that the requirements would apply to renovations in target housing. In addition, EPA proposed to extend the lead hazard information distribution requirements of the Pre-Renovation Education Rule, 40 CFR part 745, subpart E, to renovations in child-occupied facilities. Specifically, EPA proposed that persons performing renovations in child-occupied facilities in public or commercial buildings would have to provide a lead hazard information pamphlet to the owner of the building and to the proprietor of the child-occupied facility. In addition, general information about the renovation would have to be provided to parents and guardians of children under age 6 using the child-occupied facility. The 2007 Supplemental Proposal further provided that a lead hazard information pamphlet would have to be provided to parents and guardians or made available upon request. EPA received 12 comments on its 2007 Supplemental Proposal.

5. *2007 Notice of Data Availability.* After the 2006 proposal, two new studies assessing hazards associated

with renovation activities were completed. On March 16, 2007, EPA announced the availability of these new studies in the docket for this rulemaking (Ref. 16). EPA requested comment on how these studies might inform provisions of the final rule. EPA received nearly 100 comments in response to its notice. Comments specifically on the studies are discussed below. Comments on how the studies might affect the final rule are discussed along with the provisions of the final rule in Unit III.E. of this preamble.

a. *Characterization of Dust Lead Levels after Renovation, Repair, and Painting Activities.* EPA conducted a field study (Characterization of Dust Lead Levels after Renovation, Repair, and Painting Activities) (the "Dust Study") to characterize dust lead levels resulting from various renovation, repair, and painting activities (Ref. 17). This study, completed in January 2007, was designed to compare environmental lead levels at appropriate stages after various types of renovation, repair, and painting preparation activities were performed on the interiors and exteriors of target housing units and child-occupied facilities. All of the jobs disturbed more than 2 square feet of lead-based paint, so they would not have been eligible for the minor maintenance exception from the 2006 Proposal. The renovation activities were conducted by local professional renovation firms, using personnel who received lead safe work practices training using the curriculum developed by EPA and HUD, "Lead Safety for Remodeling, Repair, and Painting" (Ref. 18). The activities conducted represented a range of activities that would be permitted under the 2006 Proposal, including work practices that are restricted or prohibited for abatements under 40 CFR 745.227(e)(6). Of particular interest was the impact of using specific work practices that renovation firms would be required to use under the proposed rule, such as the use of plastic to contain the work area and a multi-step cleaning protocol, as opposed to more typical work practices.

The design of the Dust Study was peer-reviewed by experts in fields related to the study. They reviewed the design and quality assurance plan independently and provided written comments to EPA. The results of this peer-review are summarized in Unit 2 of the Dust Study report (Ref. 17). In addition, the record of this peer-review, which includes the comments from the reviewers and EPA's responses, has been placed into the public docket for this action.

In the Dust Study, 12 different interior and 12 different exterior renovation activities were performed at 7 vacant target housing units in Columbus, Ohio, and 8 vacant target housing units (including four apartments) in Pittsburgh, Pennsylvania. Three different interior and three different exterior renovation activities were conducted at a building representing a child-occupied facility, a vacant school in Columbus. The presence of lead-based paint was confirmed by laboratory analysis before a building was assigned a particular renovation activity or set of activities. Before interior renovation activities were performed, the floors and windowsills in the work area and adjacent rooms were cleaned. In most cases, pre-work cleaning resulted in dust lead levels on floors of less than 10  $\mu\text{g}/\text{ft}^2$ ; nearly all floors were less than 40  $\mu\text{g}/\text{ft}^2$  before work started. Most windowsills that would be used for later sampling were cleaned to dust lead levels less than 250  $\mu\text{g}/\text{ft}^2$ . In the few cases where that level was not achieved on a windowsill needed for sampling, dust collection trays were used. Interior renovation activities included the following jobs:

- Making cut-outs in the walls.
- Replacing a window from the inside.
- Removing paint with a high temperature (greater than 1100 degrees Fahrenheit) heat gun.
- Removing paint with a low temperature (less than 1100 degrees Fahrenheit) heat gun.
- Removing paint by dry scraping.
- Removing kitchen cabinets.
- Removing paint with a power planer.

To illustrate the impact of the containment plastic and the specialized cleaning and cleaning verification protocol that would be required by the 2006 Proposal, each activity was performed a minimum of four times:

- With the plastic containment described in the 2006 Proposal followed by the cleaning protocol described in the proposal.
- With the plastic containment described in the 2006 Proposal followed by dry sweeping and vacuuming with a shop vacuum.
- With no plastic containment followed by the cleaning protocol described in the 2006 Proposal.
- With no plastic containment followed by dry sweeping and vacuuming with a shop vacuum.

Dust samples were collected after the renovation work was completed, after cleaning, and after cleaning verification. If a building was being used again for the same job under different work

practices, or for a completely different job, the unit was re-cleaned and retested prior to starting the next job. All buildings were cleaned and tested after the last job.

Geometric mean post-work, pre-cleaning floor dust lead levels in the work room were as follows (in  $\mu\text{g}/\text{ft}^2$ ):

- Cut-outs--422.
- Kitchen cabinet removal--958.
- Low temperature heat gun--2,080.
- Dry scraping--2,686.
- Window replacement--3,993.
- High temperature heat gun--7,737.
- Power planing--32,644.

Power planing is an activity very similar to power sanding in which a machine that operates at high speed generating large quantities of dust is used.

Where baseline practices, i.e., no containment, dry sweeping, and vacuuming with a shop vacuum, were used, the geometric mean post-job floor dust lead levels in the work room were as follows (in  $\mu\text{g}/\text{ft}^2$ ):

- Cut-outs--22.
- Kitchen cabinet removal--58.
- Low temperature heat gun--41.
- Dry scraping--66.
- Window replacement--135.
- High temperature heat gun--445.
- Power planing--450.

The package of proposed rule requirements, i.e., containment, specialized cleaning, and cleaning verification, resulted in the lowest geometric mean dust lead levels in the work room at the end of a job. These results were as follows (in  $\mu\text{g}/\text{ft}^2$ ):

- Cut-outs--5.
- Kitchen cabinet removal--12.
- Low temperature heat gun--24.
- Dry scraping--30.
- Window replacement--33.
- High temperature heat gun--36.
- Power planing--148.

Windowsill sample results were similar; the geometric mean dust lead levels after renovation activities performed in accordance with the proposed rule exceeded  $250 \mu\text{g}/\text{ft}^2$  only where power planing or a high temperature heat gun were used. When baseline practices were used, the geometric mean dust lead levels on the windowsills exceeded  $250 \mu\text{g}/\text{ft}^2$  for kitchen cabinet removal, window replacement, high temperature heat gun use, and power planing.

Exterior renovation activities performed as part of the study included the following:

- Replacing a door and doorway.
- Replacing fascia boards, soffits, and other trim.
- Removing paint with a high temperature (greater than 1100 degrees Fahrenheit) heat gun.

- Removing paint with a low temperature (less than 1100 degrees Fahrenheit) heat gun.

- Removing paint by dry scraping.
- Removing paint with a needle gun.
- Removing paint with power sanding or grinding.
- Removing paint with a torch or open flame.

For the exterior jobs, plastic sheeting was placed on the ground to catch the debris and dust from the job, in accordance with the requirements of the proposed rule. Additional plastic sheeting was laid out beneath and beyond the "proposed rule" plastic. Trays to collect dust and debris were placed on top of and underneath the "proposed rule" plastic. Trays were also placed just outside of the "proposed rule" plastic to assess how far the dust was spreading. A vertical containment, as high as the work zone, was erected at the end of the additional plastic.

The use of the "proposed rule" plastic as a ground covering captured large amounts of leaded dust. For all job types except removing paint with a torch, there was a substantial difference between the amount of lead captured by the "proposed rule" plastic and the amount under the "proposed rule" plastic. Including both bulk debris and dust, geometric mean lead levels in exterior samples from the collection trays on top of the "proposed rule" plastic ranged from a low of  $60,662 \mu\text{g}/\text{ft}^2$  for the door replacement activity to a high of  $7,216,358 \mu\text{g}/\text{ft}^2$  for removing paint with a high temperature heat gun. Geometric mean lead levels from the collection trays under the "proposed rule" plastic ranged from a low of  $32 \mu\text{g}/\text{ft}^2$  for door replacement to  $8,565 \mu\text{g}/\text{ft}^2$  for removing paint with a torch.

This regulatory action was supported by the Dust Study discussed above. Therefore, EPA conducted a peer review in accordance with OMB's Final Information Quality Bulletin for Peer Review. EPA requested this review from the Clean Air Scientific Advisory Committee (CASAC) Lead Review Panel. The CASAC, which is comprised of seven members appointed by the EPA Administrator, was established under the Clean Air Act as an independent scientific advisory committee. The CASAC's comments on the Dust Study, along with EPA's responses, have been placed into the public docket for this action. More information on the CASAC consultation process, along with background documents, is available on EPA's website at <http://www.epa.gov/lead/pubs/casac.htm>.

According to the peer review report, the CASAC Panel found

... that the [Dust Study] was reasonably well-designed, considering the complexity of the problem, and that the report provided information not available from any other source. The study indicated that the rule cleaning procedures reduced the residual lead (Pb) remaining after a renovation more than did the baseline cleaning procedures. Another positive aspect of the Dust Study was that it described deviations from the protocol when they occurred.

The CASAC Panel also contended that the limited data from residential housing units and child-occupied facilities included in the Dust Study, most likely do not represent a statistically valid sample of housing at the national level. They noted that there are aspects of the study that would underestimate the levels of lead-loadings while other aspects of the study would overestimate the loadings. EPA agrees that the Dust Study is not nationally representative of all housing. EPA notes that there are several reasons why this is the case, including the fact that all of the housing studied was built during 1925 or earlier, and a large number of the floors were in poor condition. A major purpose of the Dust Study was to assess the proposed work practices. A statistically valid sample of housing at the national level is not needed to assess the work practices. If anything, the Dust Study is conservative with respect to the age of housing because it studied older houses and therefore is appropriate for assessing the effectiveness of the work practices.

In addition to the Dust Study which directly supported this regulatory action, several other studies are discussed throughout the preamble which may or may not have been peer reviewed.

*b. Lead-Safe Work Practices Survey Project.* The National Association of Home Builders (NAHB) conducted a survey that assessed renovation and remodeling activities to measure levels of lead dust generated by home improvement contractors (Ref. 19). The stated objective of this survey, completed in November 2006, was to measure the amount of lead dust generated during typical renovation and remodeling activities and assess whether routine renovation and remodeling activities increased lead dust levels in the work area and on the property.

The activities evaluated during the survey were selected in consultation with remodeling contractors. NAHB believes that these activities represent the most common jobs performed by renovation and remodeling firms. The renovations were performed by professional renovation and remodeling

contractors from each of the communities where the properties were located. All of the workers who participated in this project had previously attended and successfully completed the EPA/HUD curriculum for *Lead Safety for Remodeling, Repair, & Painting*.

According to the NAHB survey, an EPA-certified lead-based paint inspector confirmed the presence of lead-based paint in all of the properties considered for this survey. Previous inspection reports were consulted if the inspections conformed to the HUD Guidelines for lead-based paint inspections. Properties used in this survey included a single family home in Illinois, two single-family homes and a duplex in Connecticut, and an apartment above a storefront in Wisconsin.

The NAHB survey evaluated the following activities:

- Wall and ceiling removal (demolition).
- Wall and ceiling modification.
- Window and door removal and/or replacement (no sanding).
- Window and door alteration (no sanding).
- Sanding on windows and doors.
- Kitchen or bath cabinet removal.
- Baseboard and stair removal.
- Surface preparation (sanding).
- Sawing into wood and plaster.

Activities were performed in one of three ways: Using the work practices presented in the EPA/HUD curriculum, using modified work practices (one or more of the dust control or cleanup methods discussed in the EPA/HUD curriculum), or routine renovation practices.

Area air samples were collected before, during and after the work activity. Personal breathing zone air samples were collected during the work activity. Dust wipe samples were collected before work started and after final clean-up. Dust wipe samples were routinely collected from floors near the work activity and in some cases collected from a windowsill and/or window well.

In comparing the mean dust lead levels before the activities with the mean dust lead levels after the activities, the NAHB concluded that the renovation activities surveyed did not create new lead dust hazards overall. However, even after clean-up was conducted, over half of the 60 individual renovation activities studied resulted in an increase in dust lead levels on at least one surface. In most cases, the increase was considerably greater than the regulatory dust-lead hazard standard for that surface.

6. *Statutory finding and regulatory approach—TSCA section 402(c)(3) determination.* TSCA section 402(c)(3) directs EPA to revise the regulations issued under TSCA section 402(a), the Lead-based Paint Activities Regulations, to apply to renovation or remodeling activities that create lead-based paint hazards. EPA finds that renovation, repair, and painting activities that disturb lead-based paint create lead-based paint hazards. This finding is based upon EPA's Environmental Field Sampling Study and corroborated by the Dust Study and the NAHB survey (Refs. 11, 17, and 19).

In the 2006 Proposal, EPA proposed to conclude that any renovation activity that disturbs lead-based paint can create significant amounts of leaded dust, that most activities created lead-based paint hazards, and that some activities can be reasonably anticipated to create lead-based paint hazards. EPA's proposed conclusions were based upon the results of the Environmental Field Sampling Study, which examined, on a variety of components using a variety of tools and methods, activities that EPA had determined were representative of the paint-disturbing activities that typically occur during renovations. The activities were:

- Paint removal by abrasive sanding.
- Window replacement.
- HVAC duct work.
- Demolition of interior plaster walls.
- Drilling into wood.
- Drilling into plaster.
- Sawing into wood.
- Sawing into plaster.

Specifically, EPA proposed to conclude that all of the activities studied in the Environmental Field Sampling Study, with the exception of drilling into plaster, can create lead-based paint hazards. With respect to drilling into plaster, where lead-based paint is present, EPA proposed to conclude that this activity can reasonably be anticipated to create lead-based paint hazards. The Environmental Field Sampling Study found that, with the exception of drilling into plaster, all renovation and remodeling activities, when conducted where lead-based paint is present, generated lead loadings on floors at a distance of 5 to 6 feet from the activity that exceeded EPA's dust-lead hazard standard of 40  $\mu\text{g}/\text{ft}^2$ . However, upon further review, it is apparent that the study also found that drilling into plaster created dust lead levels in the immediate vicinity of the activity that exceeded the dust-lead hazard standard. Thus, all the activities studied did in fact create lead-based paint hazards.

The 2006 Proposal cited the other phases of the TSCA section 402(c)(2) renovation and remodeling study to support EPA's proposed determination that any renovation, remodeling, or painting activity that disturbs lead-based paint can be reasonably anticipated to create lead-based paint hazards. Phase III, the 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  $\mu\text{g}/\text{dL}$ , 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.

In light of EPA's proposed determination, the 2006 Proposal included revisions to the existing Lead-based Paint Activities Regulations to extend them to renovation, remodeling, and painting activities in target housing, with certain exceptions. In proposing to extend these regulations to renovation, remodeling, and painting activities in child-occupied facilities, the 2007 Supplemental Proposal incorporated the proposed TSCA section 402(c)(3) determination.

Since the 2006 Proposal, EPA conducted the Dust Study and NAHB submitted the results of their survey. The results of the Dust Study confirm that renovation and remodeling activities that disturb lead-based paint create lead-based paint hazards. The Dust Study evaluated a number of common renovation activities, including replacing windows, removing kitchen cabinets, cutting into walls, and removing paint by high and low temperature heat guns, power tools, and dry scraping. The geometric mean post-work dust lead levels on work room floors ranged from a low of 422  $\mu\text{g}/\text{ft}^2$ , or 10 times the dust-lead hazard

standard for floors, for cut-outs, to a high of 32,644  $\mu\text{g}/\text{ft}^2$  for power planing. Thus, all of the activities evaluated in the Dust Study created floor dust lead levels that exceeded 40  $\mu\text{g}/\text{ft}^2$ , one of the measures that, in 40 CFR 745.65, defines a lead-based paint hazard. It is more difficult to evaluate the effect of disturbing lead-based paint in the NAHB Survey, since the survey did not involve collecting samples after work had been performed but before the post-renovation cleaning had begun. Nevertheless, even after post-renovation cleaning using a variety of methods, in more than half of the 60 experiments performed in this survey, the post-cleaning dust wipe sample results for at least one surface showed an increase greater than the TSCA section 403 hazard standard over pre-work levels. These experiments showing increased dust lead levels cover the range of activities evaluated in the NAHB Survey.

Therefore, in this action, EPA is issuing its determination that renovation, repair, and painting activities that disturb lead-based paint create lead-based paint hazards. Because the evidence shows that all such activities in the presence of lead-based paint create lead-based paint hazards, EPA is modifying its proposed finding, which distinguished between activities that create lead-based paint hazards and those that can reasonably be anticipated to create lead-based paint hazards, and instead concludes that renovation activities that disturb lead-based paint create lead-based paint hazards. Indeed, no commenter submitted data indicating that any renovation, repair, or painting activity should be exempt from regulation because it does not create lead-based paint hazards.

EPA received a large number of comments on this proposed finding. Many expressed support for EPA's determination that any renovation, repair, or painting activity that disturbs lead-based paint creates lead-based paint hazards. Some commenters, while expressing their support for this determination, also opined that the regulatory dust-lead hazard standards for floors and windowsills are too high. These commenters argued that recent scientific evidence shows that children experience adverse health effects at lower blood lead levels than previously thought, and since EPA's regulatory dust-lead hazard standards were set with reference to a blood lead level of 10  $\mu\text{g}/\text{dL}$ , the CDC level of concern, the dust-lead hazard standards must be lowered. EPA agrees that recent studies demonstrate that neurocognitive effects occur at blood lead levels below the

current CDC level of concern. In fact, EPA's most recent Air Quality Criteria for Lead document, issued in October, 2006, describes several epidemiologic studies published in the last 5 years that observed significant lead-induced IQ decrements in children with some effects observed at blood lead levels of 5  $\mu\text{g}/\text{dL}$  and lower (Ref. 1). The document also notes that other recent studies observed significant associations at low blood-lead levels for other neurotoxicity endpoints in addition to IQ, such as arithmetic and reading scores, attentional behavior, and neuromotor function. However, EPA is not addressing the appropriateness of the existing dust-lead hazard standards in this rulemaking. The original hazard standards were set through a separate rulemaking process under TSCA section 403 that allowed for input from all of the parties that would be affected by the standards. Furthermore, EPA is concerned that a full review of the available evidence and other considerations affecting the hazard standards as part of this rulemaking would result in a significant delay in promulgating training, certification, and work practice standards for renovation activities. EPA did not propose to modify the TSCA section 403 hazard standard levels in this rulemaking and has not undertaken the significant analyses that would need to be performed in order to establish different standards. Accordingly, EPA is not able, in this final rule, to modify the regulatory hazard standard. In any event, since EPA finds that renovation activities that disturb lead-based paint create lead-paint hazards, lowering the hazard standard would not affect EPA's finding.

Some commenters objected to EPA's proposed determination that renovation, repair, or painting activities that disturb lead-based paint create lead-based paint hazards. Some commenters interpreted EPA's statutory authority to regulate renovation and remodeling under TSCA section 402(c)(3) as being limited to those renovation and remodeling activities for which EPA can prove a link between the activity and the blood lead action level established by CDC for public health intervention. These commenters contend that the failure to prove such a link means that renovation and remodeling activities do not create lead-based paint hazards. This interpretation is not supported by the plain language of the statute. TSCA section 402(c)(3) requires EPA to regulate renovation and remodeling activities that create lead-based paint hazards. The term "lead-based paint

hazard" is defined in TSCA section 401 as "any condition that causes exposure to lead from lead-contaminated dust . . . that would result in adverse human health effects as established by the Administrator under this subchapter." TSCA section 403 directs EPA to promulgate regulations which "identify, for purposes of this subchapter and the Residential Lead-Based Paint Hazard Reduction Act of 1992, lead-based paint hazards, lead-contaminated dust, and lead-contaminated soil." The TSCA section 403 regulations define dust-lead hazards as levels that equal or exceed 40  $\mu\text{g}/\text{ft}^2$  of lead on floors or 250  $\mu\text{g}/\text{ft}^2$  of lead on interior windowsills. Therefore, EPA interprets TSCA as directing it to regulate renovation and remodeling activities if such activities create dust lead levels that exceed the standards for dust-lead hazards established under TSCA section 403. Again, the Environmental Field Sampling Study, the Dust Study, and the NAHB survey all demonstrate that renovation and remodeling activities that disturb lead-based paint create dust lead levels that exceed the hazard standards in 40 CFR 745.65.

EPA also interprets the scientific evidence for a link between renovations and the CDC blood lead action level differently than do these commenters. EPA's Wisconsin Childhood Blood-Lead Study, described more fully in Unit III.C.1.c. of the preamble to the 2006 Proposal, provides ample evidence of a link between renovation activities and elevated blood lead levels in resident children (Ref. 13). This peer-reviewed study concluded that general residential renovation and remodeling is associated with an increased risk of elevated blood lead levels in children and that specific renovation and remodeling activities are also associated with an increase in the risk of elevated blood lead levels in children. In particular, removing paint (using open flame torches, using heat guns, using chemical paint removers, and wet scraping/sanding) and preparing surfaces by sanding or scraping significantly increased the risk of elevated blood lead levels. Some of the commenters on this rule focused on Table 3-13 in the study report and cited that as evidence that work performed by paid professional renovators does not create a statistically significant risk of an elevated blood-lead level in a resident child. EPA agrees that this table, which presents the results of analyses using one of the sets of models used to interpret study data, indicates that, with respect to the persons performing the work, the only statistically significant result associated with increased risk of

elevated blood lead levels was work performed by a relative or friend not in the household. Work performed by professional renovators was associated with an increased risk of an elevated blood lead level, but the association was not statistically significant. As explained more fully in a memorandum summarizing additional analyses of the data from this study (Ref. 20), this table does not indicate that professional contractors were not responsible for creating lead exposure hazards. Rather, it indicates that renovation activities performed by professional contractors are no more or less hazardous than renovation activities performed by most of the other categories of persons identified in the survey responses collected as part of the study. It is also important to note that, while these commenters focus on a blood-lead level of 10 µg/dL as a threshold, this level is not and has not been considered by CDC or EPA as a threshold for adverse effects.

One commenter also dismissed the two studies from New York that EPA cited as supporting the findings of the Wisconsin Childhood Blood-Lead Study. In 1995, the New York State Department of Health assessed lead exposure among children resulting from home renovation and remodeling in 1993–1994. A review of the health department records of children with blood lead levels equal to or greater than 20 µg/dL identified 320, or 6.9%, with elevated blood lead levels that were attributable to renovation and remodeling (Ref. 21). The commenter noted that this study suffered from a number of limitations, including the fact that it was not a case-control study; i.e., the group of children with elevated blood lead levels attributed to renovation and remodeling was not compared with a similar group of households that had not undergone renovation during the period. EPA agrees that this is an important limitation of this study. However, with respect to the other limitations noted by this commenter, the authors of the report felt that most of these limitations would likely result in an underestimation of the burden of lead exposure associated with renovation and remodeling.

The other study cited by EPA as supporting the Wisconsin Childhood Blood-Lead Study conclusions was a case-control study that assessed the association between elevated blood lead levels in children younger than 5 years and renovation or repair activities in homes in New York City (Ref. 22). EPA notes that the authors show that when dust and debris was reported (by

respondents via telephone interviews) to be “everywhere” following a renovation, the blood lead levels were significantly higher than children at homes that did not report remodeling work. On the other hand, when the respondent reported either “no visible dust and debris” or that “dust and debris was limited to the work area,” there was no statistically significant effect on blood lead levels relative to homes that did not report remodeling work. Although the study found only a weak and nonsignificant link between a report of any renovation activity and the likelihood that a resident child had an elevated blood-lead level, the link to the likelihood of an elevated blood-lead level was statistically significant for surface preparation by sanding and for renovation work that spreads dust and debris beyond the work area. The researchers noted the consistency of their results with EPA’s Wisconsin Childhood Blood-Lead Study (Ref. 13, at 509). EPA notes that this confirms that keeping visible dust and debris contained to the work area is important for limiting children exposures to lead dust, rather than providing substantial arguments for the effectiveness of visual inspection.

In sum, EPA’s finding that renovation and remodeling activities create lead-based paint hazards is not dependent upon establishing a correlation between such activities and elevated blood lead levels. Rather, it rests on the fact that, as demonstrated by EPA’s Environmental Field Sampling Study, EPA’s Dust Study, and by the NAHB Survey, such activities create lead-based paint hazards as defined by EPA regulations. Moreover, EPA disagrees that there is no scientific support for establishing a relationship between elevated blood lead levels in children and renovation activities. While EPA interprets these studies as supporting such a relationship and believes these studies further support its finding, it is not a determinative factor.

b. *EPA’s approach to this final rule.* Given EPA’s determination that renovation, repair, and painting activities that disturb lead-based paint create lead-based paint hazards, TSCA section 402(c)(3) directs EPA to revise the Lead-based Paint Activities Regulations to apply to these activities. EPA does not interpret its statutory mandate to require EPA to apply the existing TSCA section 402(a) regulations to renovations without change. By using the word “revise,” and creating a separate subsection of the statute for renovation, EPA believes that Congress intended that EPA make revisions to those existing regulations to adapt them

to a very different regulated community. As discussed below, there are significant differences between renovations and abatements. Accordingly, this final rule does not 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 rule that is practical for renovation, remodeling and painting businesses and their customers, taking into account reliability, effectiveness, and safety as directed by TSCA section 402(a). Specifically, the Agency concludes that the training, containment, cleaning, and cleaning verification requirements in this final rule achieve the goal of minimizing exposure to lead-based paint hazards created during renovation, remodeling and painting activities, taking into account reliability, effectiveness, and safety.

In taking safety into account, EPA looked to the statutory directive to regulate renovation activities that create lead-based paint hazards. Although there is no known level of lead exposure that is safe, EPA does not believe the intent of Congress was to require elimination of all possible risk arising from a renovation. Nor does TSCA explicitly require EPA to eliminate all possible risk from lead, nor would it be feasible to do so since lead is a component of the earth. Rather, it directs EPA to regulate renovation and remodeling activities that create lead-based paint hazards. Given that the trigger for regulating renovation and remodeling activities is the creation of lead-based paint hazards—which EPA has identified in a separate rulemaking pursuant to TSCA section 403—EPA believes taking safety into account in this context is best interpreted with reference to those promulgated hazard standards. If taking safety into account required a more stringent standard, as suggested by some commenters, the potential would be created for a scheme under which any renovation activities found not to create hazards are not regulated at all, whereas renovation activities found to create hazards trigger requirements designed to leave the renovation site cleaner than the unregulated renovations. EPA’s interpretation is supported by the broad Congressional intent that the section 403 hazard standards apply for purposes of subchapter IV of TSCA. It is also consistent with EPA’s approach in its abatement regulations, which require post-abatement cleaning to dust-lead

clearance levels that are numerically equal to the TSCA section 403 hazard standards levels. It would be anomalous to impose a more stringent safety standard in the renovation context than in the abatement context, where the express purpose of the regulated activities is to abate lead-based paint hazards. Therefore, in taking into account safety, this final rule regulates renovation and remodeling activities relative to the TSCA section 403 hazard standard, with the purpose of minimizing exposure to such hazards created during renovation and remodeling activities.

Additionally, EPA has interpreted practicality in implementation to be an element of the statutory directive to take into account effectiveness and reliability. In particular, EPA believes that given the highly variable nature of the regulated community, the work practices required by this rule should be simple to understand and easy to use. EPA is very aware that this regulation will apply to a whole range of individuals from day laborers to property maintenance staff to master craftsmen performing a whole range of activities from simple drywall repair to window replacement to complete kitchen and bath renovations to building additions and everything in between. Work practices that are easy and practical to use are more likely to be followed by all of the persons who perform renovations, and, therefore, more likely to be reliable and effective in minimizing exposure to lead-based paint hazards created by renovation activities.

One of the biggest challenges facing EPA in revising the TSCA section 402(a) Lead-based Paint Activities Regulations is how to effectively bridge the differences between abatement and renovation and remodeling while acknowledging that many of the dust generating activities are the same. Abatement is generally performed in three circumstances. First, an abatement may be performed in the residence of a child who has been found to have an elevated blood lead level. Second, abatements are performed in housing receiving HUD financial assistance when required by HUD's Lead-Safe Housing Rule. Third, state and local laws and regulations may require abatements in certain situations associated with rental housing. Typically, when an abatement is performed, the housing is either unoccupied or the occupants are temporarily relocated to lead-safe housing until the abatement has been demonstrated to have been properly completed through dust clearance

testing. Carpet in the housing is usually removed as part of the abatement because it is difficult to demonstrate that it is free of lead-based paint hazards. Uncarpeted floors that have not been replaced during the abatement may need to be refinished or sealed in order to achieve clearance. Abatements have only one purpose--to permanently eliminate lead-based paint and lead-based paint hazards.

On the other hand, renovations are performed for a myriad of reasons, most having nothing to do with lead-based paint. Renovations involve activities designed to update, maintain, or modify all or part of a building. Renovations may be performed while the property is occupied or unoccupied. If the renovation is performed while the property is occupied, the occupants do not typically relocate pending the completion of the project.

Further, performing abatement is a highly specialized skill that workers and supervisors must learn in training courses accredited by EPA or authorized States, Territories, and Tribes. In contrast, EPA is not interested in teaching persons how to be painters, plumbers, or carpenters. Rather, EPA's objective is to ensure that persons who already know how to perform renovations perform their typical work in a lead-safe manner.

Nevertheless, as pointed out by some commenters, abatement and renovation have some things in common. For example, as noted by one commenter, window replacement may be performed as part of an abatement to remove the lead-based paint and lead-based paint hazards on the existing window, or it may be performed as part of a renovation designed to improve the energy efficiency of the building. In many cases, the window replacement as abatement and the window replacement as renovation will generate the same amount of leaded dust.

Another consideration is that while renovation activities undoubtedly create lead-based paint hazards, without results from dust wipe samples collected immediately before the renovation commences, there is no way to tell what portion of the lead dust remaining on the surface was contributed by the renovation. In addition, as a practical matter, once dust-lead hazards commingle with pre-existing hazards, there is no functional way to distinguish between those created by the renovation activity and any pre-existing dust-lead hazards. However, the Dust Study shows that the combination of training, containment, cleaning and cleaning verification required by this rule is effective at

reducing dust lead levels below the dust-lead hazard standard. While the requirements of this rule will, in some cases, have the ancillary benefit of removing some pre-existing dust-lead hazards, these requirements are designed to effectively clean-up the lead-based paint hazards created during renovation activities without changing the scope of the renovation activity itself. The intent of this final rule is not to require cleanup of pre-existing contamination.

For example, the rule does not require cleaning of dust or any other possible lead sources in portions of target housing or child-occupied facilities beyond the location in and around the work area. Nor does this rule require the replacement of carpets in the area of the renovation or the refinishing or sealing of uncarpeted floors. The approach in this final rule is designed to address the lead-based paint hazards created during the renovation while not requiring renovators to remediate or eliminate hazards that are beyond the scope of the work they were hired to do.

In addition, EPA has made a concerted effort to keep the costs and burdens associated with this rule as low as possible, while still providing adequate protection against lead-based paint hazards created by renovation activities. Indeed, as part of this rulemaking EPA has, as directed by TSCA section 2(c), considered the environmental, economic, and social impact of this rule. Nonetheless, many commenters expressed concerns over the potential unintended consequences of this rulemaking. These commenters argued that too-burdensome rule will result in more renovations by noncompliant renovators, and more do-it-yourself renovations, both of which are likely to be more hazardous than renovations by certified professional renovation firms using certified renovators who follow the work practice requirements of the rule. These commenters were also concerned about deferred property maintenance which can be hazardous for many reasons, including lead-based paint issues. For example, one commenter pointed out that a renovation project that replaces old lead-based paint covered windows with new ones that have no lead-based paint may, as a by-product, reduce lead hazards, and the rule should not work to discourage this activity.

On the other hand, one commenter argued that increased do-it-yourself activity is an unlikely byproduct of this rule because consumers are not only opting to hire or not hire contractors based on factors such as cost, convenience, and perceived quality, but,

even more importantly, their own proclivity towards performing renovation work. According to the commenter, the fact that the work practices required by this rule may result in slight cost increases is unlikely to motivate homeowners to perform their own renovations. This commenter also felt that the sooner that protective approaches become the accepted standard of care for renovation work by contractors receiving compensation, the sooner do-it-yourselfers and the do-it-yourself literature and training supports will adopt the same protective approaches.

It is difficult to determine with any amount of certainty whether this final rule will have unintended consequences. However, EPA agrees that it is important to minimize disincentives for using certified renovation firms who follow the work practices required by this rule. EPA also agrees that practicality is an important consideration. Given the relatively low estimated overall average per-job cost of this final rule, which is \$35, and the relatively easy-to-use work practices required by this final rule, EPA does not expect the incremental costs associated with this rule to be a determinative factor for consumers. However, that relatively low cost has resulted in part from EPA's efforts to contain the costs of this rule in order to avoid creating disincentives to using certified renovation firms, and EPA has viewed the comments received with those considerations in mind.

With respect to the comment regarding the standard of care for do-it-yourselfers, EPA also plans to conduct an outreach and education campaign aimed at encouraging homeowners and other building owners to follow work practices while performing renovations or hire a certified renovation firm to do so.

**7. Summary of the final rule.** This section summarizes the final rule in general terms. For more information, consult Unit III. below, which describes each provision in detail, discusses any changes from the proposal, and reviews the comments received.

**a. Definitions and scope.** This final rule applies to renovations for compensation in target housing and child-occupied facilities. TSCA section 401 defines "target housing" as any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing for the elderly or persons with disabilities) or any 0-bedroom dwelling.

This rule contains the following definition of "child-occupied facility":

Child-occupied facility" means a building, or portion of a building, constructed prior to 1978, visited regularly by the same child, under 6 years of age, on at least two different days within any week (Sunday through Saturday period), provided that each day's visit lasts at least 3 hours and the combined weekly visits last at least 6 hours, and the combined annual visits last at least 60 hours. Child-occupied facilities may include, but are not limited to, day care centers, preschools and kindergarten classrooms. Child-occupied facilities may be located in target housing or in public or commercial buildings. With respect to common areas in public or commercial buildings that contain child-occupied facilities, the child-occupied facility encompasses only those common areas that are routinely used by children under age 6, such as restrooms and cafeterias. Common areas that children under age 6 only pass through, such as hallways, stairways, and garages are not included. In addition, with respect to exteriors of public or commercial buildings that contain child-occupied facilities, the child-occupied facility encompasses only the exterior sides of the building that are immediately adjacent to the child-occupied facility or the common areas routinely used by children under age 6.

TSCA does not define the terms "renovation" or "remodeling," but this final rule builds upon the definition of "renovation" already established by the regulations promulgated under TSCA section 406(b). This rule defines "renovation" as follows:

"Renovation" means the modification of any existing structure, or portion thereof, that results in the disturbance of painted surfaces, unless that activity is performed as part of an abatement as defined by this part (40 CFR 745.223). The term renovation includes (but is not limited to): The removal, modification or repair of painted surfaces or painted components (e.g., modification of painted doors, surface restoration, window repair, surface preparation activity (such as sanding, scraping, or other such activities that may generate paint dust)); the removal of building components (e.g., walls, ceilings, plumbing, windows); weatherization projects (e.g., cutting holes in painted surfaces to install blown-in insulation or to gain access to attics, planing thresholds to install weather-stripping), and interim controls that disturb painted surfaces. A renovation performed for the purpose of converting a building, or part of a building, into target housing or a child-occupied facility is a renovation under this subpart. The term renovation does not include minor repair and maintenance activities.

This final rule excludes some of the same projects that are excluded by the

TSCA section 406(b) regulations, such as lead-based paint abatement projects and renovations affecting components that have been found to be free of lead-based paint. To be eligible for the latter exception, the components must be determined to be free of lead-based paint by a certified inspector or risk assessor, or by a certified renovator using an EPA-approved test kit. Emergency projects would continue to be exempt from the lead hazard information distribution requirements, but the clean-up after the project must meet the requirements of this regulation, and compliance with the training, certification, warning sign, and containment requirements of this regulation is required to the extent practicable. Minor maintenance projects that disturb no more than 6 square feet of painted surface per room for interiors or no more than 20 square feet of painted surface for exteriors are also exempt, so long as no work practices prohibited or restricted by this final rule are used, the renovation does not involve window replacement and there is no demolition of painted areas. Finally, this regulation contains an exception for renovations in owner-occupied target housing where no child under age 6 or pregnant woman resides, so long as the housing does not meet the definition of "child-occupied facility." To claim this exception, the renovation firm must obtain, before beginning the renovation, a signed statement from the owner of the housing that states that the person signing is the owner of the housing to be renovated, that he or she resides there, that no child under age 6 or pregnant woman resides there, that the housing is not a child-occupied facility, and that the owner understands that the renovation firm will not be required to use the work practices contained in this rule.

**b. Pre-Renovation Education Rule.** As described in greater detail in a separate notice published elsewhere in today's **Federal Register**, EPA has developed a new renovation-specific lead hazard information pamphlet intended for use in fulfilling the requirements of the Pre-Renovation Education Rule, 40 CFR part 745, subpart E. This final rule requires firms performing renovations for compensation in target housing and child-occupied facilities to distribute this new pamphlet before beginning renovations to the owners and occupants of target housing, owners of public or commercial buildings that contain a child-occupied facility, and the proprietor of the child-occupied facility, if different, and to provide general information on the renovation

and the pamphlet to, or make it available to, parents or guardians of children under age 6 using the child-occupied facility. This can be accomplished by mailing or hand-delivering the general information on the renovation and the pamphlet to the parents and guardians or by posting informational signs containing general information on the renovation in areas where the signs can be seen by the parents or guardians of the children frequenting the child-occupied facility. The signs must be accompanied by a posted copy of the pamphlet or information on how interested parents or guardians can review a copy of the pamphlet or obtain a copy from the renovation firm at no cost to the parents or guardians. For renovations in the common areas of multi-unit target housing, similar notification options are available to firms. They must provide tenants with general information regarding the nature of the renovation by mail, by hand-delivery, or by posting signs, and must also make this new pamphlet available upon request. Firms must maintain documentation of compliance with these requirements.

*c. Training, accreditation, and certification.* This final rule contains training requirements leading to certification for “renovators”—individuals who perform and direct renovation activities—and “dust sampling technicians”—individuals who perform dust sampling not in connection with an abatement. Requirements for each of these courses of study are described in detail, and a hands-on component is required. Training providers who wish to provide training to renovators and dust sampling technicians for Federal certification purposes must apply for and receive accreditation from EPA following the same procedures that training providers who offer lead-based paint activities training now use to become accredited by EPA. Providers of renovation training must follow the same requirements for program operation as training providers who offer lead-based paint activities training. For example, renovation training programs must have adequate facilities and equipment for delivering the training, a training manager with experience or education in a construction or environmental field, and a principal instructor with experience or education in a related field and education or experience in teaching adults. To become accredited to provide training for renovators and dust sampling technicians, a provider must submit an application for accreditation

to EPA. The application must include the following items:

- The course materials and syllabus, or a statement that EPA model materials or materials approved by an authorized State or Tribe will be used.
- A description of the facilities and equipment that will be used.
- A copy of the test blueprint for each course.
- A description of the activities and procedures that will be used during the hands-on skills portion of each course.
- A copy of the quality control plan.
- The correct amount of fees.

Training programs that submit a complete application and meet the requirements for faculty, facilities, equipment, and course and test content will be accredited for 4 years. To maintain accreditation, the training program must submit an application and the correct amount of fees every 4 years. EPA is not establishing the required fees in this rulemaking. EPA intends to publish a proposed fee schedule for public comment shortly. Accredited renovation training programs must also comply with the existing notification and recordkeeping requirements for lead-based paint activities training programs at 40 CFR 745.225(c)(13) and 40 CFR 745.225(i), respectively, by notifying EPA before and after providing renovation training and by maintaining records of course materials, course test blueprints, information on how hands-on training is delivered, and the results of the students' skills assessments and course tests.

Each renovation project covered by this final rule must be performed and/or directed by an individual who has become a certified renovator by successfully completing renovator training from an accredited training provider. The certified renovator is responsible for ensuring compliance with the work practice standards of this final regulation. The certified renovator must perform or direct certain critical tasks during the renovation, such as posting warning signs, establishing containment of the work area, and cleaning the work area after the renovation. These and other renovation activities may be performed by workers who have been provided on-the-job training in these activities by a certified renovator. However, the certified renovator must be physically present at the work site while signs are being posted, containment is being established, and the work area is being cleaned after the renovation to ensure that these tasks are performed correctly. Although the certified renovator is not required to be on-site at all times, while

the renovation project is ongoing, a certified renovator must nonetheless regularly direct the work being performed by other workers to ensure that the work practices are being followed. When a certified renovator is not physically present at the work site, the workers must be able to contact the renovator immediately by telephone or other mechanism. In addition, the certified renovator must perform the post-renovation cleaning verification. This task may not be delegated to workers with on-the-job training. To maintain certification, a renovator must successfully complete an accredited renovator refresher training course every 5 years.

Renovations must be performed by certified firms. The certification requirements for renovation firms are identical to the certification requirements for firms that perform lead-based paint activities, except that renovation firm certification lasts for 5 years instead of 3 years. A firm that wishes to become certified to perform renovations must submit an application, along with the correct amount of fees, attesting that it will assign a certified renovator to each renovation that it performs, that it will use only certified or properly trained individuals to perform renovations, and that it will follow the work practice standards and recordkeeping requirements in this regulation. EPA will certify any firm that meets these requirements unless EPA determines that the environmental compliance history of the firm, its principals, or its key employees demonstrates an unwillingness or inability to maintain compliance with environmental statutes or regulations. To maintain certification, the firm must submit an application and the correct amount of fees every 5 years. As noted above, EPA will establish the required fees in a subsequent rulemaking.

*d. Work practice standards.* This final rule contains a number of work practice requirements that must be followed for every covered renovation in target housing and child-occupied facilities. These requirements pertain to warning signs and work area containment, the restriction or prohibition of certain practices (e.g., high heat gun, torch, power sanding, power planing), waste handling, cleaning, and post-renovation cleaning verification. The firm must ensure compliance with these work practices. Although the certified renovator is not required to be on-site at all times, while the renovation project is ongoing, a certified renovator must nonetheless regularly direct the work being performed by other workers to ensure that the work practices are being

followed. When a certified renovator is not physically present at the work site, the workers must be able to contact the renovator immediately by telephone or other mechanism.

i. *Warning signs and work area containment.* Before beginning a covered renovation, the certified renovator or a worker under the direction of the certified renovator must post signs outside the area to be renovated warning occupants and others not involved in the renovation to remain clear of the area. In addition, the certified renovator or a worker under the direction of the certified renovator must also contain the work area so that dust or debris does not leave the area while the work is being performed. At a minimum, containment for interior projects must include:

- Removing or covering all objects in the work area with plastic or other impermeable material.
- Closing and covering all forced air HVAC ducts in the work area with plastic or other impermeable material.
- Closing all windows in the work area.
- Closing and sealing all doors in the work area with plastic or other impermeable material.
- Covering the floor surface,

including installed carpet, with taped-down plastic sheeting or other impermeable material in the work area 6 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to contain the dust, whichever is greater.

Doors within the work area that will be used while the job is being performed must be covered with plastic sheeting or other impermeable material in a manner that allows workers to pass through while confining dust and debris to the work area. In addition, all personnel, tools, and other items, including the exterior of containers of waste, must be free of dust and debris when leaving the work area. There are several ways of accomplishing this. For example, tacky mats may be put down immediately adjacent to the plastic sheeting covering the work area floor to remove dust and debris from the bottom of the workers' shoes as they leave the work area, workers may remove their shoe covers (booties) as they leave the work area, and clothing and materials may be wet-wiped and/or HEPA-vacuumed before they are removed from the work area.

At a minimum, containment for exterior projects must include:

- Covering the ground with plastic sheeting or other disposable impermeable material extending 10 feet beyond the perimeter of surfaces undergoing renovation or a sufficient

distance to collect falling paint debris, whichever is greater, unless the property line prevents 10 feet of such ground covering.

- Closing all doors and windows within 20 feet of the outside of the work area on the same floor as the renovation and closing all doors and windows on the floors below that area.

In certain situations, such as where other buildings are in close proximity to the work area, when conditions are windy, or where the work area abuts a property line, the certified renovator or a worker under the direction of the certified renovator performing the renovation may have to take extra precautions to prevent dust and debris from leaving the work area as required by the regulation. This may include erecting a system of vertical containment designed to prevent dust and debris from migrating to adjacent property or contaminating the ground, other buildings, or any object beyond the work area. In addition, doors within the work area that will be used while the job is being performed must be covered with plastic sheeting or other impermeable material in a manner that allows workers to pass through while confining dust and debris to the work area.

ii. *Waste management.* The certified renovator or a worker trained and directed by a certified renovator must, at the conclusion of each work day, store any collected lead-based paint waste from renovation activities under containment, in an enclosure, or behind a barrier that prevents release of dust and debris and prevents access to the waste. In addition, the certified renovator or a worker under the direction of the certified renovator transporting lead-based paint waste from a work site must contain the waste to prevent identifiable releases. With regard to the lead-based paint waste generated by renovations in housing units, Unit IV.D.2. of the preamble to the 2006 Proposal describes how a clarification of the hazardous waste exclusion in 40 CFR 261.4(b)(1) means that residential lead-based paint waste may be disposed of in municipal solid waste landfill units, as long as the waste is generated during abatement or renovation and remodeling activities in households. Also discussed in the preamble to the 2006 Proposal is a subsequent amendment to the waste regulations promulgated under the Resource Conservation and Recovery Act (RCRA) that allows construction and demolition (C&D) landfills to accept residential lead-based paint waste.

iii. *Cleaning.* This final rule contains a number of specific cleaning steps that

the certified renovator or a worker under the direction of the certified renovator must follow after performing a covered renovation. Upon completion of renovation activities, all paint chips and debris must be picked up. Protective sheeting must be misted and folded dirty side inward. Sheeting used to isolate the work area from other areas must remain in place until after the cleaning and removal of other sheeting; this sheeting must be misted and removed last. Removed sheeting must either be folded and taped shut to seal or sealed in heavy-duty bags and disposed of as waste.

After the sheeting has been removed from the work area, the entire area must be cleaned, including the adjacent surfaces that are within 2 feet of the work area. The walls, starting from the ceiling and working down to the floor, must be vacuumed with a HEPA vacuum or wiped with a damp cloth. This final rule requires that all remaining surfaces and objects in the work area, including floors, furniture and fixtures, be thoroughly vacuumed with a HEPA-equipped vacuum. When cleaning carpets, the HEPA vacuum must be equipped with a beater bar to aid in dislodging and collecting deep dust and lead from carpets. Where feasible, floor surfaces underneath area rugs must also be thoroughly vacuumed with a HEPA vacuum.

After vacuuming, all surfaces and objects in the work area, except for walls and carpeted or upholstered surfaces, must be wiped with a damp cloth. Uncarpeted floors must be thoroughly mopped using a 2-bucket mopping method that keeps the wash water separate from the rinse water, or using a wet mopping system with disposable absorbent cleaning pads and a built-in mechanism for distributing or spraying cleaning solution from a reservoir onto a floor.

For cleaning following an exterior renovation, this final rule requires all paint chips and debris to be picked up. Protective sheeting must be misted and folded dirty side inward. Removed sheeting must be either folded and taped shut to seal or sealed in heavy-duty bags and disposed of as waste.

iv. *Post-renovation cleaning verification.* This final rule requires a certified renovator to perform a visual inspection of the work area after the cleaning steps outlined in the previous subsection. This visual inspection is for the purpose of determining whether dust, debris, or other residue is present in the work area. If dust, debris, or other residue remains in the work area, the dust, debris, or other residue must be

removed by re-cleaning and another visual inspection must be performed.

When an exterior work area passes the visual inspection, the renovation has been properly completed and the warning signs may be removed. When an interior work area passes the visual inspection, an additional cleaning verification step is required. A certified renovator assigned to the renovation project must use disposable cleaning cloths to wipe the windowsills, countertops, and uncarpeted floors in the work area. These cloths must then be compared to a cleaning verification card. For each cloth that matches or is lighter than the cleaning verification card, the corresponding windowsill, countertop, or floor area is considered to have passed the post-renovation cleaning verification. In contrast to the 2006 Proposal, this final rule limits this requirement to two wet cloths and one dry cloth. After the first dry cloth, that surface will be considered to have passed post-renovation cleaning verification. When all windowsills, countertops, and floor areas in the work area have passed post-renovation cleaning verification, the warning signs may be removed. More information on the post-renovation cleaning verification procedure and the underlying studies can be found in Unit IV.E. of the preamble to the 2006 Proposal and in Unit III.E.7. of this preamble.

In contrast to the 2006 Proposal, this final rule does not allow dust clearance sampling in lieu of post-renovation cleaning verification, except in cases where the contract between the renovation firm and the property owner or another Federal, State, Territorial, Tribal, or local regulation requires dust clearance sampling by a certified sampling professional and requires the renovation firm to clean the work area until it passes clearance.

*e. State, Territorial, and Tribal programs.* This final rule also contains provisions for interested States, Territories, and Tribes to apply for and receive authorization to administer their own renovation, repair and painting programs in lieu of the proposed regulation. States, Territories and Tribes may choose to administer and enforce just the existing requirements of subpart E, the pre-renovation education elements, the training, certification, accreditation, work practice, and recordkeeping requirements of this final rule, or both. EPA will use the same process used for lead-based paint activities programs, along with proposed specific renovation program elements, to authorize State, Territorial, and Tribal programs.

States, Territories, and Tribes seeking authority to administer and enforce renovation programs must obtain public input and then submit an application to EPA. Applications must contain a number of items, including a description of the State, Territorial, or Tribal program, copies of all applicable statutes, regulations, and standards, and a certification by the State Attorney General, Tribal Counsel, or an equivalent official, that the applicable legislation and regulations provide adequate legal authority to administer and enforce the program. The program description must demonstrate that the State, Territorial, or Tribal program is at least as protective as the Federal program and that it provides for adequate enforcement.

To be eligible for authorization to administer and enforce renovation programs, State, Territorial, and Tribal renovation programs must contain certain minimum elements that are very similar to the minimum elements required for lead-based paint activities programs. In order to be authorized, State, Territorial, or Tribal programs must have procedures and requirements for the accreditation of training programs, the training of renovators, and the certification of renovators or renovation firms. At a minimum, the program requirements must include accredited training for renovators and procedures and requirements for recertification. State, Territorial, and Tribal programs applying for authorization are also required to include work practice standards for renovations that ensure that renovations are conducted only by certified renovators or renovation firms and that renovations are conducted using work practices at least as protective as those of the Federal program.

#### *B. What is the Agency's Authority for Taking this Action?*

These training, certification and accreditation requirements; State, Territorial, and Tribal authorization provisions; and work practice standards are being promulgated under the authority of TSCA sections 402(c)(3), 404, 406, and 407, 15 U.S.C. 2682(c)(3), 2684, 2686, and 2687, and in a manner that is consistent with TSCA section 2(c), 15 U.S.C. 2601(c).

### **III. Provisions of this Final Rule**

This unit describes the specific provisions of the final regulation and discusses the major comments received.

#### *A. Scope of the Final Rule*

EPA is amending the existing regulations at 40 CFR part 745, subpart

E (the "Pre-Renovation Education Rule"), that implement TSCA section 406(b) to add training and certification requirements, as well as work practice standards, for certain renovation, repair, and painting projects performed for compensation in target housing and in child-occupied facilities.

1. *Buildings covered*—a. *Target housing.* The requirements of this final rule apply to renovations performed for compensation within and on the exteriors of target housing units, including renovations performed for compensation in common areas, such as hallways, stairways, and laundry and recreational rooms, in multi-unit target housing. The term "target housing" is defined in TSCA section 401 as any housing constructed before 1978, except housing for the elderly or persons with disabilities (unless any child under age 6 resides or is expected to reside in such housing) or any 0-bedroom dwelling.

Several commenters were concerned about the exclusion of 0-bedroom dwellings from the definition of "target housing." These commenters noted that this effectively excludes a significant subset of housing where children live, particularly studio or efficiency apartments and certain low-income housing such as single-room occupancy hotels. One commenter stated that, in his city, at least 400 families with more than 700 children live in single-room occupancy hotels, and these hotels constitute some of oldest housing in their city. Other commenters were concerned about the exclusion of housing for the elderly (or persons with disabilities) unless any child under age 6 resides or is expected to reside in such housing. These commenters suggested that EPA not exempt such housing because children may be present for a substantial amount of time. One commenter noted that, because some children spend 40 or more hours per week at their grandparents' home, eliminating housing for the elderly from the rule would place an inordinate number of young children at risk. Another commenter observed that unless the building is reserved for elderly residents only, the likelihood of children living in a multi-unit building and being exposed to lead hazards in common areas is high.

EPA understands and shares the concerns of these commenters. However, these exclusions were established by Congress in Title X. The exclusions and limitations in the exclusions appear consistent with a focus on housing where children under age 6 reside. Nonetheless, EPA does wish to point out that this regulation and other existing TSCA regulations

cover activities in common areas that are accessible to residents of target housing units. Thus, renovations in common areas in a building built before 1978 that contains both housing units reserved for the elderly and regular housing units would be covered by this rule. In addition, as described more fully in Unit III.G. of this preamble, States, Territories and Tribes may choose to develop and implement their own lead renovation, repair, and painting programs. Such programs may be more stringent than this Federal regulation and could, therefore, cover 0-bedroom dwellings or housing for the elderly.

Finally, one commenter questioned the existing definition of "multi-family housing" in 40 CFR 745.83, which defines the term as a "housing property consisting of more than four dwelling units." The commenter referred to the definition of "multi-family dwelling" in 40 CFR 745.223 which does not limit the term to a specific number of units, and questioned why smaller multi-family housing such as duplexes should not be included in the definition in 40 CFR 745.83. This commenter and others contended that it is important to cover common areas, including building exteriors, in all multi-unit target housing. In response to these commenters, EPA is deleting the definition of "multi-family housing" from 40 CFR 745.83 because the term is not used in this final rule. This final rule covers renovations in common areas, including building exteriors, of multi-unit buildings regardless of the number of units contained in the building. In addition, the deletion of this definition will also make it clear that the existing Pre-Renovation Education Rule provisions also apply to the same renovations covered by this final rule.

b. *Child-occupied facilities.* The certification, training, recordkeeping, and work practice standards of this final rule also apply to renovations for compensation in child-occupied facilities. As discussed in the preamble to the 2007 Supplemental Proposal, numerous commenters on the 2006 Proposal requested that EPA cover child-occupied facilities under this regulation and suggested that EPA use the existing definition of "child-occupied facility" in 40 CFR 745.223. In response, the 2007 Supplemental Proposal included a definition of "child-occupied facility" that was based upon the existing definition, with modifications to make it consistent with the provisions of the 2006 Proposal. EPA also proposed to modify the definition to clarify, for child-occupied

facilities located in public or commercial buildings, which portions of the building would be considered part of the child-occupied facility for purposes of this rulemaking. EPA received several comments suggesting modifications to the proposed definition, but (with the exception of one small clarification) EPA is retaining the proposed definition for the reasons discussed below. The final rule's definition of "child-occupied facility" is as follows:

"Child-occupied facility" means a building, or portion of a building, constructed prior to 1978, visited regularly by the same child, under 6 years of age, on at least 2 different days within any week (Sunday through Saturday period), provided that each day's visit lasts at least 3 hours and the combined weekly visits last at least 6 hours, and the combined annual visits last at least 60 hours. Child-occupied facilities may include, but are not limited to, day care centers, preschools and kindergarten classrooms. Child-occupied facilities may be located in target housing or in public or commercial buildings. With respect to common areas in public or commercial buildings that contain child-occupied facilities, the child-occupied facility encompasses only those common areas that are routinely used by children under age 6, such as restrooms and cafeterias. Common areas that children under age 6 only pass through, such as hallways, stairways, and garages are not included. In addition, with respect to exteriors of public or commercial buildings that contain child-occupied facilities, the child-occupied facility encompasses only the exterior sides of the building that are immediately adjacent to the child-occupied facility or the common areas routinely used by children under age 6.

EPA added the introductory clauses "with respect to common areas" and "with respect to exteriors of" to the sentences describing the applicability of the rule to common areas and exteriors of public or commercial buildings because EPA was concerned that people would be confused about the area defined by the term "child-occupied facility" in those situations.

Most of the commenters on the 2007 Supplemental Proposal expressed support for including child-occupied facilities within the universe of buildings covered by this rulemaking. Several commenters requested that EPA provide a more clear definition of public buildings that contain child-occupied facilities or additional examples of such facilities. However, EPA is not aware of additional examples that could be

included in the definition to make the applicability of this rule clearer. One commenter believed that a definition based upon the amount of time a child spends at a facility would be unworkable.

EPA disagrees with the comment that a time-based definition of child-occupied facility is unworkable. A time-based definition has been a part of the Lead-based Paint Activities Program under TSCA section 402(a) for more than 10 years and EPA is not aware of any significant implementation difficulties. As initially proposed in 1994, the Lead-based Paint Activities Regulations under TSCA section 402(a) would have contained one set of requirements for the training and certification of contractors and the accreditation of training programs, as well as specific work practice standards that would have applied to lead-based paint activities conducted in target housing and public buildings (Ref. 23). A different set of requirements would have applied to lead-based paint activities conducted in commercial buildings and on bridges and other structures. The 1994 proposal would have defined public buildings to include all buildings generally open to the public or occupied or visited by children, such as stores, museums, airports, offices, restaurants, hospitals, and government buildings, as well as schools and day care centers. During the comment period, a significant majority of commenters expressed the concern that applying these regulations to activities in all of the buildings that EPA would consider public would result in significant costs without a comparable reduction in lead-based paint exposures for children under age 6, the population most vulnerable to lead exposures. Many of these commenters recommended that EPA focus its attention on buildings that are frequented by children, rather than on buildings that may be briefly visited by children.

In response to these comments, EPA established, in the final rule, a subset of the buildings EPA had intended to define as public. This subset, called "child-occupied facilities," was delineated in terms of the frequency and duration of visits by children (Ref. 4). These primarily consist of public buildings where young children receive care or instruction on a regular basis, such as child care centers and kindergarten classrooms. The Agency's decision to define child-occupied facilities as a sub-category of public buildings was based on one of the key objectives of the Lead-based Paint Activities Regulations, which was to

prevent lead exposures among young children. The Agency reasoned that children face an equal, if not greater, risk from lead-based paint hazards in schools and day care centers as they do at home. Indeed, EPA was concerned that children could spend more time in a particular classroom or day care room in a given day or week than they might spend in a single room in their homes. With respect to the type of building covered, this regulation will operate in much the same way as the Lead-based Paint Activities Regulations. In most cases, office buildings without child care facilities, museums, stores, airports, and restaurants will not be covered by this rule. Although there may be large numbers of children present at any given time in these kinds of buildings, individual children are not likely to be there often enough and long enough to qualify the building as a child-occupied facility.

Some commenters appeared to be confused about whether the definition of "child-occupied facility" covers housing where informal or unpaid care is provided, such as the homes of relatives and neighbors. Whether or not a building is a child-occupied facility does not depend upon whether the owner or operator of the child-occupied facility is somehow compensated for the child's presence. Indeed, the first sentence of the definition makes this clear in stating that a child-occupied facility is a "building, or portion of a building, constructed prior to 1978, visited regularly by the same child . . ." The word "visited" is very broad, it includes visits to a relative's house or a neighbor's house as well as visits to a child-care facility or school.

Except in owner-occupied target housing, as discussed below, the firm performing the renovation is responsible for determining whether a building is a child-occupied facility. This can be accomplished in any number of ways. A stand-alone child care center is likely to have a name that suggests that it provides child care, and the center's status as a child-occupied facility should be obvious upon entering the center. Child care centers in office buildings are likely to have informational signs posted and the centers are likely to be identified in the building directory. Elementary schools are likely to have kindergarten classrooms. The renovation firm should inquire about the presence of a child-occupied facility when contracting to perform renovation services in a public or commercial building. However, a statement by the building owner or manager that there is no child-occupied facility in the building may not be relied

upon in the face of evidence to the contrary.

Several commenters felt that EPA had inappropriately limited the space encompassed by a child-occupied facility in a public or commercial building. These commenters thought that EPA should follow the approach used for common areas in multi-family housing. Under this approach, the rule would cover renovations for compensation in all areas normally accessible to the children using the child-occupied facility. However, children under age 6 are likely to spend less time in the hallways and stairways of public or commercial buildings than they do in common areas in the buildings where they live. It is also likely that children under age 6 walking to and from a child care center in an office building, or to and from a classroom in a school building, will be closely supervised and will not be permitted to walk through active renovation work sites. Although some exposure is possible in these areas, they are more akin to general public and commercial buildings that children may enter but where they are not expected to spend significant amounts of time than to the exposures associated with child-occupied facilities, and EPA's hazard standards are applicable to residents and residential-type settings. In addition, EPA is concerned that application of this final rule to all common areas of public or commercial buildings that may house a child-occupied facility in a small portion of the building would likely result in minimal benefit to the children at a potentially large cost.

*c. Other public or commercial buildings.* A number of commenters noted that TSCA section 402(c)(3) directs EPA to address renovation or remodeling activities that create lead-based paint hazards not only in target housing, but also in public buildings constructed before 1978, and commercial buildings. Most of these commenters, commenting on the 2006 Proposal, expressed the greatest concern over EPA's failure to address buildings where young children spend significant amounts of time, or child-occupied facilities. However, a handful of commenters argued that EPA also needed to address other public and commercial buildings under the renovation, repair, and painting program.

TSCA section 402(c)(3) provides authority for EPA to regulate renovation or remodeling activities that create lead-based paint hazards. EPA has, by regulation under TSCA section 403, identified lead-based paint hazards for

purposes of Title IV. These hazard standards were developed by evaluating exposure patterns and hazard information for young children and taking into account costs and benefits. They are only applicable in target housing and child-occupied facilities, places where young children are likely to be present for significant periods of time. Although EPA realizes that lead exposure for older children and adults can result in adverse health effects, effects which are discussed in chapter 5 of the Final Economic Analysis for the Lead Renovation, Repair, and Painting Program ("Final Economic Analysis") (Ref. 24), EPA has not evaluated the exposure and hazard information for these groups in the same way that it has for young children. EPA has not evaluated the potential adverse health effects and associated them with a specific level of surface dust that will result in a blood lead level in an older child or an adult that is likely to cause a particular adverse effect. Nor has EPA evaluated the potential health effects to young children from the less frequent exposures that might arise in public and commercial buildings that are not child-occupied facilities. At this time, EPA does not have sufficient information with which to conclude that renovation and remodeling activities in buildings not frequented by young children, e.g., public or commercial buildings that are not child-occupied facilities, create lead-based paint hazards because EPA's TSCA section 403 hazard standards only apply to target housing and child-occupied facilities. EPA has no hazard standards to apply in other situations. Thus, this rule, like the Lead-based Paint Activities Regulations, only applies in target housing and child-occupied facilities.

*2. Activities covered—*a. *Renovations for compensation.* This rule, like the Pre-Renovation Education Rule, only applies to persons who perform renovations for compensation. As discussed in the preamble to the 2007 Supplemental Proposal, for the purposes of this regulation, compensation includes pay for work performed, such as that paid to contractors and subcontractors; wages, such as those paid to employees of contractors, building owners, property management companies, child-occupied facility operators, State and local government agencies, and non-profits; and rent for target housing or public or commercial building space.

Although the owner of rental property may not be compensated for maintenance and repair work at the time that the work is performed, tenants generally pay rent for the right to

occupy rental space as well as for maintenance services in that space. Thus, renovations performed by renovation contractors and their employees in target housing or child-occupied facilities are covered, as are renovations by owners of rental target housing or child-occupied facilities, if the child-occupied facility leases space.

Renovations in target housing or in child-occupied facilities are covered if they are performed by employees of the renovation contractor, the building owner, the building manager, a State or local government agency, a non-profit organization, or the child-occupied facility operator, and the employees receive wages or other compensation for the work performed. Child care payments, in and of themselves, are not considered compensation for renovations. An agreement to provide child care in exchange for a payment is not a contract for building maintenance services in the same way that a lease or other agreement between a landlord and a tenant generally is.

One commenter requested that EPA consider payments for child care to be compensation for renovations. A number of other commenters expressed a general concern over the fact that EPA was not proposing to cover do-it-yourself renovations in owner-occupied target housing. Some of these commenters cited research or observations suggesting that improperly performed renovations by homeowners, relatives, or friends are equally likely, if not more likely, to cause elevated blood lead levels as renovations performed by professional contractors. The most commonly cited study for this proposition was the Wisconsin Childhood Blood-Lead Study, commissioned by EPA as Phase III of the Renovation and Remodeling Study performed pursuant to TSCA section 402(c)(2). As described more fully in the preamble to the 2006 Proposal, in homes where renovation and remodeling activities had been performed, the analysis of the results of the Wisconsin Study indicated the following ordering of the five possible responses to the question of who performed the renovation and remodeling, in order of highest to lowest risk of increased odds of an elevated blood lead level:

- Relative or friend not in household.
- Paid professional.
- Owner or building superintendent.
- Head of household or spouse.
- Other person in household.

As discussed in the preamble to the 2007 Supplemental Proposal, EPA does not believe that child-care payments

represent compensation for renovations in the same way that rent is.

Furthermore, as discussed in the Final Economic Analysis, the overwhelming majority of child-occupied facilities covered by this final rule are located in target housing. Some of that housing is rental target housing, and renovations in rental target housing are covered by this final rule regardless of whether a child-occupied facility is present. With respect to child-occupied facilities located in owner-occupied target housing and do-it-yourself renovations in owner-occupied target housing in general, EPA believes that it would be inconsistent with Congressional intent to cover these renovations.

EPA has previously determined that Congress was most concerned with the certification and training of contractors, not homeowners. In the preamble to the proposed Lead-based Paint Activities Regulations, EPA reviewed section 1021 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, the section that added Title IV to TSCA, and determined that the emphasis under section 402 of TSCA ought to be the certification and training of contractors, not homeowners (Ref. 23). In its review, EPA declared that TSCA section 402(c)(3), the section under which this final rule is being issued, shows that Congressional "focus was on the need to regulate contractors doing renovation and remodeling activities, and not homeowners doing renovation and remodeling of their own homes" (Ref. 23). Specifically, TSCA section 402(c)(3) directs EPA to revise the TSCA section 402(a) Lead-based Paint Activities Regulations to apply to renovation and remodeling activities. In so doing, EPA is to determine "which *contractors* are engaged in such activities." TSCA section 402(c)(3) (emphasis added). EPA thus interprets the statutory directive to regulate remodeling and renovation activities found in TSCA section 402(c)(3) as applying to contractors and not a broader category of persons, such as homeowners.

With respect to do-it-yourself renovations in child-occupied facilities in target housing, as stated above, although payment is received in exchange for childcare, EPA does not consider this to be a contract for building maintenance. As discussed in the previous paragraph, Congress intended to cover renovation contractors, not homeowners who perform renovations on their own homes.

However, as previously discussed, EPA intends to conduct an outreach and education campaign designed to encourage homeowners and other

building owners to follow lead-safe work practices while performing renovations or hire a certified renovation firm to do so.

b. *Definition of "renovation."* The universe of renovation activities covered by this rule is virtually identical to the renovation activities already regulated under the Pre-Renovation Education Rule—essentially, activities that modify an existing structure and that result in the disturbance of painted surfaces. All types of repair, remodeling, modernization, and weatherization projects are covered, including projects performed as part of another Federal, State, or local program, if the projects meet the definition of "renovation" already codified in 40 CFR 745.83.

As discussed in Unit IV.B.3. of the preamble to the 2006 Proposal, EPA considered a number of options for defining the term "renovation" for the Pre-Renovation Education Rule, and chose a definition that focuses on the activities of greatest concern to EPA, activities that disturb lead-based paint. This definition also covers virtually all of the types of activities in the Environmental Field Sampling Study that created lead-based paint hazards. In this rulemaking, EPA received several comments requesting clarification on the definition; some of these commenters were particularly interested in the types of jobs that would be covered by this definition. One commenter requested that, if EPA intended to cover maintenance and repair projects and interim control projects, the definition of "renovation" be modified to specifically include those projects. Another commenter requested that EPA specifically mention weatherization projects as an example of the types of projects covered by the rule. Several commenters suggested that the definition should clearly delineate the boundaries between renovation and abatement.

EPA also received several responses to its requests for comment on whether to exclude any category of specialty contractor and whether certain renovation activities, such as HVAC duct work, which may result in the disturbance of limited amounts of lead-based paint, should be specifically included or excluded. A state agency contended that exterior siding projects, HVAC duct work, and wallpaper removal should not be excluded, noting that wallpaper removal was implicated in a lead poisoning case the agency investigated. Another commenter argued that many interior and exterior painting projects involve washing, scuff-sanding, and scraping to remove loose materials, and that such "common" and

“relatively benign” industry practices should not be regulated. Other commenters argued that there should be no categorical exemption for any type of specialty contractor. Most commenters on this issue contended that the amount of lead-based paint disturbed, rather than the type of project or contractor involved, should control the applicability of the rule.

EPA specifically disagrees that scuff-sanding and scraping are “benign,” especially in light of the dust lead levels generated by dry scraping in the Dust Study. The geometric mean post-work, pre-cleaning dust lead levels resulting from dry scraping were 2,686  $\mu\text{g}/\text{ft}^2$ . After baseline cleaning procedures, the geometric mean was still 66  $\mu\text{g}/\text{ft}^2$ . When the work practices required by the final rule were used, the geometric mean was 30  $\mu\text{g}/\text{ft}^2$ . As stated above, all of the renovation activities in the Dust Study and the other studies in the record for this final rule created lead-based paint hazards. Therefore, this regulation will not exempt any category of specialty contractor or any specific type of renovation. EPA notes, however, that it has not prohibited the use of dry scraping or dry hand sanding. More information on prohibited renovation practices can be found in Unit III.E.4. of this preamble. EPA also notes that some small jobs will be exempt from the requirements of this final rule under the minor repair and maintenance exception.

EPA has also determined that, based on the comments, some changes to the proposed definition of the term “renovation” are necessary to ensure that everyone understands that all types of building renovation, repair, and painting projects are covered, so long as painted surfaces are disturbed. The following definition of “renovation” will be incorporated into 40 CFR 745.83.

Renovation means the modification of any existing structure, or portion thereof, that results in the disturbance of painted surfaces, unless that activity is performed as part of an abatement as defined by this part (40 CFR 745.223). The term renovation includes (but is not limited to): The removal, modification or repair of painted surfaces or painted components (e.g., modification of painted doors, surface restoration, window repair, surface preparation activity (such as sanding, scraping, or other such activities that may generate paint dust)); the removal of building components (e.g., walls, ceilings, plumbing, windows); weatherization projects (e.g., cutting holes in painted surfaces to install blown-in insulation or to gain access to attics, planing thresholds to install weather-stripping),

and interim controls. A renovation performed for the purpose of converting a building, or part of a building, into target housing or a child-occupied facility is a renovation under this subpart. The term renovation does not include minor repair and maintenance activities.

EPA added “repair,” “surface restoration,” “window repair,” “weatherization,” and “interim controls” to the definition to make it clear that all of these activities are covered by this definition if they disturb painted surfaces. EPA also separated the removal and the modification of building components to provide clarity. In addition, EPA provided examples of weatherization activities and building component removal. Finally, EPA added a sentence to ensure that it is clear that renovations performed to turn a building into target housing or a child-occupied facility are covered.

Thus, interim control projects and weatherization projects that disturb painted surfaces are renovations. In addition, under this definition, the line between renovation and abatement is clear. Any renovation, repair, maintenance, or painting project is a renovation potentially covered by this rule unless the purpose of the project is to permanently eliminate lead-based paint or lead-based paint hazards. In that case, the project is an abatement. Covered renovations must be performed in accordance with 40 CFR part 745, subpart E, while covered abatements must be performed in accordance with 40 CFR part 745, subpart L.

3. *Exceptions—a. Owner-occupied target housing that is neither the residence of a child under age 6 or a pregnant woman, nor a child-occupied facility.* The 2006 Proposal proposed to establish an exception that would allow owner-occupants of target housing to opt-out of having renovation firms use the work practices that would be required by the rule. The proposed exception provided that if the owner-occupant signed a statement that no child under 6 resided there, the renovation would be exempt from the training, certification, and work practice requirements of the regulation. The 2007 Supplemental Proposal narrowed this exception. Under the 2007 Supplemental Proposal, owner-occupied target housing where no child under age 6 resides would not be eligible for this exception if the housing meets the definition of “child-occupied facility.” This final rule retains this exception, but further narrows it to exclude housing where pregnant women reside. In addition, to make it clear to the property owner what the effect of

the signed statement is, EPA has modified the requirements to include an acknowledgment by the owner that the renovation firm will not be required to use the lead-safe work practices contained in EPA’s renovation, repair, and painting rule. Thus, unless the target housing meets the definition of a child-occupied facility, if an owner-occupant signed a statement that no child under 6 and no pregnant woman reside there and an acknowledgment that the renovation firm will not be required to use the lead-safe work practices contained in EPA’s renovation, repair, and painting rule, the renovation activity is exempt from the training, certification, and work practice requirements of the rule. Conversely, if the owner-occupant does not sign the certification and acknowledgement (even if no children under 6 or no pregnant women reside there), or if the owner-occupant chooses not to take advantage of the exception for other reasons, the exception does not apply and the renovation is subject to the requirements of this final rule.

EPA asked for and received numerous comments on this aspect of the 2006 Proposal. Several commenters supported EPA’s focus on housing where children under age 6 reside, citing the need to target society’s resources towards the housing that presents the greatest risk. One commenter also noted that this provision would help keep renovation costs down for low-income homeowners without children. Most commenters, however, did not agree with EPA’s proposal to allow homeowners with no children under age 6 who occupy their own homes to opt out of the rule’s requirements. These commenters cited a number of reasons for their position, including the fact that children visit homes where they do not reside, and newly renovated housing may be sold to a family with young children regardless of whether children were in residence when the renovation occurred. Commenters also expressed concern about pregnant women, given that the transplacental transfer of lead in humans is well documented, and infants are generally born with a lead body burden reflecting that of the mother. This led some commenters to suggest that women of child-bearing age and girls between the ages of 6 and 14 also deserve special protection, because any lead body burden that they acquire through uncontrolled renovations will be passed on to any children they may eventually have.

EPA has carefully considered the issues and concerns raised with respect to exceptions to the rule. On the one

hand, EPA agrees with the commenters that believed it was important to focus this regulation on the housing that presents the greatest risk to young children. EPA is mindful of the impacts this regulation may have on the affordability of renovations, particularly for low-income homeowners. EPA believes that primarily focusing society's resources on the housing that presents the greatest risk to children is consistent with Congressional intent. In the Senate report on Title X, Congress noted the need "for a flexible, targeted approach for protecting children from exposure to lead hazards while maintaining housing affordability" (Ref. 25). The report also noted that "exposure to lead is primarily caused by ingesting paint dust or chips," which is the route of exposure of concern primarily for young children, ages 18–27 months. Indeed, in the Congressional findings for Title X, Congress focused on the lead poisoning of children and the need to address this as a national priority. [Sec. 1002, Public Law 102–550]. The focus on children can also be inferred from the very definition of "target housing" which on the one hand excludes housing for the elderly and disabled "unless a child under six resides or is expected to reside" there. Similarly, this final rule focuses on the population most at risk and does not provide any exceptions if a child under age 6 resides in the target housing to be renovated.

On the other hand, EPA understands and shares some of the concerns expressed by those commenters who did not support an exception for owner-occupied target housing where no child under 6 resides. In balancing these countervailing considerations, EPA has further limited this exception to owner-occupied target housing that does not meet the definition of a child-occupied facility because no child under 6 is present on a regular basis and in which no pregnant women reside. This has the effect of focusing this regulation primarily on renovations performed in buildings where children under age 6 reside or spend a great deal of time or in which a pregnant woman resides.

With regard to older children and adults, it is important to remember that the hazards presented by a particular floor or windowsill dust lead level are markedly different for a toddler than for an older child or an adult. As discussed in EPA's most recent Air Quality Criteria for Lead document, hand-to-mouth behavior is an important means of exposure for children. The period of peak exposure, reflected in peak blood lead levels, is around 18–27 months when hand-to-mouth activity is at its

maximum. This leads to a high rate of ingestion of dust at a time when children are believed to be particularly vulnerable to the neurological effects of lead exposure. While lead exposure continues to affect older children and adults, these individuals do not ingest dust at the same high rate that a toddler does. Therefore, the same floor dust level will present a much greater hazard for the young child than it will for the older child or adult. The lead-based paint hazard standards in 40 CFR part 745, subpart D, were established with reference to impacts on childhood blood lead levels based principally on hand-to-mouth activity, and EPA has not assessed the effect of dust lead levels or other potential sources of lead-based paint hazards on older children or adults.

However, EPA is particularly concerned about exposure to pregnant women because while the exposure patterns for small children and older children and adults are different, once exposed a pregnant woman can transfer lead to the developing fetus. Epidemiologic evidence indicates that lead freely crosses the placenta resulting in continued fetal exposure throughout pregnancy. Of particular concern is transfer to the developing brain of the fetus across the poorly developed blood brain barrier. Further, a significant proportion of lead transferred from the mother is incorporated into the developing skeletal system of the offspring, where it can serve as a continuing source of toxic exposure (Ref. 1). Thus, EPA agrees with the commenters who believed it is important to ensure that the work practices required in this final rule are followed in homes where a pregnant woman resides.

EPA also acknowledges the concern expressed by a number of commenters that newly renovated housing will be sold to a family with young children. If the renovation was not performed in accordance with the work practices prescribed by this rule, a dust-lead hazard may be present in the home. However, EPA does not believe it is an effective use of society's resources to impose this final rule requirements on all renovations in order to account for the portion of homes without young children that will be sold to families with young children following renovations. Moreover, the Disclosure Rule, 40 CFR part 745, subpart F, requires sellers of target housing to disclose known lead-based paint or lead-based paint hazard information to purchasers and provide them with a copy of the lead hazard information pamphlet entitled *Protect Your Family*

*From Lead in Your Home* (Ref. 7). In the situation described by the commenters, the receipt of this information should prompt the family to inquire about potential lead-based paint hazards in the home, particularly if one of the selling points is that areas of the home have been recently renovated. In addition, EPA continues to recommend that purchasers take advantage of their statutory opportunity to have a lead-based paint inspection or risk assessment done while in the process of purchasing target housing.

In response to comments expressing concern about this exception from this final rule, EPA has further considered the proposed owner-occupant acknowledgement statement and concluded that it is important that homeowners understand the effect of the acknowledgement. Accordingly, EPA has clarified and expanded the acknowledgement language to ensure that it is clear and consistent. In addition, EPA would like to make it clear that even if the housing to be renovated qualifies for this exception, the homeowner may always choose to have the renovation firm follow the work practices required by this rule. For example, the homeowner may be concerned about potential exposures for visiting children who do not visit often enough to make the housing a child-occupied facility. The homeowner may also be concerned that she may be pregnant, even though she is not yet certain. EPA has added a statement to the sample acknowledgment form that would allow the homeowner to state that the housing does qualify for the exception, but the homeowner wishes the renovation firm to follow the requirements of this rule anyway.

EPA would like to reiterate that this exception applies only to target housing that is occupied by its owner. For a number of reasons, this exception is not available in rental target housing, whether young children are present or not. First, tenants are likely to have much less control over renovations in their housing than owners. Next, as pointed out by some commenters, there is more turnover in rental housing than in owner-occupied housing. In many cases, renovations are done between tenants and it may not be known who will be occupying the unit next. Finally, as noted by at least two commenters, exempting renovations in rental housing that is not occupied by a child under age 6 could cause discrimination in the rental housing market against families with young children. Nearly all of the commenters on this issue agreed with this approach.

Several commenters expressed reservations about the ability of renovation firms to determine whether housing to be renovated is eligible for this exception. As discussed in both proposals, EPA believes that it could be difficult for a renovation firm to determine whether a child under age 6 resides in a particular unit of target housing or whether the housing is a child-occupied facility or whether a woman is pregnant. EPA will therefore allow renovation firms to rely on a signed statement from the owner of the housing that he or she is the owner of the housing to be renovated, that he or she resides in the housing to be renovated, that no child under 6 or pregnant woman resides there, that the housing does not meet the definition of a child-occupied facility, and that the owner acknowledges that the renovation firm will not be required to use the lead-safe work practices contained in this final rule. In the absence of such a signed statement, the renovation firm must comply with all of the regulation's requirements. If the renovation firm obtains such a statement, the renovation firm is not subject to the work practice and other requirements of this final rule. EPA will not hold the renovation firm responsible for misrepresentations on the part of the owner of the housing. Renovations in common areas of owner-occupied multi-unit target housing, such as condominiums, must be performed in accordance with the requirements of this rule unless the renovation firm obtains a signed statement from each occupant with access to the common area that the occupant is the owner of the housing unit, that he or she resides there, that no child under age 6 or pregnant woman resides there, that the housing does not meet the definition of child-occupied facility, and that the owner understands that the renovation firm will not be required to use the work practices contained in this final rule.

Finally, some commenters argued that TSCA section 402(c)(3) requires EPA to cover all renovations in target housing regardless of whether the housing is the residence of a child under age 6 or a child-occupied facility. This regulation covers all target housing. In order to perfect a claim for the exception for owner-occupied target housing that is not the residence of a child under age 6 or a pregnant woman or a child-occupied facility, the renovation firm must obtain the owner's signature on a form indicating that the housing qualifies for the exception and the owner is opting out of the training, certification, and work practice

requirements of this rule. In addition, the form and regulation provide the option for a homeowner to request that the work conform to the requirements of this final rule even in homes without young children or pregnant women. EPA believes homeowners without young children or who reside in homes without pregnant women should be able to choose whether or not work done in their own homes conforms to the requirements of this final rule. EPA has determined that allowing these owner-occupants to opt out of the training, certification, and work practice requirements of the rule does not significantly compromise the safety and effectiveness of this rule because the limitations on the applicability of the exception with respect to children under 6 and pregnant women serve to minimize the possibility that a young child or a pregnant woman will be exposed to a lead-based paint hazard resulting from a renovation in target housing.

b. *Renovations affecting only components free of regulated lead-based paint*—i. *Determination by certified inspector or risk assessor.* In keeping with the 2006 Proposal and the 2007 Supplemental Proposal, this final rule exempts renovations that affect only components that a certified inspector or risk assessor has determined are free of paint or other surface coatings that contain lead equal to or in excess of 1.0 mg/cm<sup>2</sup> or 0.5% by weight. These standards are from the definition of lead-based paint in Title X and in EPA's implementing regulations. Nearly all of the commenters that expressed an opinion on this topic favored this exception. The determination that any particular component is free of lead-based paint may be made as part of a lead-based paint inspection of an entire housing unit or building, or on a component-by-component basis.

Some commenters expressed confusion over the mechanics of this exception. The certified inspector or risk assessor determines whether components contain lead-based paint, while the renovation firm is responsible for determining which components will be affected by the renovation. A renovation firm may rely on the report of a past inspection or risk assessment that addresses the components that will be disturbed by the renovation.

ii. *Determination by certified renovator using EPA-recognized test kits.* Also in accordance with both of the proposals, this final rule exempts renovations that affect only components that a certified renovator, using a test kit recognized by EPA, determines are free of lead-based paint. EPA has deleted the

regulatory thresholds for lead-based paint from this definition because they unnecessarily complicate the exception. As discussed in Unit III.C.1. of this preamble, a certified renovator is a person who has taken an accredited course in work practices. This training will include how to properly use the EPA-approved test kits. This final rule also establishes the process EPA will use to recognize test kits.

As discussed in the preamble to the 2006 Proposal, research on the use of currently available kits for testing lead in paint has been published by the National Institute of Standards and Technology (NIST) (Ref. 26). The research indicates that there are test kits on the market that, when used by a trained professional, can reliably determine that regulated lead-based paint is not present by virtue of a negative result. Based on this research, EPA proposed to initially recognize test kits that have, for paint containing lead at or above the regulated level, 1.0 mg/cm<sup>2</sup> or 0.5% by weight, a demonstrated probability (with 95% confidence) of a negative response less than or equal to 5% of the time.

Some commenters, representing a variety of interests, supported an exception for renovations affecting components that have been found to be free of regulated lead-based paint by use of a test kit. One commenter cited the need for faster and cheaper methods of accurately checking for lead and expressed the opinion that this approach will expand access to lead screening in homes. Several comments were generally supportive, with some reservations about kit reliability.

However, most commenters did not favor the use of test kits. The most commonly cited reason for not supporting this approach was the potential conflict-of-interest present in having the certified renovator be the one to determine whether or not he or she must use the work practices required by the rule. EPA addressed potential conflicts-of-interest in its lead-based paint program in the preamble to the final Lead-based Paint Activities Regulations. That discussion outlined two reasons for not requiring that inspections or risk assessments, abatements, and post-abatement clearance testing all be performed by different entities. The first was the cost savings and convenience of being able to hire just one firm to perform all necessary lead-based paint activities. The second was the potential regional scarcity of firms to perform the work. These considerations may also be applicable to the renovation sector, given the premium on maintaining a

rule that is simple and streamlined and does not unduly prolong the timeframes for completing renovations. Moreover, it is not unusual in regulatory programs to allow regulated entities to make determinations affecting regulatory applicability and compliance. See, e.g., 40 CFR 262.11 (hazardous waste determinations by waste generators under RCRA). EPA has decided to take an approach that is consistent with the approach taken in the 402(a) lead-based Paint Activities regulation and not require third party testing.

Another commonly cited reason for not supporting the use of test kits by certified renovators was the lack of any sampling protocol in the regulation. A related concern was that the training in sampling techniques and protocols in the lead-based paint inspector course could not be shortened to fit within the 8-hour renovator course and still retain all of the necessary information. EPA wishes to make it clear that the 8-hour renovator course will not train renovators in how to select components for sampling because the certified renovator must use a test kit on each component affected by the renovation. The only exception to this is when the components make up an integrated whole, such as the individual stair treads and risers in a staircase. In this situation, the renovator need test only one such individual component, e.g., a single stair tread, unless it is obvious to the renovator that the individual components have been repainted or refinished separately. As such, a complicated sampling protocol is not necessary. EPA plans to modify the EPA/HUD Lead Safe Work Practices course to include training on how to use a test kit. To ensure that the applicability of the exception is clear, EPA has also modified 40 CFR 745.82(a)(2) to specifically state that the certified renovator must test each of the components that will be affected by the renovation.

iii. *Phased implementation and improved test kits.* Under the proposals, the regulatory requirements would have taken effect in two major stages, based on the age of the building being renovated. The first stage would have applied to renovations in target housing and child-occupied facilities built before 1960. Requirements for renovations in target housing and child-occupied facilities built between 1960 and 1978 would have taken effect 1 year later. The primary reason for this phased implementation was to allow time for the development of improved test kits.

According to the National Survey of Lead and Allergens in Housing, 24% of

the housing constructed between 1960 and 1978 contains lead-based paint (Ref. 27). In contrast, 69% of the housing constructed between 1940 and 1959, and 87% of the housing constructed before 1940 contains lead-based paint. The results of this survey indicate that there is a much greater likelihood of disturbing lead-based paint during a renovation that occurs in a home built before 1960 than in a home built after that date. The NIST research on existing test kits shows that existing test kits cannot reliably determine that lead is present in paint only above the statutory levels because the kits are sensitive to lead at levels below the Federal standards that define lead-based paint, and therefore are prone to a large number of false positive results (i.e., a positive result when regulated lead-based paint is, in fact, not present). The NIST research found that such false positive rates range from 42% to 78%. This means that the currently available kits are not an effective means of identifying the 76% of homes built between 1960 and 1978 that do not contain regulated lead-based paint.

Research conducted by EPA subsequent to the publication of the 2006 Proposal confirms that the sensitivity of test kits could be adjusted for paint testing so that the results from the kits reliably correspond to one of the two Federal standards for lead-based paint, 1.0 mg/cm<sup>2</sup> and 0.5% by weight. EPA's research and initial contacts with potential kit manufacturers also indicate that this can be accomplished in the near future. As stated in the preamble to the 2006 Proposal, EPA's goal is to foster the development of a kit that can reliably be used by a person with minimal training, is inexpensive, provides results within an hour, and is demonstrated to have a false positive rate of no more than 10% and a false negative rate at 1.0 mg/cm<sup>2</sup> or 0.5% by weight of less than 5%. EPA is confident that improved test kits meeting EPA's benchmarks will be commercially available by September 2010.

With this in mind, EPA felt that a staged approach would initially address the renovations that present the greatest risks to children under age 6, i.e., the renovations that are most likely to disturb lead-based paint, while allowing additional time to ensure that the improved test kits are commercially available before phasing in the applicability of the rule to newer target housing and child-occupied facilities. However, EPA was concerned about delaying implementation for post-1960 target housing and child-occupied facilities that are occupied or used by

children under age 6 with increased blood lead levels. In order to reduce the possibility that an unregulated renovation activity would contribute to continuing exposures for these children, the 2006 Proposal would have required renovation firms, during the first year that the training, certification, work practice and recordkeeping requirements are in effect, to provide owners and occupants of target housing built between 1960 and 1978 and child-occupied facilities built between 1960 and 1978 the opportunity to inform the firm that the building to be renovated is the residence of, or is a child-occupied facility frequented by, a child under age 6 with a blood lead level that equals or exceeds the CDC level of concern, or a lower State or local government level of concern. If the owner or occupant informs the renovation firm that a child under age 6 with an increased blood lead level lives in or frequents the building to be renovated, the renovation firm must comply with all of the training, certification, work practice, and recordkeeping requirements of this regulation.

Some commenters agreed that a staged approach was probably necessary, given the number of renovations that would be covered by the rule, and that a focus on buildings built before 1960 was appropriate. However, most commenters objected to the phased implementation. Some were concerned about the potential exposures to children in buildings built between 1960 and 1978 during the first stage of the rule. Another major concern expressed by commenters was that the phased implementation would unnecessarily complicate the rule, especially with the provision relating to children under age 6 with increased blood lead levels. These commenters felt that, because there already are accurate methods for determining whether a building contains lead-based paint, and because renovation firms ought to get into the habit of working in a lead-safe manner whenever they are working on a building built before 1978, the utility of the delay does not outweigh the likely confusion in the regulated community. Commenters also expressed reservations about providing sensitive medical information to contractors, in the case of children under age 6 with increased blood lead levels.

After reviewing the comments and weighing all of the factors, including EPA's expectation that the improved test kits will be commercially available by September 2010, EPA has decided not to include a phased implementation in this rulemaking. Therefore, this

regulation will take effect at the same time for target housing and child-occupied facilities regardless of whether they were built before or after 1960. Nonetheless, if the improved test kits are not commercially available by September 2010, EPA will initiate a rulemaking to extend the effective date of this final rule for 1 year with respect to owner-occupied target housing built after 1960.

*iv. Test kit recognition process.* In the 2006 Proposal, EPA described proposed criteria for test kit recognition. Specifically, for paint containing lead at or above the regulated level, 1.0 mg/cm<sup>2</sup> or 0.5% by weight, EPA stated its intention to only recognize kits that have a demonstrated probability (with 95% confidence) of a negative response less than or equal to 5% of the time. In addition, as soon as the improved test kits are generally available, EPA proposed to recognize only those test kits that have a demonstrated probability (with 95% confidence) of a false positive response of no more than 10% to lead in paint at levels below the regulated level. EPA stated its belief that limiting recognition to kits that demonstrate relatively low rates of false positives would benefit the consumer by reducing the number of times that the training and work practice requirements of this regulation are followed in the absence of regulated lead-based paint. EPA also proposed to require that these performance parameters be validated by a laboratory independent of the kit manufacturer, using ASTM International's E1828, Standard Practice for Evaluating the Performance Characteristics of Qualitative Chemical Spot Test Kits for Lead in Paint (Ref. 28) or an equivalent validation method. In addition, the instructions for use of any particular kit would have to conform to the results of the validation, and the certified renovator would have to follow the manufacturer's instructions when using the kit. EPA requested comment on whether these standards are reasonably achievable and sufficiently protective. EPA also solicited input on how to conduct the kit recognition process.

Some commenters expressed reservations about the proposed performance criteria, contending that a false negative rate of 5% is too high to be protective. However, a 5% false negative rate (with 95% confidence) is similar to the performance requirements for other lead-based paint testing methods, such as laboratory analysis used for lead-based paint inspections, and is considered to be the statistical equivalent of zero. Therefore, this final rule retains the proposed false-negative

criteria for test kit recognition, i.e., for paint containing lead at or above the regulated level, 1.0 mg/cm<sup>2</sup> or 0.5% by weight, kits will be only recognized if they have a demonstrated probability (with 95% confidence) of a negative response less than or equal to 5% of the time. Because no comments were received on the proposed false-positive criteria of 10% for the improved test kits, this final rule also retains the proposed false-positive criteria for the improved kits, i.e., after the improved kits are available, the only test kits that will be recognized are those that have a demonstrated probability (with 95% confidence) of a false positive response of no more than 10% to lead in paint at levels below the regulated level.

EPA did not receive any comments or suggestions on the test kit recognition process itself. With respect to existing test kits, EPA has determined that the NIST research (Ref. 26) is the equivalent of an independent laboratory validation of test kit performance. The NIST research found that three kits met the false-negative criteria established in this final rule. For the purposes of this regulation, EPA will therefore recognize these test kits, provided that they still use the same formulation that was evaluated by NIST. These test kits will be recognized by EPA until EPA publicizes its recognition of the first improved test kit.

With respect to the improved test kits, EPA has determined that Environmental Technology Verification Program (ETV) is a suitable vehicle for obtaining independent laboratory validation of test kit performance. EPA intends to use ETV or an equivalent testing program approved by EPA for the test kit recognition process. The goal of the ETV Program is to provide independent, objective, and credible performance data for commercial-ready environmental technologies. The ETV process promotes these technologies implementation for the benefit of purchasers, permittees, vendors and the public. If ETV is used, EPA would utilize the Environmental and Sustainable Technology Evaluations (ESTE) element of the ETV program because the development of the test kits is in support of this final rule, and the ESTE element was created in 2005 to address Agency priorities such as rule making. More information on this program is available on EPA's website at <http://www.epa.gov/etv/index.html>.

In the 2006 Proposal, EPA noted that it would look to ASTM International's E1828, Standard Practice for Evaluating the Performance Characteristics of Qualitative Chemical Spot Test Kits for Lead in Paint (Ref. 28) or equivalent for a validation method for test kits. With

the input of stakeholders, EPA is adapting this ASTM Standard for use in the laboratory validation program. The testing protocol will consist of an evaluation of the performance of the test kits, using the manufacturer's instructions, on various substrates, such as wood, steel, drywall, and plaster, with various lead compounds, such as lead carbonate and lead chromate, at various lead concentrations above and below regulatory threshold for lead-based paint. To be consistent with the performance criteria of the National Lead Laboratory Accreditation Program, the testing protocol will not involve testing the performance of the kits on paint that contains between 0.8 milligrams of lead per square centimeter and 1.2 milligrams of lead per square centimeter. After a test kit has gone through the ETV or other EPA approved testing process, EPA will review the test report to determine whether the kit has been demonstrated to achieve the criteria set forth in the rule. EPA anticipates that evaluation of the improved test kits under the recognition program will begin by August 2009.

In addition, EPA intends to allow other existing test kit manufacturers the opportunity to demonstrate that their kits meet the false negative criteria described in 40 CFR 745.88(c)(1) by going through the ETV process. Any recognition granted to test kits based only on the false negative criteria will expire when EPA publicizes its recognition of the first improved test kit that meets both the false negative and false positive criteria of 40 CFR 745.88(c).

Beginning on September 1, 2008, EPA's ETV program will accept applications for testing from test kit manufacturers. Applications must be submitted, along with a sufficient number of kits and the instructions for using the kits, to EPA. The test kit manufacturer should first visit the following website for information on where to apply: <http://www.epa.gov/etv/howtoapply.html>.

*c. Minor repair and maintenance.* EPA proposed to incorporate into this regulation the minor maintenance exception for the Pre-Renovation Education Rule. The proposed minor maintenance exception would have applied to projects that disturb 2 ft<sup>2</sup> or less of painted surface per component. The preamble to the 2006 Proposal discusses the history of this exception and requested comment on potential changes. In particular, EPA noted that HUD's Lead Safe Housing Rule, at 20 CFR 35.1350(d), includes a *de minimis* exception for projects that disturb 2 ft<sup>2</sup> or less of painted surface per room for

interior projects, 20 ft<sup>2</sup> or less of painted exterior surfaces, and 10% or less of the total surface area on an interior or exterior type of component with a small surface area. 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 Activities Regulation incorporates this as an exception for small projects at 40 CFR 745.65(d). EPA requested comment on whether the minor maintenance exception in this regulation should be consistent with other EPA regulations and the HUD Lead Safe Housing Rule. This provision describes the applicability of the Pre-Renovation Education Rule as well as this final rule.

Most commenters expressed support for consistency in the various lead-based paint regulations administered by EPA and HUD. They noted that a consistent exception for small projects or minor maintenance would be easier for the regulated community to apply. Many of these commenters recommended 2 ft<sup>2</sup> for interior projects and 20 ft<sup>2</sup> on exterior surfaces. While some commenters supported a "per component" exception, several commenters specifically noted that the "per component" aspect of the existing Pre-Renovation Education Rule exception was problematic in that it could result in the disturbance of large areas of painted surfaces in a single room. Other commenters recommended that the threshold area for the exception be made smaller or the exception abolished. These commenters noted that even very small projects have the potential to create lead-based paint hazards and that, rather than worrying about the applicability of the exception, renovation firms should just get into the habit of performing every project in a lead-safe manner. Other commenters suggested that EPA consider a larger threshold area for the exception, or an exception based on other factors, such as time spent performing an activity. EPA recognizes that, depending upon the methods used to disturb lead-based paint, very small disturbances can release a great deal of lead. EPA also understands the practicality of a minor maintenance exception.

In weighing these competing considerations, EPA has decided to incorporate in this final rule a minor maintenance exception for projects that disturb 6 ft<sup>2</sup> or less of painted surface per room for interiors and 20 ft<sup>2</sup> or less of painted surface on exteriors. This addresses the concerns of those commenters who supported a "per component" exception while still limiting the overall amount of paint that can be disturbed in a single room during

a single project. As in the 2006 Proposal, this exception is not available for window replacement projects. In contrast to the Proposal, this exception is only available for projects that do not use any of the work practices prohibited or restricted by 40 CFR 745.85(a)(3) and that do not involve demolition of painted surface areas.

EPA remains convinced that the distinction between renovation and minor maintenance activities is an important part of implementing this program. Congress directed EPA to address renovation and remodeling. In ordinary usage, minor maintenance activities that might disturb lead-based paint (e.g., removing a face plate for an electric switch to repair a loose connection, adding a new cable TV outlet, or removing a return air grill to service the HVAC system) are not normally considered home renovations. EPA believes that minor repair and maintenance activities that cover 6 ft<sup>2</sup> or less per room and 20 ft<sup>2</sup> or less for exteriors and that do not involve prohibited practices, demolition or window replacement would not ordinarily be considered renovation or remodeling but would better be described as minor work on the home or COF. EPA also believes that a typical minor repair and maintenance activity would not normally involve the use of high dust generating machinery such as those prohibited or restricted by this rule. To make the distinction between renovations and minor repair and maintenance activities clear, EPA has added a definition of "minor repair and maintenance activities" to 40 CFR 745.83. This term is defined as follows:

"Minor repair and maintenance activities" are activities, including minor heating, ventilation or air conditioning work, electrical work, and plumbing, that disrupt 6 square feet or less of painted surface per room for interior activities or 20 square feet or less of painted surface for exterior activities where none of the work practices prohibited or restricted by § 745.85(a)(3) are used and where the work does not involve window replacement or demolition of painted surface areas. When removing painted components, or portions of painted components, the entire surface area removed is the amount of painted surface disturbed. Jobs, other than emergency renovations, performed in the same room within the same 30 days must be considered the same job for the purpose of determining whether the job is a minor repair and maintenance activity.

To accommodate this new definition of "minor repair and maintenance activities," the definition of "renovation" in § 745.83 has also been changed to include the following sentence: "The term renovation does not include minor repair and maintenance

activities." As a result of these two definitional changes, the reference to minor maintenance in 40 CFR 745.82(a)(1) is no longer necessary. Therefore, when engaged in minor repair and maintenance activities as defined in 40 CFR 745.83, renovation firms and renovators are not covered by this rule. EPA believes this approach--eliminating the per-component limitation in favor of an overall size cap, and prohibiting practices that EPA believes are inconsistent with minor maintenance work and that generate very high lead dust loadings--is a reasonable balance of the considerations identified by commenters and considered by EPA.

Several commenters expressed concerns about how the exception would be applied, and whether various activities would be covered by the rule or exempt under the minor maintenance exception. Window replacement was of interest to several commenters, who referred to EPA's previous guidance on window replacement under the Pre-Renovation Education Rule (Ref. 29). That guidance states that window replacement, for various reasons, cannot qualify for the minor maintenance exception. EPA knows of no reason why this interpretation should be changed. In fact, contrary to the assertions of some commenters, the Dust Study found that window replacement was one of the more hazardous jobs. The geometric mean of the lead content of floor dust samples taken in the work area after the window replacement projects was 3,003 µg/ft<sup>2</sup> (Ref. 17, at 6–11). In addition, EPA does not believe that window replacement is within the common understanding of the meaning of either minor repair or maintenance. EPA has specifically included language in the definition of "minor repair and maintenance activities" to make it clear that window replacements cannot qualify.

Two commenters contended that, when determining whether wall or ceiling cut-outs exceed the minor maintenance exception, the painted surface disturbed should be measured by multiplying the length of the cut by its width, as opposed to the total size of the cut-out. EPA disagrees with these commenters. For cut-outs, the calculation is made for the entire area of surface being disturbed, e.g., the area of the cut-out, for the following reasons:

- The removed portion can flex or be broken during the removal process and the paint can flake off;
- The removed portion can fall on the floor and be trampled upon; or
- The removed portion may not be removed as a single piece.

Calculating the amount of painted surface disturbed in the manner that the commenters suggested would also complicate the rule and be more difficult to convey during the renovator training course. In response to these comments, EPA has inserted clarifying language on this into the text of the definition of "minor repair and maintenance activities" at 40 CFR 745.83.

One commenter recommended that EPA prohibit splitting work, i.e., conducting a single project as several minor maintenance activities in the same room in a short time (like a month) in order to avoid the regulatory requirements. EPA agrees with this commenter. It has always been EPA's interpretation of the Pre-Renovation Education Rule that renovators could not artificially split up projects in order to avoid having to provide the pamphlet. In response to this comment, EPA has inserted clarifying language on this into the definition of "minor repair and maintenance activities" at 40 CFR 745.83. This definition states that jobs, other than emergency renovations, performed in the same room within the same 30 days must be considered the same job for the purpose of determining whether the job is a minor repair and maintenance activity.

d. *Emergency projects.* Both the 2006 Proposal and the 2007 Supplemental Proposal proposed to retain the emergency project exception in the Pre-Renovation Education Rule with one modification. EPA proposed to clarify that interim control projects performed on an expedited basis in response to an elevated blood lead level finding in a resident child qualify for the emergency project exception from the Pre-Renovation Education Rule requirements. As discussed in the 2006 Proposal, EPA was 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 lead hazard information pamphlet before an interim control project begins. In addition, EPA recognized that some emergencies could make it difficult to comply with all of the training, certification, work practice, and recordkeeping requirements. For example, a broken water pipe may make it impossible to contain the work area before beginning to disturb painted surfaces to get to the pipe. The proposed emergency project exception would have required firms to comply with the work practice, training, certification, and recordkeeping requirements to the extent practicable.

EPA received a number of comments on this aspect of the 2006 Proposal. Several recognized the need for such an exception, but most of the commenters were concerned that the language of the proposal would make it possible for renovation firms to circumvent the training, certification, and work practice controls when performing interim controls in response to a child with an elevated blood lead level. A number of these commenters, as well as several others, urged EPA to be more specific about which requirements could be bypassed in particular situations. EPA agrees with these commenters. It never was EPA's intention to allow firms performing interim controls in response to a poisoned child to use untrained workers or work in a manner not consistent with the work practices required by this rule.

EPA has therefore revised the exception to specifically state that interim controls performed in response to a child with an elevated blood lead level are only exempt from the information distribution requirements, which is consistent with the current Pre-Renovation Education Rule. EPA has also modified the exception to state that emergency renovations are only exempt to the extent necessary to respond to the emergency from the training, certification, sign posting, and containment requirements of this regulation. For example, most property management companies who do their own maintenance are likely to have at least one trained and certified renovator on staff to perform renovations, so these companies should be able to comply with the training and certification requirements on all renovations. Likewise, firms performing emergency renovations should be able to follow the required cleaning procedures after emergency repairs have been made. As such, under the final rule, in all cases the cleaning specified by the regulation must be performed and it must be performed or directed by certified renovators. In addition, in all cases, the cleaning verification requirements of this regulation must be performed and they must be performed by a certified renovator. In response to one commenter who requested that EPA require firms to document their inability to comply with all of the regulatory provisions in emergencies, EPA has included such a requirement in 40 CFR 745.86(b)(7). Finally, EPA has removed the word "operations" from the exception, in response to one commenter who suggested that the word is unnecessary and confusing. EPA agrees that the word "operations" is

unnecessary in its description of emergency renovations. EPA intends to continue interpreting the term "emergency renovations" in the same way that it always has done, except that EPA has clarified that interim controls performed in response to a child with an elevated blood-lead level can be an emergency renovation.

#### B. Pre-Renovation Education

The Pre-Renovation Education Rule, promulgated pursuant to TSCA section 406(b) and codified at 40 CFR part 745, subpart E, requires renovators to provide owners and occupants of target housing with a lead hazard information pamphlet before beginning a renovation in the housing (Ref. 8). The pamphlet currently used for this purpose, "Protect Your Family From Lead in Your Home," was developed in accordance with TSCA section 406(a) and includes useful information on lead-based paint and lead-based paint hazards in general. This pamphlet is also used to provide lead hazard information to purchasers and renters of target housing under the Requirements for Disclosure of Information Concerning lead-Based Paint in Housing "Lead Disclosure Rule" (Ref. 30).

1. *New renovation-specific pamphlet.* EPA has developed a new lead hazard information pamphlet that addresses renovation-specific lead exposure concerns. The development of this pamphlet, including the public comments received on the format and content, is discussed in greater detail in a separate notice published elsewhere in today's **Federal Register**. This new renovation-specific pamphlet, entitled *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools* will better inform families about the risks of exposure to lead-based paint hazards created during renovations and promote the use of work practices and other health and safety measures during renovation activities (Ref. 31). This new pamphlet gives information on lead-based paint hazards, lead testing, how to select a contractor, what precautions to take during the renovation, and proper cleanup activities, while still incorporating the information already included in the original "Protect Your Family From Lead in Your Home" and mandated by section 406(a) of TSCA.

In the 2006 Proposal, EPA proposed to require renovation firms to distribute the new renovation-specific pamphlet (then titled *Protect Your Family From Lead During Renovation, Repair & Painting*) instead of the pamphlet currently used for this purpose (*Protect Your Family From Lead in Your Home*).

In general, most commenters were supportive of a requirement to distribute a new renovation-specific pamphlet for the purposes of TSCA section 406(b). One commenter stated a belief that the existing *Protect Your Family From Lead in Your Home* pamphlet had served its purpose well and the development of a new pamphlet should not be a priority. EPA agrees with the commenters who recognized the merit of providing renovation-specific information to owners and tenants before renovations commence. Therefore, this final rule will require renovation firms to distribute the new *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools* pamphlet before beginning renovations. This requirement to use the new pamphlet will become effective as discussed in Unit III.H. of this preamble.

2. *Information distribution requirements.* Other than the use of the new renovation-specific pamphlet, EPA did not specifically propose any changes to the existing information distribution requirements for target housing that does not meet the proposed definition of "child-occupied facility." One commenter contended that the existing information distribution requirements for multi-family target housing were extremely burdensome and resulted in tenants being given multiple notifications and copies of the lead hazard information pamphlet over the course of a year's time. This commenter requested that EPA modify the regulations to allow an annual distribution of renovation-related lead hazard information to tenants. However, as noted in interpretive guidance previously issued on the Pre-renovation Education Rule, EPA, in developing the final Pre-renovation Education Rule, carefully weighed whether a one-time pamphlet distribution would be adequate to meet the objectives of section 406(b) of the lead statute, and concluded that many, if not most, tenants would benefit from receiving the information in the lead pamphlet closer to the time that a renovation is to begin. Although some tenants may read lead information delivered on a "for-your-information" basis, many others are not likely to focus on potential lead hazards until a renovation affecting their unit is imminent, and would welcome receiving information on protecting their families from lead in a more timely fashion. Therefore, EPA has determined that an annual distribution of renovation-specific lead hazard information would not be an effective means of providing timely information to tenants.

However, with respect to renovations in common areas, EPA has determined that there are other effective ways of delivering lead hazard information to tenants in a timely manner. Specifically, the posting of informational signs during the renovation in places where the tenants of the affected units are likely to see them will provide these tenants with the information they need at the time that they need it. Depending upon the circumstances, renovation firms may find the posting of such signs to be less burdensome than mailing or hand-delivering this information to affected tenants. Indeed sign posting may be more effective than mail since it provides an immediate reminder. Therefore, EPA will allow renovation firms performing renovations in common areas of multi-unit target housing the option of mailing or hand-delivering general information about the renovation and making a copy of the pamphlet available to the tenants of affected units upon request prior to the start of the renovation, or posting informational signs while the renovation is ongoing. These signs must be posted where they are likely to be seen by all of the tenants of the affected units and they must contain a description of the general nature and locations of the renovation and the anticipated completion date. The signs must be accompanied by a posted copy of the pamphlet or information on how interested tenants can review or obtain a copy of the pamphlet at no cost to the tenants.

One commenter expressed concern about tenants either not seeing the "postings" because they use different entrances or distinguishing the renovation-specific lead hazard information "postings" from other "postings" in the general area. To take advantage of this option, this final rule requires renovation firms to use actual signs, not notices on tenant bulletin boards. In addition, these signs must be posted where the tenants of all of the affected units can see them. If the tenants of the affected units use several different entrances, a sign posted by one of the entrances would not be sufficient.

With respect to renovations in individual housing units, whether single family or multi-family, firms performing renovations for compensation in target housing must continue to distribute a lead hazard information pamphlet to the owners and tenants of the housing no more than 60 days before beginning renovations. This requirement, along with the associated requirements to obtain acknowledgments or document delivery, has not changed. For

renovations in the common areas of multi-unit target housing, firms must provide tenants with general information regarding the nature of the renovation and make the pamphlet available upon request, by mailing, hand-delivery, or posting informational signs. Firms must also maintain documentation of compliance with these requirements. The 2007 Supplemental Proposal contained additional proposed information distribution requirements for child-occupied facilities in target housing and in public and commercial buildings. This final rule incorporates those additional requirements.

Also, as proposed in the 2006 Proposal, this final rule deletes the existing 40 CFR 745.84 because it is duplicative. The section provided some details on submitting CBI and how EPA will handle that information. However, comprehensive regulations governing sensitive business information, including CBI under TSCA, are codified in 40 CFR part 2. The regulations in 40 CFR part 2 set forth the procedures for making a claim of confidentiality and describe the rules governing EPA's release of information. EPA received no comments on the proposed deletion of 40 CFR 745.84. Therefore, EPA is deleting this section and redesignating existing 40 CFR 745.85 as 40 CFR 745.84.

EPA is also taking this opportunity to reiterate who is responsible for complying with the information distribution responsibilities of 40 CFR 745.84. This provision of this final rule includes the existing Pre-Renovation Education Rule information distribution requirements as amended to include requirements applicable to child-occupied facilities. In interpretive guidance issued for the Pre-Renovation Education Rule, EPA shed additional light on the issue of who is responsible for complying with the information distribution requirements, particularly for renovation projects where multiple contractors are involved (Ref. 32). EPA stated that if the renovation is overseen by a general contractor, the general contractor is considered to be the "renovator" under the rule and is therefore responsible for ensuring that the information distribution requirements are met. EPA further stated that it would not consider a subcontractor to be a "renovator" for purposes of the Pre-Renovation Education Rule so long as the subcontractor has no direct contractual relationship with the property owner or manager relating to the particular renovation. EPA's reasoning is that the information distribution requirements

should be fulfilled by the person or entity with which the customer enters into the contract and compensates for the work—even if that work is subsequently contracted out.

This final rule changes the existing definition of “renovator” to refer specifically to the individual trained in work practices as distinct from the renovation firm. The final rule also specifies in 40 CFR 745.84 that the renovation firm is responsible for carrying out the information distribution requirements. Renovation firms may find it more efficient to have someone other than the certified renovator distribute the pamphlet and obtain the acknowledgement forms. In changing the definition of “renovator,” EPA is not changing its policies as to which entity, between a contractor and subcontractor, is responsible for carrying out the information distribution requirements. On the contrary, as to this issue, EPA intends to continue interpreting the regulatory responsibility for the information distribution requirements as it has in the past.

a. *Owners and occupants of public or commercial buildings containing a child-occupied facility.* The Pre-Renovation Education Rule covers only renovations in target housing. Thus, the information distribution requirements summarized in the preceding paragraph have not historically applied to firms performing renovations for compensation in public or commercial buildings. In the 2007 Supplemental Proposal, EPA proposed to require firms performing renovations for compensation in child-occupied facilities in public or commercial buildings to provide a lead hazard information pamphlet to the owner of the building as well as to an adult representative of the child-occupied facility, if the owner of the building and the child-occupied facility are different entities. This requirement was modeled on the Pre-Renovation Education Rule’s requirements for pamphlet distribution in rental target housing. As described in the 2007 Supplemental Proposal, EPA has determined, in accordance with TSCA section 407, that the distribution of lead hazard information, before renovation projects begin, to an adult representative of the child-occupied facility as well as to the owners of public or commercial buildings that contain child-occupied facilities is necessary to ensure effective implementation of this regulation. EPA believes that information on lead-based paint hazards, and lead-safe work practices that minimize the creation of hazards, will stimulate interest on the

part of child-occupied facilities and public or commercial building owners in these work practices and increase the demand for their use.

EPA received no comments on this aspect of the 2007 Supplemental Proposal. Therefore, the final rule includes this requirement as proposed. Renovation firms performing renovations for compensation in a child-occupied facility in a public or commercial building must provide the lead hazard information pamphlet entitled *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools* to the owner of the building. The renovation firm must either obtain written acknowledgment from the owner that the pamphlet was delivered or obtain a certificate of mailing for the pamphlet at least 7 days prior to the start of the renovation. In addition, the renovation firm must provide the pamphlet to an adult representative of the child-occupied facility if the facility and the building are owned by different entities. To document compliance with this requirement, the renovation firm must do one of the following:

- Obtain a written acknowledgment of pamphlet delivery from the adult representative of the child-occupied facility.
- Obtain a certificate of mailing for the pamphlet at least 7 days prior to the start of the renovation.
- Certify in writing that the pamphlet has been delivered to the child-occupied facility and the firm has been unsuccessful in attempting to obtain the signature of an adult representative of the child-occupied facility. This certification must contain the reason for the failure to obtain the signature.

b. *Parents and guardians of children under age 6 using a child-occupied facility.* The 2007 Supplemental Proposal would also have required a renovation firm performing a renovation for compensation in a child-occupied facility to provide information about the renovation to the parents and guardians of children under age 6 using the facility. This proposed requirement was designed to be comparable to the Pre-Renovation Education Rule provisions for informing adult occupants (who are not owners). EPA is finalizing this requirement as proposed. The renovation firm must either mail each parent or guardian the lead hazard information pamphlet and a general description of the renovation or post informational signs where parents and guardians would be likely to see them. The signs must be accompanied by a posted copy of the pamphlet or

information on how to obtain the pamphlet at no charge to interested parents or guardians. This requirement applies to renovations in child-occupied facilities in target housing as well as to renovations in child-occupied facilities in public or commercial buildings.

EPA received three comments on this aspect of the 2007 Supplemental Proposal. One commenter expressed support for this proposed requirement. The other two provided a number of reasons why the final rule should not include such a requirement. These commenters noted that renovation firms have no contractual connection with or contractual responsibility to the parents or guardians of children using a child-occupied facility. They believe that the child-occupied facility owner bears primary responsibility for maintaining a safe environment for children. They were also concerned that renovation firms might be called upon to spend a significant amount of additional time at a child-occupied facility to answer parents’ questions about lead poisoning. EPA is not persuaded by these comments. Although the firms may have no contractual connection with the parents or guardians of the children, that is often the case with occupants who are not owners. Although child-occupied facility owners bear responsibility for maintaining a safe environment for children, renovation firms are responsible for providing the pamphlet to owners and occupants. Once the renovation firm has distributed the pamphlet, it has no further obligation to educate the owners or occupants about lead poisoning. The pamphlet contains this information and refers to additional resources. EPA acknowledges that it may be difficult to provide copies of the pamphlet to each parent, which is why this final rule allows renovation firms to comply by posting informational signs where parents or guardians would be likely to see them.

c. *Other commenter suggestions regarding information distribution to owners and occupants.* EPA received a number of comments that recommended that additional information be provided to the owner and the occupant before and after a renovation occurs. These commenters believe that one of the purposes of this rule ought to be to provide enough information to owners and occupants so that they can understand the work practices and can adequately monitor the work being performed by renovation firms. EPA agrees that consumers will play a critical role in ensuring that the requirements of this regulation are being followed. EPA believes that some of the

suggested items of additional information, such as an explanation of the cleaning verification process, use of test kits, lead-based paint and dust testing recommendations, and how to find a qualified person to do testing, are best addressed through revisions to the new lead hazard informational pamphlet for renovations, *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools*. Those changes are described and discussed in a notice published elsewhere in today's **Federal Register**.

Other information distribution elements recommended by these commenters are likely to be provided by renovation firms already. For example, several commenters suggested that EPA require the renovation firm to provide emergency contact information to owners and occupants. EPA believes that, during the normal course of business, persons that hire renovation firms to perform renovations typically already have contact information. A person who contracts for a renovation is likely to be the owner of the property being renovated, and this person is also likely to be able to stop the work at any time so that he or she can confer with the certified renovator or supervisor. Occupants who are not the owners of the property being renovated often will not be the party contracting for the renovation and may not always have emergency contact information for the specific firm performing a renovation in their housing unit or building. However, these occupants will most likely have contact information for their landlord, and the landlord as the person most likely contracting with the renovation firm and therefore to have authority to direct the renovation work. In addition, renovations that occur in occupied rental housing are likely to be maintenance or repair projects that are performed by the landlord, the landlord's employees, or a maintenance company under contract to perform all maintenance for a particular landlord or rental complex.

Some commenters suggested that EPA require renovation firms provide a description of the work area and identify the designated entrance and exit from the work area. EPA is not requiring the renovation firm to designate a specific entrance and exit from the work area. This final rule requires the work area itself to be delineated by warning signs and plastic containment. EPA does not believe there is any utility in requiring the contractor to also provide the owner and occupant with a written description of the work area before the work begins.

Other commenters noted the existence of the Lead Disclosure Rule (Ref. 30), promulgated under section 1018 of the Residential lead-Based Paint Hazard Reduction Act of 1992, and codified at 40 CFR part 745, subpart F and 24 CFR part 35. These commenters stated that information about the use of spot test kits and the results of those tests, and well as any sort of dust testing information, are information pertaining to lead-based paint or lead-based paint hazards and would therefore have to be disclosed to subsequent purchasers or tenants of the renovated property under the Lead Disclosure Rule. These commenters further opined that a requirement for the renovation firm to provide this information to the owner of the property is necessary to ensure the information is available to be disclosed. With respect to the use of test kits to determine whether components to be affected by a renovation contain lead-based paint, EPA agrees with these commenters in their Lead Disclosure Rule analysis. Therefore, this final rule includes a requirement for the renovation firm to provide, within 30 days, information identifying the manufacturer and model of test kits used, a description of the components tested, including locations, and the results of the test kits to the person who contracted for the renovation. EPA also agrees that dust clearance sampling information is information pertaining to lead-based paint hazards and must be disclosed under the Disclosure Rule. If dust clearance sampling is performed instead of cleaning verification as permitted in 40 CFR 745.85(c), this final rule requires the renovation firm to provide, within 30 days, a copy of the dust clearance report to the person contracting for the renovation.

However, EPA does not believe that information related to cleaning verification is a record or report "pertaining to lead-based paint or lead-based paint hazards" for purposes of section 1018. As discussed in more detail in Unit III.E.7. of this preamble, cleaning verification is not the equivalent of clearance. The purpose of cleaning verification is to determine whether the dust that was created by the renovation, whether or not it contains lead, has been adequately removed. Although the disposable cleaning-cloth study, discussed in Unit III.E.7., and the Dust Study show that information is correlated with the hazard standard, the purpose of cleaning verification is not to detect lead-based paint hazards *per se*. In addition, under this final rule, cleaning verification must be completed for every renovation (i.e., it must

achieve "white glove" or the prescribed combination of wet and dry wipes must have been used), so the results of verification will always show that "white glove" or the equivalent has been achieved. As explained below, the cleaning verification is part of a package of work practices that, together, minimize exposure to hazards created by renovation. Also, as explained below, completing the cleaning verification process does not necessarily indicate that the surface does not have lead-based paint hazards unrelated to the renovation. Therefore, EPA will not require the results of cleaning verification activities to be disclosed under the Lead Disclosure Rule.

### C. Training and Certification

Under the current Lead-based Paint Activities Regulations at 40 CFR part 745, subpart L, both individuals and firms that perform lead-based paint inspections, lead hazard screens, risk assessments, and abatements must be certified by EPA. EPA proposed a similar, but not identical, regulatory scheme for individuals and firms that perform renovations.

This final rule requires all renovations subject to this rule to be performed by a firm certified to perform renovations. In addition, the rule requires that all persons performing renovation work either be certified renovators or receive on-the-job training from and perform key tasks under the direction of a certified renovator. In order to become a certified renovator, a person must successfully complete an accredited renovator course. EPA renovator certification allows the certified individual to perform renovations in any State, Territory, or Indian Tribal area that does not have a renovation program authorized under 40 CFR part 745, subpart Q. These requirements are discussed in greater detail in the following sections.

EPA is also creating, with this final rule, a dust sampling technician discipline. Although, as discussed in Unit III.E.7. of this preamble, this final rule does not allow dust clearance testing in lieu of post-renovation cleaning verification, except in limited circumstances, EPA still believes that there will be a market for the services of persons with dust sampling technician credentials. EPA recommends that any property owners who choose to have dust clearance testing performed after a renovation use a certified inspector, risk assessor, or dust sampling technician.

Finally, in response to one commenter who suggested that EPA's use of the term "person" and the term

“individual” was confusing, EPA has modified the regulatory text in the sections added or significantly revised by this final rule to use the term “person” when referring to both natural persons and judicial persons, such as renovation firms, property management companies, or units of government, and the term “individual” when referring only to natural persons.

1. *Individuals.* Under this final rule, EPA is establishing new individual certification disciplines for renovators and dust sampling technicians. All renovation activities covered by this final rule must be performed by certified renovators, or by renovation workers who receive on-the-job training in the work practices from a certified renovator.

a. *Certified renovators and renovation workers—i. Responsibilities of certified renovators.* The certified renovator assigned to a renovation is responsible for ensuring that the renovation is performed in compliance with the work practice requirements set out in 40 CFR 745.85. These requirements pertain to warning signs and work area containment, the restriction or prohibition of certain practices (e.g., high heat gun, torch, power sanding), waste handling, cleaning, and post-renovation cleaning verification. The certified renovator can perform these work practices herself or himself. Alternatively, the certified renovator can direct other workers to perform most of these work practices. However, the post-renovation cleaning verification requirements must be performed by a certified renovator. These requirements cannot be delegated to a worker. If the certified renovator directs the other workers to perform the work practices, the certified renovator must be at the work site during the critical phases of the renovation activity. The critical phases are posting warning signs, containing the work area, and cleaning the work site.

Although the certified renovator is not required to be on-site at all times, while the renovation project is ongoing, a certified renovator must nonetheless regularly direct the work being performed by other workers to ensure that the work practices are being followed. When a certified renovator is not physically present at the work site, the workers must be able to contact the renovator immediately by telephone or other mechanism. A certified renovator must:

- Perform the post-renovation cleaning verification described in 40 CFR 745.85(b).

- Perform or direct workers who perform all of the work practices described in 40 CFR 745.85(a).

- Provide training to workers on the work practices they will be using in performing their assigned tasks.

- Be physically present at the work site when the signs required by 40 CFR 745.85(a)(1) are posted, while the work area containment required by 40 CFR 745.85(a)(2) is being established, and while the work area cleaning required by 40 CFR 745.85(a)(5) is performed.

- Regularly direct the work being performed by other workers to ensure that the work practices are being followed, including maintaining the integrity of the containment barriers and ensuring that dust or debris does not spread beyond the work area.

- Be available, either on-site or by telephone, at all times that renovations are being conducted.

- When requested by the party contracting for renovation services, use an acceptable test kit to determine whether components to be affected by the renovation contain lead-based paint.

- Have with them at the work site copies of their initial course completion certificate and their most recent refresher course completion certificate.

- Prepare the records required to demonstrate that renovations have been performed in accordance with the requirements of this rule.

There are some slight revisions between the 2006 Proposal and this final rule, although none of these changes add to or detract from the renovator’s responsibilities. First, the Proposal used both the term “lead-safe work practices” and “work practices” in the preamble and in the proposed rule text. Although the work practices required in this final rule are lead-safe, for purposes of clarity, the final rule text has been changed to “work practices.” The reason for this change was to make text of the rule relating the renovator’s responsibilities text consistent with other provisions in the rule, particularly 40 CFR 745.85 (Work Practice Standards). Today’s work practices are lead-safe work practices. The work practice standards listed in § 745.85(a) are the same tasks that the other workers will be directed in and trained to do by the certified renovator (except for cleaning verification). In addition, the term “lead-safe work practices” has different meanings in different contexts, and this change is to make clear that the work practices required by this final rule are the work practices required in § 745.85(a).

Second, one of the renovator’s responsibilities listed in the preamble of the 2006 Proposal was to “[r]egularly

direct the work being performed by uncertified persons to ensure that lead-safe work practices are being followed, the integrity of the containment barriers is maintained, and dust or debris is not spread beyond the work area.” The word “regularly” was inadvertently omitted from the proposed regulatory text. To make the regulatory text consistent with the preamble, the word “regularly” has been added to the final regulatory text. In addition, EPA has slightly modified the regulatory text, consistent with the preceding paragraph, to clarify that maintaining the integrity of the containment barriers and ensuring that dust or debris does not spread beyond the work area are among the work practices required by the rule.

Some commenters agreed that it was unnecessary for a certified renovator to be on site at all times and believed that oversight by a certified renovator on a regular basis was sufficient. One commenter believed that the certified renovator should be on site at critical points including site preparations and isolation, end of day and end of project cleaning, and cleaning verification. Many other commenters thought a certified renovator should be on site at all times. Another stated that a certified renovator would not have to be on site at all times if workers received lead safe work practices training. After carefully considering the issue, EPA has concluded that requiring a certified renovator to be on site during critical phases of the work is sufficient to ensure that the work practices required by this final rule are followed. These work practices provide a mechanism to contain dust and debris generated by a job and a clean-up regimen following work that is designed to minimize exposure to lead-based paint hazards created during the renovation activity. Once the containment has been established and until cleanup begins, this final rule requires few, and simple, changes from the way renovation work is currently carried out. Specifically, renovation workers need to avoid using the specific practices prohibited by this final rule; they need to maintain the containment (e.g., avoid ripping or displacing the plastic); and they need to make sure that any waste generated is contained at the end of the day. These are important but relatively simple measures that EPA does not believe require formal classroom training, or the constant supervision of a certified renovator who has had formal training. Once the cleanup begins, the certified renovator will again be required to be present, either performing the cleanup

or directing others. In addition, the certified renovator must perform the cleaning verification. Thus, EPA has concluded that having a renovator on site at all times is unwarranted.

ii. *Renovator training.* To become a certified renovator, a person must successfully complete a renovator course accredited by EPA or by a State, Territorial, or Tribal program authorized by EPA.

Some commenters questioned the need to create a separate discipline for renovators. In their opinion, the existing abatement course is sufficient (with some basic changes) and to create a new program will take resources away from existing efforts in lead hazard control. EPA believes that there are sufficient differences between abatement and renovation activities to warrant different training and work practice requirements. Specific activities of an abatement contractor may be similar to those of a renovator (e.g., sanding, caulking, painting, sawing), but because the project goal is the permanent elimination of hazards, the application and methodology differ. Therefore, a significant portion of an abatement contractor's training is focused on abatement techniques and selection of the appropriate course of action for a variety of hazards. Renovators, on the other hand, do not seek to permanently eliminate lead hazards. Renovators perform maintenance and improvement tasks as directed by the consumer. The goal of EPA's renovator training and certification program is not to update the methodology a renovator uses to accomplish these tasks, with the exception of the practices prohibited or restricted by this final rule, but rather to introduce containment and cleaning methods to minimize exposure to lead-based paint hazards created by the renovation activity.

Several commenters saw the need for universal, standard renovator training. A commenter suggested that training for certified renovators be similar to the current EPA/HUD renovator and remodeler course. One commenter thought that standard training would make it easier when hiring someone to verify that they had completed the appropriate training. Another mentioned that it would encourage state-to-state reciprocity for training programs so that renovators would not need to take multiple courses with the same content. EPA plans to work with HUD to update the model EPA/HUD renovator training course to cover the requirements of this final rule. EPA agrees that reciprocity among authorized State, Territorial, and Tribal programs, and with the Federal

program, is preferable. However, as with the abatement program, authorized programs will have the ability to customize requirements and course content based on their particular needs. The Agency encourages jurisdictions seeking authorization to consider reciprocity of training as they develop their individual programs.

Commenters were also concerned about the cost of formal training. Commenters thought that EPA could provide free training to encourage renovator compliance, or that EPA funds for enforcement of the final rule would be better spent on training. EPA agrees that renovator training should be as inexpensive as possible. However, the training course costs will be established by independent training programs based on market forces. The total cost of conducting a training course depends upon the labor cost for the instructor(s), the cost of providing a classroom and other facilities, and other fixed costs. But the cost per trainee also depends on the number of trainees per class. Due to the large number of individuals who will need training, the Agency anticipates that demand will be high, keeping the cost per trainee lower than might otherwise be the case. But also due to that large volume, the Agency does not anticipate that it will be able to provide any significant source of funding to support training.

iii. *Other renovation worker training.* This final rule does not require everyone involved in performing a regulated renovation project to receive training from an accredited training provider. To allow flexibility for firms undertaking these projects, the rule allows firms to use other workers to perform renovation activities as long as they receive on-the-job training (OJT) in work practices from a certified renovator. This training must include instruction in the specific work practices that these workers will be responsible for performing. OJT training occurs while the worker is engaged in productive work and which provides knowledge and skills essential to the full and adequate performance of the job. OJT may also be structured through a planned process of developing competence on units of work by having the certified renovator train the worker at the work setting or a location that closely resembles the work setting. Although there is no specific requirement for "refresher training," OJT must be provided for each worker for each job to the extent necessary to ensure that that worker is adequately trained for the tasks he or she will be performing.

If, under the direction of the certified renovator, the workers will be posting warning signs, establishing containment, or cleaning the work area after the renovation, the certified renovator must provide instruction, either verbally or through demonstration, to the workers in how to perform these tasks. With respect to other activities, including work performed while the certified renovator is not present, the certified renovator must provide instruction, either verbally or through demonstration, in how to perform the work without using work practices prohibited by this rule, how to maintain the integrity of the containment barriers (e.g., taking care not to tear the plastic), and how to avoid spreading dust or debris beyond the work area (e.g., vacuuming clothing and tools with a HEPA vacuum before leaving the work area). In any event, the certified renovator remains responsible for ensuring that this work is done in compliance with the rule's requirements, e.g., that containment sufficient to prevent release of dust or debris from the work site has been established and that clothing and tools were adequately cleaned before leaving the work area.

Workers need not be trained in work practices that do not pertain to the renovations they will be performing. If the certified renovator will be the one posting warning signs, establishing containment, and cleaning the work area after the renovation, it is not necessary for the certified renovator to provide instruction on these tasks to any workers who will be used elsewhere on the project. Similarly, workers hired to perform only exterior projects need not receive training in how to clean an interior work area after a renovation.

EPA chose to allow OJT to alleviate industry concerns raised during the SBREFA panel process regarding high employee turnover rates within the industry and the potential for high training costs if all workers were required to be certified. The Agency concluded that allowing OJT could be done effectively and would provide flexibility for firms undertaking renovation projects. EPA determined that OJT can be effectively delivered by a certified renovator because the requirements themselves are simple and easy to understand. This final rule also requires a certified renovator be assigned and responsible for each project to ensure compliance with required standards.

Some commenters agreed that OJT by a certified renovator is sufficient for training workers. One commenter stated that as long as a specific person is

designated to oversee the job, there is no need for all workers on site to have formal training. The commenter noted the similarity between this approach and OSHA's "competent person" standard. EPA agrees that there are some similarities between the approach in this final rule and OSHA's "competent person" standard.

However, the majority of commenters had concerns about the use of OJT to train workers. Many argued that OJT is insufficient for providing workers with the necessary skills and thought renovation workers should receive formal LSWP training such as a 1 day course equivalent to that required for certified renovators. Some of these commenters also thought that workers should be certified or licensed.

Some commenters were concerned that the content of OJT is not clearly defined in the rule. One believed EPA should impose a structured OJT program in order to produce consistent, accurate, and comprehensive training outcomes. Others thought more time was needed for OJT, with suggestions ranging from 5 to 6 hours of training to 3 to 4 days. EPA has neither established a structured OJT program nor required a specific length of time for OJT because the OJT required will vary widely from project to project, depending upon how the other workers are used. As discussed above, if the worker will not be establishing containment, there is no need to train the worker in how to establish containment. If the worker in question is an electrician, and he will merely be installing an electrical outlet as part of a larger job, then there may be no need to provide any training to this worker other than instructing him not to disturb the plastic on the floor and making sure that he and his tools are free of dust and debris before leaving the work area.

In addition, as discussed in Unit III.C.1.c.iii. of this preamble, EPA will "grandfather" persons with previous EPA/HUD lead-safe work practices training or accredited abatement supervisor or worker training. To become certified renovators, these persons must take a renovator refresher course in order to ensure that they are acquainted with how to use test kits to determine whether lead-based paint is present on a component and how to perform cleaning verification. However, even if they do not take the refresher course and become certified renovators, these individuals have still received significant training in the required work practices such as establishing containment and cleaning the area after the job is finished. They are not likely to need much, if any OJT, depending

upon how recent their training was. Similarly, although not recognized for the purpose of "grandfathering" by EPA, HUD's Lead Maintenance course would also provide a great deal of information on lead-safe work practices. Someone who had taken the Maintenance course recently would also not be likely to need much, if any, OJT.

Several commenters thought that workers would not receive adequate OJT because the certified renovator was not qualified to train others. They noted that the certified renovators are renovators, not professional trainers, and do not necessarily have the skills necessary for teaching others.

After consideration of these commenters' concerns, EPA has concluded that OJT is sufficient for training some renovation employees. The work practice standards of this final rule are not complex or difficult to institute, and those activities critical to ensuring the lead safe outcome of the project are either conducted by certified renovators or directed by certified renovators. The remainder of the project is often just the renovation itself, and EPA was careful when developing these final work practices to minimize the effect on the way typical renovations are conducted. With the exception of the prohibition of certain unsafe practices, renovation methods are unaffected by this rule. For example, the work practices of this final rule do not affect the method a firm would employ to replace a window. A certified renovator should be able to demonstrate to other firm employees work practices, such as how to work within containment and how to move into and out of containment without spreading lead dust and debris. EPA does not believe a professional trainer is needed to train renovation workers, who will be directed by a certified renovator if they will be performing any of the key tasks associated with the work practices. Most of the people performing renovations today are not trained by professional trainers. They are trained on-the-job by experienced firm employees. For example, persons learn the various techniques for removing and replacing windows from others in the firm who are experienced in these techniques. Renovation workers can learn work practices in the same way from a certified renovator.

Although the work practices in the final regulation are sufficiently straightforward and can be easily demonstrated by the certified renovator, EPA agrees that renovators do not necessarily consider themselves to be trainers. Therefore, accredited renovator training will include a train-the-trainer

component to provide instruction on providing OJT. In addition, instructors will be expected to provide training tips to renovators during hands-on instruction. As the instructor is showing the renovator how to do these work practices, he or she can also provide instruction on how to show others how to do these work practices. Accordingly, EPA has concluded that certified renovators will be adequately prepared to provide OJT that is sufficient and appropriate for the purposes of this rule.

Commenters expressed concerns that the rule would not provide appropriate training for the large number of non-English speaking workers in the renovation field. One of these commenters suggested that EPA consider such means as graphic manuals, video presentations, and translators to aid in training non-English speaking workers. Another thought that a hands-on only training process overlooked possible language barriers between the certified renovator and trainee. EPA agrees that OJT can be conducted effectively by demonstration by the certified renovator or through the use of graphic training materials. The Agency plans to develop materials to assist certified renovators in conducting on-the-job training. To the extent possible, these materials will use a graphic format that does not require the use of any particular language. Moreover, renovation firms currently communicate job needs to their employees, and EPA doubts that firms routinely hire people with whom they are unable to communicate. Finally, EPA emphasizes again that the certified renovator and the renovation firm are responsible for ensuring compliance with this final rule. If the certified renovator has doubts about an employee's understanding of or ability to comply with the requirements that are relevant to the work he or she is to undertake, the certified renovator may need to be on site and direct the work more regularly than he otherwise would, or may need to perform certain tasks himself. However, given the relative simplicity of the work practices that are required between establishment of containment and cleanup, EPA does not expect that this will often be necessary.

Some commenters were concerned that OJT does not include a means to assess worker competence such as an examination. Commenters were also concerned about ongoing training needs and suggested requiring worker refresher training on a periodic or annual basis. This final rule requires a certified renovator to direct workers with OJT as necessary to ensure that

work practices are being followed. This will necessarily involve a period of observation after OJT is provided to ensure that the worker has understood and is following the work practices pertinent to his assigned duties. In addition, to some extent, OJT is continuous and certified renovators will likely need to continue to provide training to workers based on the activities that they will be expected to perform on a particular job. A certified renovator would not need to provide OJT to the same worker on consecutive jobs if the worker is performing the same work, but if the nature of the work varies, or if the firm hires a new employee, relevant OJT would have to be provided for the work to be performed. EPA believes that the continuous nature of OJT obviates the need for a refresher training requirement in the rule and will serve as an incentive for firms to have their permanent employees trained as certified renovators. EPA also believes that refresher training *per se* is not practical, given that OJT will be specific to the job in question.

Some commenters wanted some form of verification that a worker had received training, such as a certificate of training or a sticker which could be placed on an ID card. Because each worker is not likely to receive training in all aspects of lead safe work practices, a certificate or other form of training completion that would indicate an employee's OJT is complete is not appropriate for this program. It is important to note that OJT is not as portable as certified renovator training nor is it intended to be. Certified renovators carry a training certificate that they can present to each new employer to prove that they have received training in the required work practices. There is no corresponding document that can be used to verify OJT by a previous employer. Renovation firms will generally need to provide OJT each time a new worker is used. It is also the renovation firm's responsibility to adequately document the elements of OJT provided to each worker on each project.

Because a certified renovator must be assigned to each and every renovation covered by this regulation, EPA anticipates that some renovation contractors and property management companies will find that they achieve maximum efficiency and flexibility by qualifying all of their permanent employees who perform renovations as certified renovators. However, due to the industry's high employee turnover rates and short-term labor needs, the Agency believes that training flexibility

in the form of on-the-job training is needed. EPA believes that such flexibility will provide firms the ability to respond to variable labor demands and will not compromise the safety of this final rule. EPA is concerned that a regulation requiring formal, classroom training for every worker performing any renovation activity would be unrealistic for this industry and therefore less effective at ensuring that the renovation work force is trained in work practices than the more balanced training requirements in this final rule.

b. *Dust sampling technicians.* Except as provided in 40 CFR 745.85(c), this final rule does not allow dust clearance sampling to be performed in lieu of post-renovation cleaning verification. However, some property owners may still choose to have dust clearance sampling performed after the renovation. Dust sampling technicians certified in accordance with this final rule will be available to perform dust clearance sampling after renovations and for purposes of HUD's Lead Safe Housing Rule.

Some commenters questioned the need for dust sampling technicians. One stated that there is no benefit to creating a third inspection-type discipline that has such limited training requirements. Two commenters thought that only EPA- or State-certified risk assessors should be allowed to collect dust wipe clearance samples and two commenters thought that dust sampling technicians should be required to work under a certified risk assessor or inspector.

In 1999, in order to make accurate dust testing for lead more available and affordable, Congress provided EPA with funding for the development of a 1 day dust sampling technician course. Congress also encouraged the Agency to promote the recognition of this discipline. EPA completed the development of the course, entitled *Lead Sampling Technician Training Course*, in July of 2000. This course provides instruction on how to conduct a visual assessment for deteriorated paint, collect samples for lead dust, and interpret sample results. The training curriculum provides clearance sampling instruction that is equivalent to that presented in inspector and risk assessor courses, in terms of time and quality with respect to dust sampling. Therefore, EPA can recommend that property owners and others who wish to have optional dust sampling performed use the services of a certified inspector, risk assessor, or dust sampling technician.

c. *Certification of individuals—i. Initial certification.* Section 745.90 of this final rule addresses renovator and

dust sampling technician certification. To become a certified renovator, a person must successfully complete a renovator course accredited by EPA or by a State, Territorial, or Tribal program authorized by EPA under 40 CFR part 745, subpart Q. The renovator course accreditation requirements are based on the joint EPA-HUD model curriculum entitled *Lead Safety for Remodeling, Repair, & Painting*. EPA is not requiring additional education or work experience of persons wishing to become certified renovators. EPA renovator certification will allow the certified individual to perform renovations covered by this section in any State or Indian Tribal area that does not have a renovation program authorized under 40 CFR part 745, subpart Q. To become a certified dust sampling technician, a person must successfully complete a dust sampling technician training course that has been accredited either by EPA or by a State, Territorial, or Tribal program authorized by EPA under 40 CFR part 745, subpart Q. EPA is not requiring additional education or work experience of persons wishing to become certified dust sampling technicians.

The final rule also establishes, in 40 CFR 745.91, procedures for suspending, revoking, or modifying an individual's or firm's certification. These procedures are very similar to the current procedures in place at 40 CFR 745.226(i) for suspending, revoking, or modifying the certification of an individual who is certified to perform lead-based paint activities. In addition, under the final rule, renovator certification can be suspended, revoked, or modified if the certified renovator does not conduct projects to which he or she is assigned in accordance with the work practice requirements of this final rule. Finally, in order to ensure that the effect of a suspension, revocation, or modification determination is clear to the certified individual or firm, EPA has added language to this section ensuring that the commencement date and duration of a suspension, revocation, or modification is identified in the Presiding Officer's decision and order. EPA has also added language to this section to clarify what steps an individual or firm must take after such an action in order to exercise the privileges of certification again. An individual whose certification has been suspended must take a refresher training course in the appropriate discipline in order to make his or her certification current, while an individual whose certification has been revoked must take another initial training course in order to be re-certified. A firm whose

certification has been suspended need not do anything after the suspension ends to become current again, as long as the suspension ends before the firm's certification expires. If the firm's certificate expires during the suspension, the firm must apply for recertification after the suspension ends. If a firm's certification is revoked, the firm must apply for certification after the revocation period ends in order to be certified.

Some commenters questioned the need for a certification requirement, emphasizing that it is the training that is important rather than the certification. One commenter thought that, since firms will have to be certified, there was no added value in certifying renovators. Others supported certification and some thought renovators should have to apply to EPA to receive their certification in the same way that abatement workers do, stating that no regulatory program can work unless the regulating agency can reliably identify and contact the regulated individuals. One commenter thought that there should also be a work experience requirement for certified renovators.

EPA believes that renovators must be certified so that the Agency has a mechanism to verify an individual has received the appropriate training. In addition, if a contractor does not comply with the regulatory standards then withdrawal of the renovator's certification is a regulatory remedy available to the Agency. The final rule includes a certification process that is more streamlined than the individual certification process of the Agency's abatement regulations. In the abatement program, an individual must complete training, then submit an application and fee to the Agency and, depending on the discipline, take a third party exam in order to be certified. In contrast, an individual will be considered a certified renovator upon successful completion of an accredited training program, and the accredited training program is required to submit identifying and contact information to EPA regarding the individuals that they have trained. EPA does not believe that work experience requirements are necessary because previous experience in the construction or renovation industry would do little to help an individual understand or perform the work practices, which are not a standard practice in the industry. Consequently, there is no relevant work experience for EPA to require. In addition, the work practices required by this final rule are sufficiently straightforward that EPA does not believe it is necessary to

require work experience in addition to certified renovator training.

Because EPA is not requiring any additional education or work experience requirements, or a third-party examination similar to that taken by inspector, risk assessor, or supervisor candidates, EPA believes that there is little value in requiring candidates to apply to EPA to receive their renovator or dust sampling technician certification. Currently, the only certified discipline without prerequisites in education or experience, or a third-party examination, is the abatement worker. When candidates for worker certification apply to EPA, EPA verifies that the copy of the training course certificate submitted with the application is from an accredited training provider. Without requiring renovators or dust sampling technicians to apply to EPA for certification EPA will still receive course completion information from course providers. With this information, EPA will have a complete list of certified renovators and will be able to check to see if a particular course completion certificate holder appeared on a course completion list submitted by the training course provider identified on the certificate. When EPA inspects a renovation job for compliance with these regulations, EPA will have the ability to verify, to the same extent, the validity of a course completion certificate held by a renovator at that job. Therefore, under this final rule, EPA is requiring that a course completion certificate from an accredited training provider serve as a renovator's or dust sampling technician's certification. To facilitate compliance monitoring, the rule requires a certified renovator or dust sampling technician to have a copy of the course completion certificate at the job site.

Several commenters saw the need for a way to determine that a certified renovator was current with applicable training requirements. Suggestions for proof of training included issuing photo IDs, issuing a hard card or certificate, and establishing a national database of workers with current training. One commenter thought that it should be the responsibility of the training provider to certify that renovators have successfully completed the training requirements and to then supply EPA with all of the information. EPA agrees that there must be a way to determine if a renovator is certified and is current with training requirements. The Agency agrees that a database of renovator information would be important, and will include identifying and training information in

the Agency's Federal Lead Paint Program (FLPP) database. However, this database will only contain information about certified renovators working in federally administered jurisdictions. In addition, the Agency will require training programs to include a photograph of the individual who completes renovator or dust sampling technician training on the training certificate and to submit that photo to the Agency to be included in the database record. This will enable inspectors to determine whether a particular individual has received training from an accredited training provider.

Some of the commenters had concerns specific to small businesses. Two commenters stressed the need for outreach programs to inform small businesses of new compliance requirements. One commenter stated that smaller firms should not be exempt from training and certification requirements; another thought that small businesses would continue to operate without appropriate training and certification unless there was some type of enforcement. EPA understands that the task of communicating this final rule requirements to the renovation community will be challenging. Therefore, EPA is developing a comprehensive outreach and communications program to support this final rule. This will include outreach to contractors as well as consumers. In addition the Agency plans to roll out a compliance assistance effort to complement this undertaking.

One commenter suggested that authorized State, Territorial, or Tribal programs include the requirement for training as part of a contractor licensing function, thereby eliminating the need to create a special (new) lead renovator's certification or license. EPA agrees that where a State, Territory, or Tribe has a pre-existing relationship with renovation contractors, such as a renovators' licensing program, the simplest and most cost-effective approach may be to incorporate a requirement for lead safe work practice training into that pre-existing program.

ii. *Recertification.* Under this final rule EPA is requiring that renovators and dust sampling technicians who wish to remain certified take refresher training every 5 years. In addition, EPA is requiring that the refresher training course be half the length of the initial course. This is consistent with current practice for certified individuals performing lead-based paint activities. If an individual does not take a refresher course within 5 years of the date he or she completed the initial course or the

previous refresher course, that individual's certification will expire on that date and that individual may no longer serve as a certified renovator or dust sampling technician. There is no grace period. To become certified again, the individual must take another initial training course. In addition, under this final rule a certified renovator may choose to take the initial renovator course instead of a refresher course to allow maximum flexibility, particularly if for some reason the person was unable to attend a refresher course.

Some commenters asserted that the refresher requirement was of no benefit or imposed an unnecessary cost. These commenters reasoned that lead-safe work practices were not likely to change significantly over time. One noted that HUD's experience with lead-safe work practices training since 1999 has not revealed a need for refresher training in their program. Commenters who supported refresher training differed on the frequency of the training and the length of the refresher course. Some agreed that refresher training should be required every 3 years, others thought it should be required biennially, annually, or every 3 to 6 months. One commenter agreed with the proposed 4-hour course, two commenters thought a 4-hour course was too short, and one thought that instead of completing a refresher, certified renovators should be required to retake the initial training course every 2 to 3 years. One commenter stated that a certified renovator should have the opportunity to take a third party test and allow the renovator to "test out" of having to complete the refresher course.

After considering the range of concerns raised by the commenters, EPA has concluded that refresher training is important for renovators and dust sampling technicians and for the Agency. During the refresher course, renovators and dust sampling technicians are given the opportunity to discuss any point of emphasis and to be updated on changes in the regulations or technical issues. For example, refresher training could be used to update renovators on availability of new techniques and products, such as test kits. Refresher training provides the Agency with a mechanism to pass along critical information to certified individuals and to keep track of the workforce. However, EPA has determined that these purposes can be adequately served by 4-hour refresher training every 5 years, instead of every 3 years. This provides a reasonable period between trainings that limits training costs while providing an opportunity to update renovators and

dust sampling technicians regarding regulations and technical issues. EPA believes that most renovators will not also be certified abatement professionals, so the difference in the length of time between required refresher courses should not confuse individuals about their responsibilities under the two programs.

iii. *Grandfathering.* Under this final rule, individuals who successfully completed an accredited abatement worker or supervisor course, and individuals who successfully completed either HUD, EPA, or the joint EPA/HUD model renovation training courses may take an accredited refresher renovation training course in lieu of the initial renovation training to become a certified renovator. In addition, individuals who have successfully completed an accredited lead-based paint inspector or risk assessor course, but are not currently certified in the discipline, may take an accredited refresher dust sampling technician course in lieu of the initial training to become a certified dust sampling technician. Inspectors and risk assessors who are certified by EPA or an authorized program are qualified to perform dust sampling as part of lead hazard screens, risk assessments, or abatements. Therefore, it would be unnecessary for a certified inspector or risk assessor to seek certification as a dust sampling technician.

A number of commenters thought that certification should be given to those who have already attended appropriate training. Some of these commenters thought that individuals who had received EPA, HUD, or State-approved Lead Safe Work Practices (LSWP) training should be grandfathered. One commenter thought individuals that had completed OSHA's 40-hour Hazardous Waste Operations and Emergency Response course should also be grandfathered and another wanted individuals that had taken the National Apartment Association's lead worker training course to be grandfathered. Four commenters were in favor of grandfathering dust sampling technicians that have previously completed a dust sampling course.

Most of the commenters who expressed an opinion agreed with grandfathering previously trained individuals but suggested that there be restrictions. Some of these commenters thought that in order to receive credit the training needed to have been completed in the last 2 to 3 years while others thought that certification should be given only if a refresher or "gap" course were completed. One commenter thought that the quality of the previous

course should be taken into account and another commenter thought that a one-size fits all rule would not be appropriate and that factors including previous course requirements, the facility that had provided the training, and time elapsed since initial training should all be considered in establishing requirements for streamlined certification. One commenter opposed grandfathering, noting that existing courses do not cover lead test kits, cleaning verification, or recordkeeping in accordance with the proposed rule.

The final rule allows individuals who have successfully completed model renovation courses developed by HUD or EPA and individuals who have taken an abatement worker or supervisor course accredited by EPA or an authorized State or Tribal program to become certified renovators by taking EPA-accredited renovator refresher training. Individuals who have successfully completed a risk assessor or inspector course accredited by EPA or an authorized State or Tribal program can become certified dust sampling technicians by taking EPA-accredited dust sampling technician refresher training. EPA is recognizing only EPA and HUD model renovation training and lead-based paint activities training courses accredited by EPA or an authorized State, Territorial, or Tribal program because EPA has not sufficiently evaluated the content of other courses. In addition, it would be unwieldy to develop the content of multiple refresher courses based on the content of different initial training courses. While the recognized training provides meaningful information relevant to these disciplines, it does not include some specific requirements of this final regulation. Therefore, EPA is requiring these individuals to receive refresher training to ensure they are familiar with the requirements of this final rule. Training providers are required to notify EPA of the individuals who become certified by successfully completing the refresher training. This information will support EPA's compliance assistance programs.

#### 2. *Renovation firms*—a.

##### *Responsibilities of renovation firms.*

Under this final rule, firms must ensure that all persons performing renovation activities on behalf of the firm are either certified renovators or have been trained and are directed by a certified renovator in accordance with 40 CFR 745.90. The firm is responsible for assigning a certified renovator to each renovation performed by the firm and ensuring that the certified renovator discharges all of the responsibilities identified in this final rule. The firm must ensure that the

information distribution requirements in 40 CFR 745.84 are met. As mentioned above, the certified renovator is responsible for ensuring compliance with 40 CFR 745.85 at all renovations to which he or she is assigned. The firm is also responsible for ensuring that all renovations performed by the firm are performed using certified renovators and in accordance with the work practice standards in proposed 40 CFR 745.85.

Where multiple contractors are involved in a renovation, any contractor who disturbs, or whose employees disturb, paint in excess of the minor maintenance exception is responsible for compliance with all of the requirements of this final rule. In this situation, renovation firms may find it advantageous to decide among themselves which firm will provide pre-renovation education to the owners and occupants, which firm will establish containment, and which firm will perform the post-renovation cleaning and cleaning verification. For example, a general contractor may be hired to conduct a multi-faceted project involving the large-scale disturbance of paint, which the general contractor then divides up among several subcontractors. In this situation, having the general contractor discharge the obligations of the Pre-Renovation Education Rule is likely to be the most efficient approach, since this only needs to be done once. With regard to containment, the general contractor may decide that it is most cost-effective to establish one large work area for the entire project. In this case, from the time that containment is established until post-renovation cleaning verification occurs, all general contractor and subcontractor personnel performing renovation tasks within the work area must be certified renovators or trained and directed by certified renovators in accordance with this rule. In addition, these personnel are responsible for ensuring the integrity of the containment barriers. The cleaning and post-renovation cleaning verification could be performed by any properly qualified individuals, without regard to whether they are employees of the general contractor or a subcontractor. However, all contractors involved in the disturbance of lead-based paint, or who perform work within the work area established for the containment of lead dust and debris, are responsible for compliance with this final rule, regardless of any agreements the contractors may have made among themselves.

b. *Certification of firms*—i. *Initial certification*. This final rule requires

firms that perform renovations, as defined by this rule, to be certified by EPA. EPA is adding a definition of “firm” to § 745.83 to make it clear that this term includes persons in business for themselves, i.e., sole proprietorships, as well as Federal, State, Tribal, and local governmental agencies, and nonprofit organizations. Firms covered by this final rule include firms that typically perform renovations, such as building contractors or home improvement contractors, as well as property management companies or owners of multi-family housing performing property maintenance activities that include renovations within the scope of this final rule.

This final rule provides information about the certification and re-certification process, establishes procedures for amending and transferring certifications, and identifies clear deadlines. A firm wishing to become certified to perform renovations must submit a complete “Application for Firms,” signed by an authorized agent of the firm, along with the correct certification fee. EPA intends to establish firm certification fees in a separate rulemaking. EPA will approve a firm’s initial application within 90 days of receipt if it is complete, including the proper amount of fees, and if EPA determines that the environmental compliance history of the firm, its principals, or its key employees does not show an unwillingness or inability to comply with applicable environmental statutes or regulations. EPA will generally consider the following to be an indication that the applicant is unwilling or unable to comply with environmental statutes or regulations if, during the past 3 years, the applicant has:

- A criminal conviction under a Federal environmental statute;
- An administrative or civil judgment against the applicant for a willful violation of a Federal environmental statutory or regulatory requirement; or
- More than one administrative or civil judgment for a violation of a Federal environmental statute. Violations that involve only recordkeeping requirements will not be considered.

If the application is approved, EPA will establish the firm’s certification expiration date at 5 years from the date of EPA’s approval. EPA certification will allow the firm to perform renovations covered by this section in any State or Indian Tribal area that does not have a renovation program authorized under 40 CFR part 745,

subpart Q. If the application is incomplete, EPA will notify the firm within 90 days of receipt that its application was incomplete, and ask the firm to supplement its application within 30 days. If the firm does not supplement its application within that period of time, or if EPA’s check into the compliance history of the firm revealed an unwillingness or inability to comply with environmental statutes or regulations, EPA will not approve the application and will provide the applicant with the reasons for not approving the application. EPA will not refund the application fees. A firm could reapply for certification at any time by filing a new, complete application that included the correct amount of fees.

This final rule provides firms with more time to amend their certification whenever a change occurs. A firm must amend its certification within 90 days whenever a change occurs to information included in the firm’s most recent application. If the firm failed to amend its certification within 90 days of the date the change occurred, the firm would not be authorized to perform renovations until its certification was amended. Examples of amendments include a change in the firm’s name without transfer of ownership, or a change of address or other contact information. To amend its certification, a firm must submit an application, noting on the form that it was submitted as an amendment. The firm must complete the sections of the application pertaining to the new information, and sign and date the form. The amendment must include the correct amount of fees. Amending a certification will not affect the validity of the existing certification or extend the certification expiration date. EPA will issue the firm a new certificate if necessary to reflect information included in the amendment. Firm certifications are not transferable—if the firm is sold, the new owner must submit a new initial application for certification in accordance with 40 CFR 745.89(a). The final rule also includes procedures for suspending, revoking, or modifying a firm’s certification. These procedures are very similar to the current procedures in place for suspending, revoking, or modifying the certification of a firm that is certified to perform lead-based paint activities.

Some commenters questioned the need for firm certification, while others, including industry representatives, supported it. The Agency believes that firm certification is necessary for several reasons. First, certification is an important tool for the Agency’s

enforcement program. To become certified, a firm acknowledges their responsibility to use appropriately trained and certified employees and follow the work practice standards set forth in the final rule. This is especially important under this final rule, since the certified renovator is not required to perform or be present during all of the renovation activities. Under these circumstances, it is important for the firm to acknowledge its legal responsibility for compliance with all of the final rule requirements, since the firm both hires and exercises supervisory control over all of its employees. Should the firm be found to violate any requirements, its certification can be revoked, giving the firm a strong incentive to ensure compliance by all employees.

ii. *Recertification.* Under 40 CFR 745.89(b), a certified firm maintains its certification by submitting a complete and timely "Application for Firms," noting that it is an application for re-certification, and paying the required re-certification fee. With regard to the timeliness of the application for re-certification, if a complete application, including the proper fee, is postmarked 90 days or more before the date the firm's current certification expires, the application will be considered timely and sufficient, and the firm's existing certification will remain in effect until its expiration date or until EPA has made a final decision to approve there-certification application, or not, whichever occurs later. If the firm submits a complete re-certification application fewer than 90 days before the date the firm's current certification expired, EPA might be able to process the application and re-certify the applicant before the expiration date, but this would not be guaranteed. If EPA does not approve the re-certification application before the existing application expired, the firm's certification expires and the firm is not able to conduct renovations until EPA approves its re-certification application. In any case, the firm's new certification expiration date will be 5 years from the date the existing certification expired.

If the firm submits an incomplete application for re-certification and EPA does not receive all of the required information and fees before the date the firm's current certification expires, or if the firm does not submit its application until after its certification expired, EPA will not approve the firm's re-certification application. The firm cannot cure any deficiencies in its application package by postmarking missing information or fees by its certification expiration date. All

required information and fees must be in EPA's possession as of the expiration date for EPA to approve the application. If EPA does not approve the application, the Agency will provide the applicant with the reasons for not approving the re-certification application. Any fees submitted by the applicant will not be refunded, but the firm can submit a new application for certification, along with the correct amount of fees, at any time.

As with initial applications, this final rule includes a description of the actions EPA may take in response to an application for re-certification and the reasons why EPA will take a particular action. This section is identical to the process for initial applications, except that EPA will not require an incomplete application to be supplemented within 30 days of the date EPA requests additional information or fees. In the re-certification context, the firm must make its application complete by the date that its current certification expires.

Several commenters thought that firms should not be required to be re-certified because the firm's certification is not based on knowledge or technology, but rather on a promise to abide by the rules. The Agency believes that firm re-certification is an important element of the final regulation. Firm re-certification provides a mechanism for EPA to keep its records current with respect to firms actively engaged in renovations. Re-certification also provides a means for EPA to ensure that it has updated firm contact information. Re-certification also prompts the firm to positively reaffirm their commitment to adhere to the requirements set forth in this regulation. Finally, re-certification allows EPA an opportunity to review a firm's compliance history before it obtains re-certification. However, EPA has determined that these purposes can be adequately served by re-certifying renovation firms every 5 years instead of every 3 years as proposed.

#### *D. Training Provider Accreditation and Recordkeeping*

EPA is amending the general accreditation requirements of 40 CFR 745.225 to apply to training programs that offer renovator or dust sampling technician courses for certification purposes. The regulations describe training program qualifications, quality control measures, recordkeeping and reporting requirements, as well as suspension, revocation, and modification procedures. Amendments to § 745.225 add specific requirements for the renovator and dust sampling technician disciplines. Also included are minimum training curriculum,

training hour, and hands-on requirements for courses leading to certification as a renovator or a dust sampling technician. As discussed in the previous Unit of this preamble, to assist EPA compliance inspectors in determining whether a renovator at a renovation work site successfully completed an accredited renovator training course, this final rule also requires providers of renovator training to take a digital photograph of each individual who successfully completes a renovator training course, include that photograph on the individual's course completion certificate, and provide that photograph to EPA along with the training course provider's post-training notification required by 40 CFR 745.225(c)(14).

Training course providers that obtained accreditation to offer renovator or dust sampling technician training would have to comply with the existing recordkeeping requirements for lead-based paint activities training course providers. These existing recordkeeping provisions require providers to maintain records of course materials, course test blueprints, information on how hands-on training is delivered, and the results of the students' skills assessments and course tests. EPA received no comments on this aspect of the proposed recordkeeping requirements. These requirements are currently working well for lead-based paint activities training providers and EPA believes they will work equally well for renovation training providers. Therefore, EPA is finalizing this requirement as proposed. Training course providers who receive accreditation to provide renovator or dust sampling technician courses must comply with the recordkeeping requirements of 40 CFR 745.225(i).

1. *Renovator training.* The minimum curriculum requirements for an initial renovator course are described in 40 CFR 745.225(d)(6). The topics include the roles and responsibilities of a renovator; background information on lead and its health effects; background on applicable Federal, State, and local regulations and guidance; use of acceptable test kits to test paint to determine whether it is lead-based paint; methods to minimize the creation of lead-based paint hazards during renovations; containment and clean-up methods; ways to verify that a renovation project has been properly completed, including cleaning verification; and waste handling and disposal. Hands-on activities relating to renovation methods, containment and clean-up, cleaning verification, and waste handling would be required in all courses. Section 745.225(c)(6)(vi)

establishes the minimum length for an initial renovator course at 8 training hours, with 2 hours being devoted to hands-on activities.

Commenters raised concerns and had suggestions regarding how certified renovator training should be conducted in three broad areas: Course length; course content and format; and training of non-English speaking renovators.

a. *Course length.* Several commenters raised concerns about the length of the certified renovator training course. Some agreed with the training length as defined in the rule, others stated it was too short or too long, and one said that the length of the training should not be defined in the rule. In establishing the minimum requirements for the renovator course, the Agency considered the many types of activities that would likely be performed during renovation, remodeling, and painting activities and tried to balance that with the need for a training course that would address the necessary skills without being overly burdensome on the part of the trainee. The suggested course schedule for the EPA/HUD lead-safe work practices curriculum "Lead Safety for Remodeling, Repair, & Painting" calls for an 8-hour training day, including lunch, two breaks, and an hour-long course test. The course is designed in a modular format, so that it can be delivered in 1 day or over two or more days, at the discretion of the training provider. Based on a review of the material and the suggested schedule, EPA believes that "Lead Safety for Remodeling, Repair, and Painting" can be modified to include material on the use of test kits and performing cleaning verification and still fit within eight training hours. However, any attempt to cover all of the required elements in a shorter period of time would likely result in a significant reduction in the level of detail with which the elements are presented. A minimum requirement for eight training hours represents a reasonable minimum requirement for the renovator course and gives training course providers an indication of the amount of time that EPA has determined through experience with the EPA/HUD curriculum that it takes to adequately cover each required training element.

b. *Course content and format.* Most commenters agree that the certified renovator course should include a hands-on training portion and several of these agree that the hands-on portion should not be any shorter than two hours as proposed. Other commenters suggested that the hands-on portion of the training should be allowed to be conducted as a demonstration via a

remote delivery system (DVD or Internet). EPA agrees that development of a procedure to address the hands-on component of the renovator course via remote delivery systems would be beneficial. This final rule does not preclude training providers from developing alternative methods for the delivery and evaluation of training for submission for approval to EPA.

Several commenters had suggestions as to the certified renovator training content. Two recommended that the renovator course include training on recordkeeping requirements. EPA agrees with these commenters, and has added the element of recordkeeping to the required training course elements for renovators. Because EPA has modified the recordkeeping requirements, as discussed below, to require the certified renovator to prepare the records associated with renovations to which he or she is assigned, the renovation training course will include a recordkeeping component. Three commenters suggested that, if the certified renovator is responsible for providing OJT to other renovation workers, the renovator training course should include a train-the-trainer component. EPA agrees with these commenters and has added a train-the-trainer element to the required elements for the renovator training course. In addition, EPA will develop a train-the-trainer component for its model renovator training course. Other commenters suggested that the required training elements include OSHA health and personal safety requirements. The Agency agrees that these are relevant topics and considers an overview of the OSHA requirements to be part of the required element of background on applicable Federal, State, and local regulations and requirements. To ensure that this is clear, EPA has modified this provision to state that the background information must include EPA, HUD, OSHA, and other Federal, State, and local regulations and guidance. Consistent with its approach in other courses related to lead-based paint activities, the Agency believes that identifying potential OSHA requirements, rather than requiring in-depth curriculum components, is the best way to make trainees aware of those requirements and yet avoid redundancies between EPA- and OSHA-required courses.

c. *Training of non-English speaking renovators.* Renovator and dust sampling technician courses, both initial and refresher, can be taught in any language, but accreditation would be required for each specific language the provider wished to present the

course in. All course materials and instruction for the course would have to be in the language of the course. The modification to § 745.225(b)(1)(ii) clarifies that all lead-based paint courses taught in different languages are considered different courses, and accreditation must be obtained for each. To facilitate accreditation of courses in languages other than English, EPA is requiring that the training provider include in its application both the English version as well as the non-English version of all training materials, in addition to a signed statement from a qualified, independent translator that the translator has compared the non-English language version of the course materials to the English-language version and that the translation is accurate. This requirement applies to any course for which accreditation is sought, including lead-based paint activities courses. Finally, to assist EPA in monitoring compliance with these requirements, EPA is requiring that course completion certificates include the language in which the course was taught.

Several commenters agreed that the needs of non-English speaking workers should be considered. Commenters suggested that EPA translate its model course into other languages and/or facilitate free access to such translations. EPA agrees that it is important to have renovator training available in languages other than English. EPA anticipates translating its revised model renovator course into Spanish. EPA will also consider translating the course into other languages. However, EPA is not able to make available proprietary material developed by training course providers that is then translated by those providers into other languages.

2. *Dust sampling technician training.* The minimum curriculum requirements for an initial dust sampling technician course are described in 40 CFR 745.225(d)(7). The topics include the roles and responsibilities of a dust sampling technician; background information on lead and its adverse health effects; background information on Federal, State, and local regulations and guidance that pertains to lead-based paint and renovation activities; dust sampling methodologies; clearance standards and testing; and report preparation and recordkeeping requirements. Section 745.225(c)(6)(vii) establishes the minimum length for an initial dust sampling technician course at 8 training hours, with 2 hours being devoted to hands-on activities. EPA received relatively few comments specifically on the content of dust

sampling technician training; most had to do with the length of the training course. EPA has developed a model dust sampling technician course (Ref. 33). This course has been designed to be delivered in one 8-hour training day, including lunch, breaks, and a course test. As with the EPA/HUD "Lead Safety for Remodeling, Repair, & Painting" curriculum, EPA believes that this is a reasonable minimum requirement for the dust sampling technician course and it gives training course providers an indication of the amount of time that EPA has determined it takes to adequately cover each required training element.

#### E. Work Practices

This final rule requires that all renovations subject to this rule be conducted in accordance with a defined set of work practice standards. Again, this final rule is a revision of the existing TSCA section 402(a) Lead-based Paint Activities Regulations to extend training, certification, and work practice requirements to certain renovation and remodeling projects in target housing and child-occupied facilities. In so doing, EPA did not merely modify 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 is revising those regulations in a manner that reflects the differences between abatement and renovation activities.

Work practices for abatement are part of larger range of activities that are intended to identify and eliminate lead-based paint hazards. When abatements are conducted, residents typically are removed from the home until after the abatement activities are completed, which is demonstrated through the use of clearance testing. This may require the removal of carpeting, refinishing, sealing, or replacement of floors to achieve clearance. Accordingly, clearance testing is part of a broader set of activities that comprise abatement, with the purpose of permanently eliminating existing lead-based paint hazards.

Renovation, repair, and painting activities typically are conducted while the residents are present in the dwelling and are not activities intended to eliminate lead-based paint hazards. Work practices for renovation, repair, and painting are designed to minimize exposure to lead-based paint hazards created by the renovation both during the renovation, while residents are likely to be present in the dwelling, and after the renovation. The work practices

are not intended to address pre-existing hazards.

1. *In general.* This final rule incorporates work practice standards generally derived from the HUD Guidelines, EPA's draft technical specifications for renovations, and the model training curriculum entitled *Lead Safety for Remodeling, Repair, & Painting* (Refs. 18, 34, and 35). For more information on the development of these documents, please consult Unit III.C. of the preamble to the 2006 Proposal. To reduce exposure to lead-based paint hazards created by renovation activities, the work practice standards in this regulation provide basic requirements for occupant protection, site preparation, and clean-up.

Commenters generally felt that work practices are important and should be clear and correctly followed. One commenter stated that the rule has "tremendous potential for making a difference," especially in establishing and "reinforcing the industry norm." One commenter noted that EPA should "set simple and flexible work practices." Another commenter asked for less specificity. EPA believes that this final rule provides certified renovators an appropriate blend of flexibility and specificity. EPA believes that, due to the highly variable nature of renovation activities, flexibility is needed for certain tasks, such as establishing containment, and that other tasks, such as specialized cleaning, require a greater degree of specificity.

2. *Occupant protection.* This final rule requires the firm to post signs clearly defining the work area and warning occupants and other persons not involved in renovation activities to remain outside of the work area. In addition, it requires that the certified renovator be physically present at the work site when the required signs are posted. These signs must be posted before beginning the renovation and must remain in place until the renovation has been completed and cleaning verification has been completed. The signs must be, to the extent practicable, provided in the occupants' primary language. If warning signs have been posted in accordance with HUD's Lead Safe Housing Rule (24 CFR 35.1345(b)(2)) or OSHA's Lead in Construction Standard (29 CFR 1926.62(m)), additional signs are not required.

Three commenters stated that the required signs for posting at a work site should be in the language of the occupant. One commenter stated that such a requirement would be consistent with HUD's Lead Safe Housing Rule

requirements. EPA agrees that having signs in the language of the occupant is preferable. However, the Agency is concerned that renovators will not have the ability to provide signs in every language, and that it may be the case that occupants, especially in multi-family dwellings, will speak a variety of languages. In the HUD Lead Safe Housing Rule, HUD addressed this issue by requiring that signs, to the extent practicable, be provided in the occupants' primary language. Therefore, consistent with HUD's Lead Safe Housing Rule, this final rule requires warning signs, to the extent practicable, to be provided in the occupants' primary language.

3. *Containment.* This final rule requires that the firm isolate the work area so that dust or debris does not leave the work area while the renovation is being performed. In addition, EPA has clarified that the firm must maintain the integrity of the containment by ensuring that any plastic or other impermeable materials are not torn or displaced, and taking any other steps necessary to ensure that dust or debris does not leave the work area while the renovation is being performed.

In addition, EPA has made conforming changes to the performance standard that renovators and renovation firms are being held to in this final rule. EPA was concerned that the rule text and preamble were confusing because there were references to "visible" dust and debris or "identifiable" dust and debris and "all" dust and debris. For example, in the 2006 Proposal "work area" was defined as the area established by the certified renovator to "contain all the dust and debris generated by a renovation." In the renovator responsibilities (as proposed at 40 CFR 745.90(b)(4)), the renovator was responsible for ensuring "that dust and debris is not spread beyond the work area." In describing the containment to be established, the rule text referred to "visible" dust and debris and in the section on waste from renovations (as proposed at 40 CFR 745.85(a)(3)) the rule text referred to "identifiable" dust. It was not EPA's intention to create subjectivity as to whether dust and debris were being dispersed. By conforming its terminology EPA is clarifying that certified renovators and renovation firms must ensure that the dust and debris (as opposed to "visible" or "identifiable" dust and debris) generated by the renovation is contained. Should an EPA inspector observe dust or debris escaping from the containment, the certified renovator and

the renovation firm would be in violation of this final rule.

This final rule also requires that the certified renovator be physically present at the work site when the required containment is established. This means the certified renovator must determine for each regulated project the size and type of containment necessary to prevent dust and debris from leaving the established work area. This determination will be based on the certified renovator's evaluation of the extent and nature of the activity and the specific work practices that will be used.

Containment refers to methods of preventing leaded dust from contaminating objects in the work area and from migrating beyond the work area. It includes, among other possible measures, the use of disposable plastic drop cloths to cover floors and objects in the work area, and sealing of openings with plastic sheeting where necessary to prevent dust and debris from leaving the work area. When planning a renovation project, it is the certified renovator's responsibility to determine the type of work site preparation necessary to prevent dust and debris from leaving the work area.

Renovation projects generate varying amounts of leaded dust, paint chips, and other lead-contaminated materials depending on the type of work, area affected, and work methods used. Because of this variability, the size of the area that must be isolated and the containment methods used will vary from project to project. Large renovation projects could involve one or more rooms and potentially encompass an entire home or building, while small projects may require only a relatively small amount of containment. The necessary work area preparations will depend on the size of the surface(s) being disturbed, the method used in disturbing the surface, and the building layout. For example, repairing a small area of damaged drywall would most likely require the containment of a smaller work area and less preparation than demolition work, which would most likely require a containment of a larger work area and more extensive preparation in order to prevent the migration of dust and debris from the work area. The Environmental Field Sampling Study, which found that the following activities created dust-lead hazards at a distance of 6 feet from where the work was being performed:

- Paint removal by abrasive sanding.
- Window replacement.
- HVAC duct work.
- Demolition of interior plaster walls.

- Drilling into wood.
- Sawing into wood.
- Sawing into plaster.

Based on these data, EPA believes that at least 6 feet of containment is necessary to contain dust generated by most renovation projects.

Under this final rule, at a minimum, interior work area preparations must include removing all objects in the work area or covering them with plastic sheeting or other impermeable material. This includes fixed objects, such as cabinets and countertops, and objects that may be difficult to move, such as appliances. Interior preparations must also include closing all forced air HVAC ducts in the work area and covering them with plastic sheeting or other impermeable material; closing all windows in the work area; closing and sealing all doors in the work area; and covering the floor surface in the work area, including installed carpet, with taped-down plastic sheeting or other impermeable material in the work area 6 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to contain the dust, whichever is greater.

To ensure that dust and debris do not leave the work area, it may be necessary to close forced air HVAC ducts or windows near the work area. Doors within the work area that will be used while the job is being performed must be covered with plastic sheeting or other impermeable material in a manner that allows workers to pass through, while confining dust and debris to the work area. In addition, all personnel, tools, and other items, including the exterior of containers of waste, must be free of dust and debris when leaving the work area.

For exterior projects, the same performance standard applies; namely, the certified renovator or a worker under the direction of the certified renovator must contain the work area so that dust or debris does not leave the work area while the renovation is being performed. Additionally, in response to comments suggesting that EPA follow the HUD Guidelines with respect to exterior containment requirements, EPA has incorporated a similar 10 foot minimum. Consequently, this final rule requires that exterior containment include covering the ground 10 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to collect falling paint debris, whichever is greater, unless the property line prevents 10 feet of such ground covering. EPA has concluded that this is an appropriate and reasonable precaution for exterior work, given the fact that some amount of

dispersal of dust or debris is likely as a result of air movement, even on relatively calm days. In addition, EPA sees value in maintaining appropriate consistency between this regulation and related HUD rules and guidelines.

In addition to such ground covering, exterior work area preparations must include, at a minimum, closing all doors and windows within 20 feet of the outside of the work area on the same floor as the renovation, and closing all doors and windows on the floors below that area. For example, if the renovation involves sanding a 5-foot by 5-foot area of paint in the middle of the third floor of a building, and that side of the building is only 40 feet long, all doors and windows on that side of the third floor must be closed, as well as all of the doors and windows on that side of the second and first floors. In situations where other buildings are in close proximity to the work area, where the work area abuts a property line, or weather conditions dictate the need for additional containment (i.e., windy conditions) the certified renovator or a worker under the direction of the certified renovator performing the renovation may have to take extra precautions in containing the work area to ensure that dust and debris from the renovation does not contaminate other buildings or migrate to adjacent property. This may include erecting vertical containment designed to prevent dust and debris from contaminating the ground or any object beyond the work area. In addition, doors within the work area that will be used while the job is being performed must be covered with plastic sheeting or other impermeable material in a manner that allows workers to pass through while confining dust and debris to the work area.

Some commenters agreed with the proposed procedures. One commenter agreed that with containment, dust can be contained and cleaned up sufficiently to pass the wipe test screening results. Another commenter supported the use of standard containment and cleaning practices known to reduce dust lead levels on both interior and exterior surfaces and to protect soils and gardens surrounding the house.

Some commenters asserted that the containment procedures were not stringent enough. Some suggested that EPA follow the HUD Guidelines with respect to exterior containment requirements. Others asked EPA to strengthen exterior containment requirements by specifying that containment extend at least twenty feet to collect all debris and residue and that

the rule address circumstances such as wind and rain. One commenter asserted that allowing the certified renovator complete discretion to determine what is appropriate renders the worksite containment requirements completely unenforceable and asked EPA to consider providing a minimum performance standard that all renovators must meet. EPA agrees that a minimum performance standard is necessary and that is why under this final rule EPA is requiring certified renovators to establish containment that prevents dust and debris from leaving the work area. In addition, in this rule EPA has established minimum containment requirements for both interior and exterior renovation requirements. While the certified renovator has discretion regarding the specific components and extent of containment, the renovator and firm will be in violation of this final rule if dust or debris leaves the work area for both interior and exterior renovations. If dust or debris migrates beyond the work area, that migration constitutes a violation of the rule. Accordingly, EPA does not agree with the commenter that the rule is unenforceable.

This final rule provides the certified renovator with some discretion to define the specific size and configuration of the containment to accommodate the variability in size and scope of renovations. EPA considered requiring that in all cases the entire room in which a renovation is occurring be contained, but concluded that doing so would be unwarranted. For example, a small manual sanding job in a large room would not necessarily require full room containment to isolate the work area. EPA has concluded that the most appropriate approach is to impose a minimum size for containment coupled with a performance standard--preventing dust or debris from leaving the work area--and to prescribe with reasonable specificity the containment measures that are required--e.g., use of plastic or other impermeable material, removal or covering of objects in the work area - but to provide some measure of discretion with regards to the case-specific approaches to containment.

In response to EPA's request for comments on whether there are any situations where some or all of the proposed work practices are not necessary, commenters suggested that work practices were not needed during a gut rehabilitation, although two of the commenters suggested a waiver rather than an exemption in these situations. Several commenters thought that work in unoccupied structures should not require the use of lead safe work

practices, or should have an adapted set of work practices. A commenter opined that certain interior containments may not be necessary in vacant and empty housing, but that exterior work always should use lead safe work practices to protect the environment and neighborhood. A commenter stated that there are certain activities common to multifamily and rental housing that warrant special consideration from the Agency. For example, simple painting activities that occur when rental properties turn over should not require a full suite of work practices, particularly given that most state laws require apartment owners to paint each unit at turnover. The commenter suggested that EPA consider a less restrictive set of guidelines for those properties simply undergoing routine painting during the turnover process.

EPA believes that whole house gut rehabilitation projects may demolish and rebuild a structure to a point where it is effectively new construction. In this case, it would not be a modification of an existing structure, and therefore not a renovation. However, a partial-house gut rehabilitation such as a kitchen or bathroom gut rehabilitation project clearly falls within the scope of this final rule.

EPA disagrees that temporarily unoccupied or vacant housing should be *per se* exempt from the requirements of this final rule. EPA's primary concern with exempting renovations in such housing from the work practices required by this final rule is the exposure to returning residents to lead-based paint hazards created by the renovation. However, EPA recognizes that if no child under 6 or no pregnant woman resides there, the owner-occupant may so state in writing and the requirements of this rule would not apply. In addition, for routine painting, such as at unit turnover, if such painting activity does not involve disturbing more than 6 ft<sup>2</sup> of painted surfaces per room for interiors or 20 ft<sup>2</sup> for exteriors, and otherwise meet the definition of "minor repair and maintenance," the requirements of this final rule would not apply. EPA cannot see a basis for imposing a less restrictive set of requirements for projects that disturb more than 6 ft<sup>2</sup> of painted surfaces per room for interiors or 20 ft<sup>2</sup> for exteriors.

Some commenters believed that the Proposal did not adequately address the decontamination of workers and equipment involved in a renovation. They supported the proposed requirement that all personnel, tools and other items, including the exteriors of containers of waste, be free of dust and debris before leaving the work area.

However, they believed that the proposed alternative, covering the paths used to reach the exterior of the building with plastic, was not sufficiently protective. One contended that significant lead dust contamination can be tracked or carried out of a work area if workers and equipment are not properly decontaminated. This commenter further noted that workers with contaminated clothing can take that contamination home to their own children and taking contaminated equipment to another jobsite could potentially create a lead hazard at a new site. EPA agrees with these commenters and has deleted the alternative language. The final rule requires renovation firms to use precautions to ensure that all personnel, tools and other items, including the exteriors of containers of waste, to be free of dust and debris before leaving the work area. There are several ways of accomplishing this. For example, tacky mats may be put down immediately adjacent to the plastic sheeting covering the work area floor to remove dust and debris from the bottom of the workers' shoes as they leave the work area, workers may remove their shoe covers (booties) as they leave the work area, and clothing and materials may be wet-wiped and/or HEPA-vacuumed before they are removed from the work area.

Finally, in response to a commenter who was concerned about containment not impeding occupant egress in an emergency, EPA has modified the regulatory text to specify that containment must be installed in such a manner that it does not interfere with occupant and worker egress in an emergency. This can be accomplished, as noted in chapter 17 of the HUD Guidelines, by installing plastic over doors with a weak tape.

**4. Prohibited and restricted practices.** The final rule prohibits or restricts the use of certain work practices during regulated renovations. These practices are open flame burning or torching of lead-based paint; the use of machines that remove lead-based paint through high speed operation such as sanding, grinding, power planing, needle gun, abrasive blasting, or sandblasting, unless such machines are used with HEPA exhaust control; and operating a heat gun above 1100 degrees Fahrenheit. These are essentially the same practices as are currently prohibited or restricted under the Lead-based Paint Activities Regulations, 40 CFR 745.227(e)(6), with the exception of dry hand scraping of lead-based paint. While this final rule and EPA's Lead-Based Paint Activities Regulations do not prohibit or restrict the use of volatile paint strippers or

other hazardous substances to remove paint, the use of these substances are prohibited for use in poorly ventilated areas by HUD's Lead Safe Housing Rule and they are regulated by OSHA.

EPA did not propose to prohibit or restrict any work practices, but instead asked for public comment regarding their prohibition or restriction. The Agency was concerned that, because these practices are commonly used during renovation work, prohibiting such practices could make certain jobs, such as preparing detailed or historic millwork for new painting, extremely difficult, if not impossible. In addition, EPA believed that use of the proposed package of training, containment, cleanup, and cleaning verification requirements would be effective in preventing the introduction of new lead-based paint hazards, even when such practices were used. EPA is modifying the proposal based on new data evaluating specific work practices and in response to comments received.

a. *The Dust Study.* EPA understood when developing the proposed rule that considerable data existed showing the potential for significant lead contamination when lead paint is disturbed by practices restricted under EPA's Lead-based Paint Activities Regulations for abatements. EPA conducted the Dust Study, in part, to determine the effectiveness of the proposed work practices. The Dust Study evaluated a variety of renovation activities, including activities that involved several practices restricted or prohibited under the abatement regulations. For example, power planing was included in the Dust Study as a representative of machines that remove lead-based paint through high speed operation. Similarly, the Dust Study also included experiments with power sanding and a needle gun. Each of these activities generated very high levels of dust. The Dust Study thus evaluated the proposed work practice standards, using a range of typical practices currently used by contractors.

In particular, the Dust Study found that renovation activities involving power planing and high temperature heat gun resulted in higher post-job renovation dust lead levels than activities using other practices. The geometric mean post-work, pre-cleaning floor dust lead levels in the work room were 32,644  $\mu\text{g}/\text{ft}^2$  for power planing and 7,737  $\mu\text{g}/\text{ft}^2$  for high temperature heat guns. More importantly, in experiments performed in compliance with this rule's requirements for containment, cleaning, and cleaning verification, the geometric mean post-job floor dust lead levels were still 148

$\mu\text{g}/\text{ft}^2$  for power planing, well over the TSCA section 403 hazard standard for floors. While the geometric mean post-job floor dust levels for the 3 similar experiments involving high temperature heat guns, i.e., experiments performed in compliance with this rule's requirements, were 36  $\mu\text{g}/\text{ft}^2$ , the average post-cleaning-verification floor dust lead levels for the individual experiments were 147.5, 65.5, and less than 10  $\mu\text{g}/\text{ft}^2$ . Thus, in 2 of these 3 experiments, the requirements of this final rule were insufficient to reduce the floor dust lead levels below the TSCA section 403 hazard standards for floors. In addition, power planing and use of a high temperature heat gun generated fine particle-size dust that was difficult to clean. In fact, almost all of the high post-renovation lead levels were associated with activities involving power planing and high temperature heat guns. Moreover, activities involving power planing and high temperature heat gun jobs also resulted in higher post-job tool room and observation room lead levels than other practices.

Thus, while the Dust Study confirmed that most practices prohibited or restricted under EPA's Lead-based Paint Activities Regulations do indeed produce large quantities of lead dust, it also demonstrated that, with respect to lead-based paint hazards created by machines that remove lead-based paint through high speed operation and high temperature heat guns, the use of the proposed work practices were not effective at containing or removing dust-lead hazards from the work area.

b. *Alternatives to certain practices.* As discussed above, in the proposed rule, EPA stated a concern that, because practices prohibited or restricted under EPA's Lead-based Paint Activities Regulations are commonly used during renovation work, prohibiting or restricting such practices could make certain jobs, such as preparing detailed or historic millwork for new painting, extremely difficult or, in some cases, impossible. In response to its request for comment, the Agency received information on techniques including benign strippers, steam stripping, closed planing with vacuums, and infrared removal that the commenter believed are far superior, far safer and far cheaper than some of the traditionally prohibited or restricted practices. Another commenter noted that window removal and off-site chemical stripping in a well-ventilated setting is an alternative to using heat or mechanical methods to remove lead paint on-site. Alternatively, chemical strippers can be used on-site, given adequate ventilation

and protection for workers and building occupants. EPA is therefore persuaded that there are sufficient alternatives to these practices.

c. *Conclusion.* Based on the results of the Dust Study and in response to the voluminous persuasive public comments, this final rule prohibits or restricts the use of the following practices during renovation, repair, and painting activities that are subject to the work practice requirements of this rule:

- Open-flame burning or torching.
- Machines that remove lead-based paint through high speed operation such as sanding, grinding, power planing, needle gun, abrasive blasting, or sandblasting, unless such machines are used with HEPA exhaust control.
- Operating a heat gun above 1100 degrees Fahrenheit.

EPA has concluded that these practices must be prohibited or restricted during renovation, repair, and painting activities that disturb lead-based paint because the work practices in this final rule are not effective at containing the spread of leaded dust when these practices are used, or at cleaning up lead-based paint hazards created by these practices. Thus, the work practices are not effective at minimizing exposure to lead-based paint hazards created during renovation activities when these activities are used.

This final rule does not prohibit or restrict the use of dry hand scraping. EPA has concluded based primarily on the Dust Study as corroborated by other data described below that it is not necessary to prohibit or restrict dry scraping because the containment, cleaning, and cleaning verification requirements of this rule are effective at minimizing exposure to lead-based paint hazards created by renovations and the migration of dust-lead hazards beyond the work area when dry hand scraping is employed.

The Dust Study evaluated dry hand scraping, which is restricted under EPA's lead abatement program. In contrast to the results of the activities using power planing and high temperature heat gun, average post-job dust lead levels in the two experiments in which paint was disturbed by dry hand scraping and the work practices required by this rule were used were below the regulatory dust-lead hazard standard for floors. In addition, the National Institute for Occupational Safety and Health (NIOSH) conducted a Health Hazard Evaluation (HHE) at the request of the Rhode Island Department of Health, and published a final report in June of 2000 (Ref. 36). The purpose of the evaluation was to measure worker exposure during various tasks and to

determine whether workers were exposed to hazardous amounts of lead-based paint. Notably worker exposures were compared when scraping painted surfaces using wet and dry scraping methods (wet scraping is the customary substitute for dry scraping in abatement applications). A comparison of worker exposure found statistically equivalent worker exposures. Based on the NIOSH study, EPA has determined that dry scraping is the equivalent of its only practical alternative, wet scraping.

In sum, EPA has determined based on the studies described above and the persuasive comments, including those summarized below, provided by the overwhelming majority of commenters that its approach of prohibiting or restricting certain practices in combination with the containment, cleaning, and cleaning verification, will be effective in minimizing exposure to lead-based paint hazards created during renovation activities, provide an appropriate measure of consistency with other regulatory programs, and cause minimal disruption for renovation firms.

i. *Substantial exposures.* Numerous commenters argued that the rule should prohibit certain practices based on potential health hazards, many backed up by well-documented scientific studies and proven health-protective standards. One commenter stated, after citing several scientific studies, that removing or disturbing lead paint without proper controls causes substantial contamination, posing serious risks to occupants, workers and others. Another cited numerous scientific studies demonstrating the adverse public health implications of permitting these work practices and the availability of alternative work methods. Still another cited the EPA renovation and remodeling study and a State of Maryland study as evidence that prohibited work practices may be associated with elevated blood lead levels. One commenter cited health hazard evaluations of residential lead renovation work showing that these activities produce hazardous worker exposures. Another commenter noted that the hazards of activities that are likely to produce large amounts of lead dust or fumes are well documented, stating that, for example, the Wisconsin Childhood Blood-Lead Study found that the odds of a resident child having a blood lead level in excess of 10 µg/dL increased by 5 times after renovation using open flame torching, and by 4.6 times after heat gun use. Another commenter was concerned that previously collected data may not account for different particle-size

distribution, a factor in both the potential cleaning efficacy of work areas and the toxicology of lead poisoning.

ii. *Consistency with other standards.* Some commenters urged EPA to prohibit certain high dust generating practices for the sake of consistency with other work practice standards. Numerous commenters asserted EPA's rule should be consistent with HUD requirements to avoid confusion on the part of contractors and to conform to the standard that has been in place for nearly 6 years. One commenter noted that the regulations of several other federal agencies that administer housing programs, such as the Department of Defense, Department of Agriculture, and Veterans Affairs include prohibited practices. Other commenters noted that the proposed rule conflicted with OSHA rules and would cause confusion among contractors.

Some commenters noted that EPA's proposed rule would conflict with individual state or local regulations prohibiting some or all of these practices. One commenter listed the following states and some cities that have prohibited work practices: California, Indiana, Maine, Massachusetts, Minnesota, New Jersey, Ohio, Rhode Island, Vermont, Wisconsin, Chicago, Cleveland, New Orleans, New York City, Rochester, and San Francisco. Two commenters cited state law in Indiana, under which certain work practices are prohibited and contractors using such work practices are committing a Class D felony (422, 449).

Other commenters noted that practices that are prohibited under EPA's Lead-based Paint Activities Regulations should also be prohibited for renovation work in pre-1978 properties, and noted that in developing the abatement rule EPA demonstrated through its own studies that these practices may increase the risk of elevated blood lead levels in children.

5. *Waste from renovations.* Under this final rule the certified renovator or a worker trained by and under the direction of the certified renovator is required to ensure that all personnel, tools, and other items including waste are free of dust and debris when leaving the work area. The certified renovator or a worker trained by and under the direction of the certified renovator must also contain waste to prevent releases of dust and debris before the waste is removed from the work area for storage or disposal. If a chute is used to remove waste from the work area, it must be covered. At the conclusion of each work day and at the conclusion of the renovation, the certified renovator or a

worker trained by and under the direction of the certified renovator must ensure that waste that has been collected from renovation activities is stored under containment, in an enclosure, or behind a barrier that prevents release of dust and debris from the work area and prevents access to dust and debris. This final rule also requires the certified renovator or a worker trained by and under the direction of the certified renovator transporting lead-based paint waste from a work site to contain the waste to prevent releases, e.g., inside a plastic garbage bag. As described in more detail in Unit IV.D.2.c. of the preamble to the 2006 Proposal, EPA revised its solid waste regulations in 40 CFR parts 257 and 258 to make clear that lead-based paint waste generated through renovation and remodeling activities in residential settings may be disposed of in municipal solid waste landfill units or in construction and demolition (C&D) landfills. Requirements for waste disposal may vary by jurisdiction and state and local requirements may be more stringent than Federal requirements. When disposing of waste, including waste water, from renovation activities, the renovation firm must ensure that it complies with all applicable Federal, State, and local requirements.

One commenter suggested that EPA should consider requiring that lead-contaminated waste be stored in a locked area or in a lockable storage container. This commenter also suggested that to prevent any confusion on what constitutes a covered chute, a definition or clarification should be provided in the rule. Another commenter recommended the use of "sealed" rather than "covered" chutes for waste removal, as a covered chute may not be protective enough to prevent the release of significant amounts of lead-contaminated dust. This final rule requires that waste must be contained to prevent releases of dust and debris before the waste is removed from the work area for storage or disposal. With respect to the use of chutes for waste removal, the requirement for a covered chute was proposed merely to facilitate the removal of bagged or sealed waste so that it is deposited in an appropriate waste disposal container and does not fall to the ground. EPA does not, therefore, believe that this term either needs to be further defined or to require the use of a "sealed" chute.

EPA understands that renovation projects can generate a considerable amount and variety of waste material. However, EPA believes that the requirements of the final rule protect

occupants and others from potential lead-based paint hazards presented by this waste. While storing the waste in a locked container is one way to meet the performance standard of this final rule, EPA does not believe that is necessary to specify that as a requirement. The waste may be stored in the work area, which will already be delineated with signs cautioning occupants and others to keep out. EPA believes the owner/occupants have some responsibility for observing these signs. Renovation sites pose potential hazards other than lead-based paint hazards—including the potential fall hazards, sharp protrusions, etc. In sum, the certified renovator is responsible for ensuring that lead-contaminated building components and work area debris that are stored under containment, in an enclosure, or behind a barrier that prevents release of dust and debris and prevents access to the debris. Under this final rule the certified renovator must ensure that waste leaving the work area is contained (e.g., in a heavy duty plastic bag or sealed in plastic sheeting) and free of dust or debris. This imposes a reasonable performance standard without requiring a specific approach. The certified renovator is responsible for evaluating the waste generated and the characteristics of the work site to determine the most effective way of meeting this standard.

6. *Cleaning the work area—a. Final rule requirements.* Under this final rule the certified renovator or a worker under the direction of the certified renovator must clean the work area to remove dust, debris or residue. All renovation activities that disturb painted surfaces can produce dangerous quantities of leaded dust. Because very small particles of leaded dust are easily absorbed by the body when ingested or inhaled, it can create a health hazard for children. Unless this dust is properly removed, renovation and remodeling activities are likely to introduce new lead-based paint hazards. Therefore, the rule requires prescriptive cleaning practices. Ultimately, improper cleaning can increase the cost of a project because additional cleaning may be necessary during post-renovation cleaning verification.

This final rule requires that, upon completion of interior renovation activities, all paint chips and debris must be picked up. Protective sheeting must be misted and folded dirty side inward. Sheetting used to isolate contaminated rooms from non-contaminated rooms must remain in place until after the cleaning and removal of other sheetting; this sheetting must then be misted and removed last.

Removed sheetting must be either folded and taped shut to seal or sealed in heavy-duty bags and disposed of as waste. After the sheetting has been removed from the work area, the entire area must be cleaned including the adjacent surfaces that are within 2 feet of the work area. The walls, starting from the ceiling and working down to the floor, must be vacuumed with a HEPA vacuum or wiped with a damp cloth. The final rule requires that all remaining surfaces and objects in the work area, including floors, furniture, and fixtures be thoroughly vacuumed with a HEPA vacuum. When cleaning carpets, the HEPA vacuum must be equipped with a beater bar to aid in dislodging and collecting deep dust and lead from carpets. The beater bar must be used on all passes on the carpet face during dry vacuuming. This cleaning step is intended to remove as much dust and remaining debris as possible. After vacuuming, all surfaces and objects in the work area, except for walls and carpeted or upholstered surfaces, must be wiped with a damp cloth. Wet disposable cleaning cloths of any color may be used for this purpose. In contrast, as discussed in the next section, only wet disposable cleaning cloths that are white may be used for cleaning verification. Uncarpeted floors must be thoroughly mopped using a 2-bucket mopping method that keeps the wash water separate from the rinse water, or using a wet mopping system with disposable absorbent cleaning pads and a built-in mechanism for distributing or spraying cleaning solution from a reservoir onto a floor.

When cleaning following an exterior renovation, all paint chips and debris must be picked up. Protective sheetting used for containment must be misted with water. All sheetting must be folded from the corners or ends to the middle to trap any remaining dust and either taped shut to seal or sealed in heavy duty bags. The sheetting must be disposed of as waste.

b. *Comments on the cleaning protocol.* Several commenters proposed minor changes to the cleaning procedures. Three commenters recommended that daily clean-up be required for projects lasting more than 1 day. One commenter stated that all tools and equipment should be cleaned prior to leaving the job site. One commenter indicated concern that there is no mention of wet wiping areas such as window sills. This final rule requires cleaning both in and around the work area to ensure no dust or debris remains following the renovation. The final rule also requires that all personnel, tools, and other items including waste are free

of dust and debris when leaving the work area. EPA recommends that contractors keep work areas as clean and free of dust and debris as practical. Daily cleaning is a good practice, and it may be necessary in some cases to ensure no dust or debris leaves the work area as required by this final rule. However, EPA has no basis to believe that daily cleaning is necessary in every case or even most cases. EPA also notes that the work area must be delineated by signs so that occupants and others do not enter the area. This final rule requires the work area to be contained, and to ensure that all tools, personnel, and other items, including waste, to be free of dust and debris when leaving the work area. Under this final rule, interior windowsills and most other interior surfaces in the work area must be wet wiped. The exceptions are upholstery and carpeting, which must be vacuumed with a HEPA vacuum, and walls, which may be wet wiped or vacuumed with a HEPA vacuum.

Some commenters requested clarification of the requirement to clean “in and around the work area.” In response to the two commenters that noted that the HUD Guidelines recommend cleaning 2 feet beyond the work area, EPA has modified the regulatory text to require cleaning of surfaces and objects in and within 2 feet of the work area.

One commenter argued that vacuuming was not necessary because 40 CFR 745.85 requires the certified renovator to cover all furnishings not removed from the work area, so additional cleaning is unnecessary. EPA disagrees with this commenter. Carpets and upholstered objects that remained, covered with plastic, in the work area during the renovation must be vacuumed after the plastic is removed to ensure that the surfaces did not become contaminated during the renovation due to a breach in the containment or during the removal of the containment during clean-up.

One commenter asserted that some requirements for cleaning were not prescriptive enough. The commenter suggested that the rule text, which states that the certified renovator or a worker under the direction of the certified renovator must “pick up all paint chips and debris,” could be re-worded to state that the certified renovator or a worker under the direction of the certified renovator must “collect all paint chips, debris, and dust, and, without dispersing any of it, seal this material in a heavy-duty plastic bag.” EPA agrees that additional detail would be helpful in this instance and has modified the final rule to include this

recommendation, with the exception of dust, which is collected when the protective sheeting is misted and folded inward.

One commenter stated that the cleaning procedures were excessive and problematic. This commenter asserted that the two-bucket mopping system is inappropriate for some floor types such as wood floors for which excessive water could damage the floor. The commenter suggested that EPA allow a cleaning method employing a dry or damp cloth, or any other specified methodology, to be used in order to achieve a no dust or debris level of cleaning. Three commenters asserted that EPA's definition of wet mopping system was too specific. One commenter stated that to include "a long handle, a mop head..." in the description of the wet mopping system is too prescriptive and favors a particular model of commercial product. EPA understands that the two bucket mopping system may not be appropriate for all floor types due to the quantity of water involved. However, the HUD Guidelines recommend and the Dust Study demonstrates that wet cleaning is best able to achieve desired results. This final rule allows for the use of a wet mopping system instead of the two bucket system for the cleaning of flooring. EPA has included a definition of a wet mopping system in order to allow the regulated community to use such a system in place of the traditional two-bucket mop method. EPA's Electrostatic Cloth and Wet Cloth Field Study in Residential Housing study ("Disposable Cleaning Cloth Study"), discussed in more detail in Unit IV.E.2. of the 2006 Proposal, indicates that a wet mopping system is an effective method for cleaning up lead dust (Ref. 37). EPA believes that allowing the use of a wet mopping system like those widely available in a variety of stores should alleviate concerns regarding the quantity of water used in the cleanup. In addition, EPA disagrees that the description of a wet mopping system favors a particular model of commercial product. Rather, it generally describes any number of wet mopping systems widely available in most stores. However, to alleviate concerns that a particular model of commercial product is preferred, EPA has added the phrase "or a method of equivalent efficacy" to the end of the definition of "wet mopping system."

One commenter recommended that instead of referencing a two bucket method, EPA should consider simply stating that a method be used that keeps the wash water separate from the rinse water. EPA agrees and has revised the

regulatory text to specify a method that keeps wash water separate from rinse water, giving as an example the two bucket method.

One commenter questioned the requirement to vacuum underneath a rug or carpet where feasible. The commenter suggested that EPA clarify that this does not include permanently affixed wall-to-wall carpeting. The commenter notes that it is highly unlikely that the renovation or remodeling activity conducted in a carpeted room would have created the dust embedded underneath both the layer of plastic sheeting and the installed carpeting. EPA agrees with this commenter. EPA did not intend to require vacuuming beneath permanently affixed carpets, i.e., wall to wall carpeting, but rather that removable rugs should be removed and the area beneath vacuumed. However, small, movable, area rugs should be removed from the work area prior to the renovation and the floor beneath would be cleaned as required under this final rule. Therefore, in response to this commenter, EPA has deleted the requirement to vacuum beneath rugs where feasible.

One commenter recommended four options for cleaning carpets: Removing the carpet and pad, cleaning the underlying flooring, then replacing the carpet and pad; shampooing the carpet using a vacuum attachment that removes the suds; steam cleaning the carpet using a vacuum attachment that removes the moisture; or HEPA filtered vacuuming. This final rule seeks to minimize the introduction of lead-based paint hazards to carpeted floors by requiring the certified renovator to cover the floor of the work area with plastic sheeting, carefully clean up and remove the plastic sheeting following work, and thoroughly vacuum the carpet using a HEPA vacuum with a beater bar. EPA believes this containment and cleanup protocol will minimize exposure to lead-based paint hazards created during renovation activities. EPA does not believe a renovation contractor should be responsible for removing and replacing carpet in a home when such a requirement was not within the scope of the renovation project. Also, in contrast to the effectiveness of using a HEPA on carpets, EPA does not have sufficient data on steam cleaning or shampooing to evaluate its effectiveness. Without data to demonstrate the effectiveness of shampooing or steam cleaning carpets EPA is not prepared to require these methods be used in lieu of vacuuming with a HEPA vacuum. EPA further notes that the HUD lead-safe Housing Rule

only requires HEPA vacuuming, not steam cleaning or shampooing.

c. *Vacuums equipped with HEPA filters.* Given that the HUD Guidelines recommend the use of HEPA vacuums and the OSHA Lead in Construction standard requires that vacuums be equipped with HEPA filters where vacuums are used, EPA proposed requiring the use of HEPA vacuums in its proposed work practices. Nonetheless, EPA requested comment on whether the rule should allow the use of vacuums other than vacuums equipped with HEPA filters given. Specifically, EPA requested comment on whether there are other vacuums that have the same efficiency at capturing the smaller lead particles as HEPA-equipped vacuums, along with any data that would support this performance equivalency and whether this performance specification is appropriate for leaded dust cleanup.

i. *Background.* HEPA filters were first developed by the U.S. Atomic Energy Commission during World War II to capture microscopic radioactive particles that existing filters could not remove. HEPA filters have the ability to capture particles of 0.3 microns with 99.97% efficiency. Particles both larger and smaller than 0.3 microns are easier to catch. Thus, HEPA filters capture those particles at 100%. Available information indicates that lead particles generated by renovation activities range in size from over 20 microns to 0.3 microns or less (Ref. 38).

OSHA recently completed a public review of their Lead in Construction standard (Ref. 39). OSHA concluded that the principal concerns regarding HEPA vacuums (i.e., cost and availability) have been significantly reduced since the standard was established in 1994. HEPA vacuum cleaners have an increased presence in the marketplace and their cost has decreased significantly. Therefore, OSHA continues to require the use of HEPA vacuums in work subject to the Lead in Construction Standard.

ii. *Final rule requirements.* Vacuums used as part of the work practices being finalized in this final rule must be HEPA vacuums, which are to be used and emptied in a manner that minimizes the reentry of lead into the workplace. The term "HEPA vacuum" is defined as a vacuum which has been designed with a HEPA filter as the last filtration stage. A HEPA filter is a filter that is capable of capturing particles of 0.3 microns with 99.97% efficiency. The vacuum cleaner must be designed so that all the air drawn into the machine is expelled through the filter with none of the air leaking past it.

iii. *Comments.* Many commenters supported the use of HEPA vacuums. Some of these commenters supported the requirement that they be used because they are also required by the OSHA Lead in Construction standard. One commenter noted that the price of HEPA vacuums had decreased and were no longer significantly more expensive than non-HEPA vacuums.

Another commenter cited the Dust Study, the NAHB Lead Safe Work Practices Survey, and several other studies as supporting the conclusion that lead-safe work practices and modified lead-safe work practices, along with a two-step or three-step cleaning process using a HEPA-equipped vacuum and wet washing, greatly reduce dust lead levels and should be regarded as best management practices for renovation jobs. The commenter notes that the NAHB study found significant reductions in loading levels after cleanup using HEPA-equipped vacuum and then either wet washing or using a wet disposable cleaning cloth mop.

One commenter contended that HEPA vacuums with beater bars were not currently available on the market at the time comments were submitted. However, EPA has been able to identify commercial vacuum manufacturers as well as department store brands that currently offer HEPA vacuums with beater bar attachments.

Several commenters noted that vacuum cleaners other than HEPA vacuums were effective at removing lead dust. They cited several papers which they asserted support their conclusion, including *Comparison of Home Lead Dust Reduction Techniques on Hard Surfaces: The New Jersey Assessment of Cleaning Techniques Trial* (2002) by Rich, *et al* (Ref. 40), a study by the California Department of Health Services (Ref. 41) which the commenter contends concluded that some non-HEPA vacuums performed better than the HEPA units tested, *Comparison of Techniques to Reduce Residential Lead Dust on Carpet and Upholstery: The New Jersey Assessment of Cleaning Techniques Trial* (2002) by Yiin, *et al* (Ref. 42), and *Effectiveness of Clean up Techniques for Leaded Paint Dust* (1992) by the Canadian Mortgage and Housing Corporation (Ref. 43).

The commenter that cited the Rich, *et al* paper contended that the authors found no clear difference between the efficacy of HEPA and non-HEPA vacuums on hard surfaces (non-carpeted floors, windowsills, and window troughs), and found that non-HEPA vacuums appeared more efficient in removing particles on uncarpeted floors, which are the hard surfaces that may

best reflect exposure to children. One commenter stated that given the research literature demonstrates that there is no performance difference in lead dust removal, EPA should allow cleanup with either a HEPA or non-HEPA vacuum. Another commenter contended that a vacuum cleaner retrofitted with a HEPA filter rather than a HEPA vacuum should be required to be used as part of the work practices.

EPA disagrees with the commenters who state that the literature does not demonstrate a difference between HEPA vacuums and non-HEPA vacuums. In the Yiin, *et al* study, the authors stated that for carpets, data from the “[Environmental and Occupational Health Sciences Institute] vacuum sampling method showed a significant reduction (50.6%,  $p = 0.014$ ) in mean lead loading for cleaning using the HEPA vacuum cleaner but did not result in a significant difference (14.0% reduction) for cleaning using the non-HEPA vacuum cleaner.” They also note that when they used wipe sampling “the results indicated that neither of the cleaning methods yielded a significant reduction in lead loading.” EPA believes the results from the wipe sampling method is less useful because as discussed in Unit III.E.8.iv. of this preamble, the Agency believes that wipe sampling on carpets is not a reliable indicator of the lead-based paint dust in the carpet. The authors report that in their study non-HEPA vacuums were more effective than HEPA vacuums on upholstery but note “[t]he reduced efficiency of the HEPA vacuum cleaner in cleaning upholstery [as compared to carpets] may be, at least partially, due to the lower pre-cleaning dust lead level and the smaller sample data set for the HEPA vacuum cleaner than for the non-HEPA vacuum cleaner.”

In the Rich, *et al* study, the authors noted that “On windowsills, the HEPA vacuum cleaner produced 22% (95% CI, 11-32%) larger reductions than the non-HEPA vacuum cleaner, and on the window troughs it produced 16% (95% CI, -4 to 33%) larger reductions than the non-HEPA vacuum cleaner.” Not only were the percent reductions greater, the post-cleaning geometric mean lead loadings for the experiments in which the HEPA vacuums were used was lower than the post-geometric mean lead loadings for the experiments in which the non-HEPA vacuums were used. On hard floors, the authors reported that the non-HEPA vacuum removed the largest quantities of lead-based paint dust. They note that this may be due in part to the fact that the initial loadings were higher where the non-HEPA vacuums were used (Pre-

cleaning geometric mean lead loadings were 200 and 155  $\mu\text{g}/\text{ft}^2$  for the two types of experiments where non-HEPA vacuum were used) as compared to the lead loadings for the experiments in which the HEPA vacuum was used (Pre-cleaning geometric mean lead loading of 100  $\mu\text{g}/\text{ft}^2$ ). However, the post-cleaning geometric mean lead loading for the experiments in which the HEPA vacuum was used was lower than for either of the two types of experiments where non-HEPA vacuums were used. The post-cleaning geometric mean lead loading was lower for each set of experiments in which the HEPA vacuum was used. In considering these data, EPA believes that the data on the post-cleaning lead loadings are particularly important. In assessing the performance of cleaning methods, it is not only the percent reduction that is important but also the ability to clean down to very low levels. Several studies have demonstrated that reducing lead loadings from relatively high levels to about 100  $\mu\text{g}/\text{ft}^2$  is more readily accomplished than reductions below 100  $\mu\text{g}/\text{ft}^2$  and becomes progressively harder at lower levels (Ref. 44).

One commenter stated that EPA did not have sufficient evidence showing that HEPA vacuums are significantly better at removing lead dust than non-HEPA vacuums and cited a Canadian Mortgage and Housing Corporation study from 1992 (Ref. 43). That study was a laboratory study done in a dynamic chamber under controlled conditions and used simulated lead dust. Lead stearate, a compound not typically used in lead-based paint, was used to spike the construction dust used in the experiments. This study has various limitations. It focused on how much of the quantity of leaded dust applied to a surface was present in the vacuum bag after vacuuming. There was no assessment of the size of the dust particles collected. Most importantly, the study did not measure the quantity of leaded dust that remained on the floor. Without this data, the efficacy of the non-HEPA vacuums cannot be assessed. In addition, the study is not very informative as to what will occur under real world conditions.

Two years later, the same group (Ref. 45) studied 20 test rooms where they produced lead-containing dust by power sanding walls of known lead levels. Four cleaning methods were used, of which only two produced acceptable results. The two cleaning methods that did not produce acceptable clean-ups were: (1) Dry sweeping the floor with a corn broom followed by vacuuming with a utility vacuum; and (2) vacuuming the floor with a household

vacuum cleaner followed by wet mopping with a commercial household cleaner. The other two methods that achieved clean-ups resulting in floors that passed dust clearance testing were: (3) vacuuming the floor with a utility vacuum followed by wet mopping with a 2% solution of a commercial lead-cleaning product, followed by a rinse with clean water; and (4) vacuuming with a HEPA vacuum, followed by wet mopping with trisodium phosphate, followed by a clean water rinse, followed by more vacuuming with a HEPA vacuum. The report concludes that “. . . Cleaning Methods 1 and 2 were inadequate to meet the cleanliness criteria. . .” Later it states “Cleaning Methods 3 and 4 did meet both the current and proposed HUD criteria.”

The same commenter also referred to a report submitted to HUD by the California Department of Health Services (Ref. 41). This study evaluated a range of vacuums. The efficacy of the non-HEPA vacuums varied, particularly in comparison with the HEPA vacuums. The authors of the report did not identify the attributes of the non-HEPA vacuums that were instrumental in determining their effectiveness. At best, vacuums that were effective at picking up and retaining lead-based paint dust could be classified as high performing although there were no criteria that could be discerned on what made a high performing vacuum. The report also states that HEPA models without floor tool brushes performed poorly. This may be the case. The HEPA vacuums used in EPA's Dust Study performed adequately and all of these vacuums were equipped with flip down brushes on the floor tool.

The California report contained another finding of interest. “Of special concern is the direct observation under the scanning electron microscope of lead dust particles dissolving on exposure to water to release large numbers of sub-micron lead particles. Although requiring further study, this effect suggests that vacuuming to remove most of the water soluble lead dust, followed by wet-washing would be the best cleaning strategy.” The cleaning protocol in this final rule follows this strategy by requiring, for all surfaces in and around the work area except for walls, HEPA vacuuming, followed by wet wiping or wet mopping, followed by the cleaning verification protocol.

EPA has determined that the weight of the evidence provided by these studies demonstrate that the HEPA vacuums consistently removed significant quantities of lead-based paint dust and reduced lead loadings to lower levels than did other vacuums.

While there may be some vacuums cleaners that are as effective as HEPA vacuums, EPA has not been able to define quantitatively the specific attributes of those vacuums. That is, EPA is not able to identify what criteria should be used to identify vacuums that are equivalent to HEPA vacuums in performance. The authors of the studies discussed above do not state that the vacuums used are representative of all vacuums nor do they try to identify particular aspects of the non-HEPA vacuums. Thus, EPA does not believe that it can identify in this final rule what types of vacuums can be used as substitutes for HEPA-vacuums. EPA believes it would be ineffective to identify specific makes or models of vacuums (e.g., the ones used in the studies) in this final rule given how quickly manufacturers change models, nor would that take into account new manufacturers.

EPA also disagrees with the commenter that suggested that vacuums that are retrofitted with a HEPA filter should be considered sufficient for purposes of this rule. These vacuums are not necessarily properly sealed or designed so that the air flow goes exclusively through the HEPA filter. EPA agrees with the commenter who stated that HEPA vacuums are vacuums which have been designed for the integral use of HEPA filters, in which the contaminated air flows through the HEPA filter in accordance with the instructions of its manufacturer and for which the performance standard for the operation of the filter is defined. EPA also agrees with those commenters that contended that the rule should contain a more-specific definition of HEPA vacuum. Accordingly, this final rule defines “HEPA vacuum” as a vacuum which has been designed with a HEPA filter as the last filtration stage and includes a description of what the term HEPA means. The definition of “HEPA vacuum” also specifies that the vacuum cleaner must be designed so that all the air drawn into the machine is expelled through the filter with none of the air leaking past it.

Furthermore, EPA agrees that OSHA's requirement that HEPA vacuums should be an important consideration in determining whether HEPA vacuums should be required to be used as part of the work practices being finalized today. Because OSHA's standard covers practically all work subject to EPA's final Renovation, Repair, and Painting program regulations, and applies to all firms having an employee/employer relationship with few exceptions, there is no reason to create a separate standard for those firms not subject to

the OSHA standard, particularly in light of the data on the efficacy of HEPA vacuums versus non-HEPA vacuums discussed above. Even if EPA were able to define vacuums that were acceptable substitutes to HEPA vacuums, it is not clear that the benefits would outweigh the complications associated with creating an EPA standard that is different than that required by OSHA.

*7. Cleaning verification.* This final rule requires the certified renovator to use disposable cleaning cloths after cleaning both as a fine cleaning step and as verification that the containment and cleaning have sufficiently cleaned up the lead-paint dust created by the renovation activity. Cleaning verification's usefulness is based on the combination of its fine cleaning properties and the fact that it provides feed-back to the certified renovator on the effectiveness of the cleaning. Cleaning verification is an important component of the work practices set forth in this rule and contributes to the effectiveness of the combination of training, containment, cleaning and verification at minimizing exposure to lead-based paint hazards created during renovation, remodeling and painting activities.

*a. Background.* As described in greater detail in Unit IV.E.2. of the preamble to the 2006 Proposal (Ref. 3), EPA began looking for an alternative to dust clearance sampling that would be quick, inexpensive, reliable, and easy to perform. EPA believed that a verification method was needed because studies have consistently shown that interior visual clearance resulted in a high percentage of false negatives, that is falsely indicating that lead loadings were below the standards used. This occurred even when using a clearance standard of 100  $\mu\text{g}/\text{ft}^2$ .

*i. Disposable Cleaning Cloth Study.* The Disposable Cleaning Cloth Study used commercially available disposable cleaning cloths to determine whether variations of a “white glove” test could serve as an effective alternative (Ref. 37). White disposable wet and dry cleaning cloths were used to wipe windowsills and wipe floors, then they were examined to determine whether dust was visible on the cloth. This determination was made by visually comparing the cloth to a photographic standard that EPA developed to correlate to a level of contamination that is at or below the dust-lead hazard standard in 40 CFR 745.65(b). Cloths that matched or were lighter than the photographic standard were considered to have achieved “white glove.” This series of studies found that on uncarpeted floors, 91.5% of the surfaces

that achieved "white glove" using only dry cloths were confirmed by dust wipe sampling to be below the dust lead hazard standard for floors, while 97.3% of the floors that achieved "white glove" using only wet cloths were also below the hazard standard. In addition, 10 of the 11 floors where "white glove" was not achieved using dry cloths, and 20 of the 21 floors where "white glove" was not achieved using wet cloths, were nonetheless below the dust lead hazard standard. There were very few instances where "white glove" was achieved but the dust lead level was above the dust lead hazard standard. Thus, the study showed that for floors, the white glove test results were biased towards false positives. Windowsills were also tested. For the dry cloth protocol, 96.4% of the sills that achieved "white glove" were also confirmed by dust wipe sampling to be below the dust lead hazard standard for windowsills, and the one sill that did not achieve "white glove" was also below the standard. For the wet cloth protocol, all of the sills that achieved "white glove" were also below the dust lead hazard standard, as were the four sills that did not reach "white glove."

Based on the results of the Disposable Cleaning Cloth Study, the 2006 Proposal included for interior renovations, as part of the work practices, a post-renovation cleaning verification process that would follow the visual inspection and cleaning. Cleaning verification would consist of wiping the interior windowsills and uncarpeted floors with wet disposable cleaning cloths and, if necessary dry disposable cleaning cloths, and comparing each to a cleaning verification card developed and distributed by EPA.

ii. *The Dust Study.* The Dust Study (Ref. 17), which is described elsewhere in this preamble, assessed the proposed work practices. As one component of the proposed work practices, the cleaning verification was evaluated in the Dust Study. It should be noted that the Dust Study was not designed specifically to evaluate the cleaning verification in isolation of the rest of the work practices. Unlike the earlier Disposable Cleaning Cloth Study that was intended to test the effectiveness of the use of the "white glove" test in isolation, the Dust Study was meant to evaluate the effectiveness of the proposed work practices, including cleaning verification. Unlike the earlier Disposable Cleaning Cloth Study, the Dust Study involved actual renovations performed by local renovation contractors who received instruction in how to perform cleaning verification and then were left alone to determine

whether cleaning cloths matched or were lighter than the cleaning verification card. In order to maximize the information collected about cleaning verification in the Dust Study, cleaning verification was conducted after each experiment, not just those experiments that were being conducted in accordance with the proposed rule requirements for containment and cleaning.

One of the Dust Study conclusions was that cleaning verification resulted in decreases in lead levels, but was not always accurate in identifying the presence of levels above EPA dust lead hazard standards for floors and sills. This refers to the experiments involving power planing and high temperature heat guns. An examination of the cleaning verification data in the study shows that, if power planing and high temperature heat gun experiments are excluded, the values for post-renovation cleaning verification when the proposed rule work practices were used were at or below the regulatory hazard standard for floors, often significantly below the regulatory hazard standard. These results were similar for windowsills. Excluding power planing and high temperature heat gun experiments, all of the post-renovation cleaning verification windowsill sample averages for experiments conducted in accordance with the proposed rule requirements were below the regulatory dust lead hazard standard for windowsills. In addition, 26 of the 30 other experiments (using only some elements of the proposed containment and cleaning requirements) not involving power planing or high temperature heat guns had post-renovation cleaning verification sill sample averages well below the hazard standards.

b. *Cleaning verification as an alternative to clearance testing.* In determining whether cleaning verification could be seen as a qualitative alternative to clearance testing, EPA considered both the Disposable Cleaning Cloth Study and the Dust Study. Even though the Disposable Cleaning Cloth Study showed that the cleaning verification cloths that reached "white glove" were approximately 91% to 97% likely to be below the regulatory hazard standard, EPA believes the greater variability seen in the Dust Study, particularly in the experiments where the complete suite of proposed work practices were not used does not support the characterization of cleaning verification as a direct substitute for clearance testing. Cleaning verification, when used apart from the other work practices, is not as reliable a test for determining whether the

hazard standard has been achieved as clearance testing. However, the Dust Study supports the validity of cleaning verification as an effective component of the work practices. The cleaning and feedback aspects of cleaning verification are important to its contribution to the effectiveness of the work practices.

c. *Final rule requirements.* Based on a review of the Dust Study and the Disposable Cleaning Cloth Study, EPA concluded that if the practices prohibited in this final rule are avoided and the required work practices are followed, then cleaning verification is an effective component of the work practices. EPA believes that the suite of work practices as a whole are effective at addressing the lead-paint dust that is generated during renovation, repair, and painting preparation activities. Therefore, the final rule does not require dust clearance sampling after any renovations, nor does it allow the signs delineating the work area to be removed based solely on the results of a visual inspection. The final rule does require a certified renovator to perform a visual inspection to determine whether dust, debris, or residue is still present in the work area, and, if these conditions exist, they must be eliminated by re-cleaning and another visual inspection must be performed. In addition, the rule requires that after an interior work area passes the visual inspection, the cleaning of each windowsill and uncarpeted floor within the work area must be verified, as explained below. After an exterior work area passes the visual inspection, the renovation has been properly completed. In response to one commenter who was concerned about the dust that could collect on exterior windowsills during exterior projects, the final rule clarifies that the visual inspection must confirm that no dust, debris or residue remains on surfaces in and below the work area, including windowsills and the ground.

For interior renovations, after the work area has been cleaned and has passed a visual inspection, a certified renovator must wipe each interior windowsill in the work area with a wet disposable cleaning cloth and compare the cloth to a cleaning verification card developed by EPA. If the cloth matches or is lighter than the image on the card, that windowsill has passed the post-renovation cleaning verification. If the cloth is darker than the image on the card, that windowsill must be re-cleaned in accordance with § 745.85(a)(5)(ii)(B) and (C) and the certified renovator must wipe that windowsill with a new wet cloth, or the same one folded so that an unused surface is exposed, and compare it to

the cleaning verification card. If the cloth matches or is lighter than the card, that windowsill has passed. If not, the certified renovator must then wait for one hour after the surface was wiped with the second wet cleaning verification cloth or until the surface has dried, whichever is longer. Then, the certified renovator must wipe the windowsill with a dry disposable cleaning cloth. Based on the Dust Study, EPA concluded that this process need not be repeated after the first dry cloth. At that point, that windowsill has passed the post-renovation cleaning verification process. Each windowsill in the work area must pass the post-renovation cleaning verification process.

The cleaning verification protocol in the final rule is similar to what was in 2006 Proposal. By not requiring the surface to be re-cleaned after the second wet wipe and by ending the cleaning verification process after one dry cloth, this final rule is different from the Proposal. The 2006 Proposal required that the dry cloths be used until one passed verification (i.e., reached "white glove"). EPA's final rule does not require more than one dry cloth because only 3 experiments out of the 60 performed in the Dust Study failed the second wet cloth. None of these 3 experiments were performed in accordance with the requirements of this final rule; all experiments performed in accordance with the requirements of this final rule passed after either the first or second wet cloth. Based on the Dust Study, it is unlikely that dust containing lead will remain in excess of the hazard standard following two wet and one dry wipes; however EPA is concerned about the possibility of requiring potentially indefinite cleaning by renovation contractors, with the potential of making them responsible for cleaning up pre-existing dirt or grime, whether lead-contaminated or not.

After the windowsills in the work area have passed the post-renovation cleaning verification, a certified renovator must proceed with the cleaning verification process for the floors and countertops in the work area. A certified renovator must wipe no more than 40 ft<sup>2</sup> of floor or countertop area at a time with a wet disposable cleaning cloth. For floors, the renovator must use an application device consisting of a long handle and a head to which a wet disposable cleaning cloth is attached. If the floor and countertop surfaces in the work area exceed 40 ft<sup>2</sup>, the certified renovator must divide the surfaces into sections, each section being no more than 40 ft<sup>2</sup>, and perform the post-renovation

cleaning verification on each section separately. If the wet cloth used to wipe a particular section of surface matches or is lighter than the image on the cleaning verification card, that section has passed the post-renovation cleaning verification. If, however, on the first wiping of a section of the surface, the wet cloth does not match and is darker than the image on the cleaning verification card, the surface of that section must be re-cleaned in accordance with § 745.85(a)(5)(ii)(B) and (C). After re-cleaning, the certified renovator must wipe that section of the surface again using a new wet disposable cleaning cloth. If the second wet cloth matches or is lighter than the image on the cleaning verification card, that section of the floor has passed. If the second wet cloth does not match and is darker than the image on the verification card, the certified renovator must wait for 1 hour or until the surface has dried, whichever is longer. Then, the certified renovator must wipe each of those 40 ft<sup>2</sup> sections of the floor or countertop surfaces that did not achieve post-renovation cleaning verification using the wet cloths with a dry disposable cleaning cloth. On floors, this wiping must also be performed using an application device with a long handle and a head to which the dry cloth is attached. At that point, the floors and countertops have passed the post-renovation cleaning verification process and the warning signs may be removed.

In finalizing the work practices in this final rule, EPA has taken into consideration safety, reliability and effectiveness. EPA has concluded that these work practices, including cleaning verification, are an effective and reliable method for minimizing exposure to lead-based paint hazards created by the renovation, both during and after the renovation.

d. *Comments.* EPA received many comments on cleaning verification. The majority of the comments supported the use of dust wipe clearance testing and did not consider cleaning verification as a suitable substitute. Some of these commenters supported the use of dust wipe clearance testing for purposes of clearance. Some commenters did not support either dust wipe clearance testing or cleaning verification; they contended that visual inspection alone was sufficient and that dust clearance testing is too costly. Others questioned whether cleaning verification had been demonstrated to be valid, reliable, and effective in establishing that the work area had been adequately cleaned or that the clearance standards were met. Some contended that the cleaning

verification method showed promise, but should be subjected to additional testing, including field trials, to demonstrate its effectiveness when used by certified renovators. A minority of commenters supported the use of cleaning verification. Some supported its use rather than dust wipe-clearance testing and clearance, particularly given that renovations are not intended to remove lead-based paint. Some supported cleaning verification because it is faster, easier to implement, and less expensive than clearance testing.

i. *Cleaning verification is not a substitute for clearance testing.* Many commenters contended that cleaning verification is not a substitute technology for dust-wipe clearance testing and should not be used in this manner. EPA agrees with the commenters. As discussed in Unit III.E.8.b., based on a careful consideration of the Disposable Cleaning Cloth Study and the Dust Study, EPA has concluded that, in itself, cleaning verification should not be used as a substitute for dust wipe clearance testing.

ii. *Dust clearance testing and clearance.* Many commenters asserted that the rule should require dust clearance testing instead of the cleaning verification. Some further contended that dust clearance testing is the only proven method for verifying lead dust levels. Others supported the use of dust wipe clearance testing for purposes of clearance for the renovation. One commenter noted that even when dust clearance testing is performed it is not uncommon for clearance to be conducted up to three times on a home to make sure that lead levels are sufficiently low. Some commenters suggested that cleaning verification be used as a screen before dust clearance testing. Other commenters contended that dust clearance testing should not be required because it is expensive and time consuming and is an obstacle to completing the renovation job. Other commenters contended that dust clearance testing has been done in some jurisdictions quickly and relatively inexpensively. A few commenters contended that EPA should not require dust clearance testing because there is a difference between abatement, which is intended to eliminate lead-based paint hazards, and renovations in which the focus should be to not create any new lead-based paint hazards. Some commenters asserted that dust clearance testing should not be required because this would result in the renovator being responsible for existing lead-based paint hazards. One commenter used the example of a window replacement

project to illustrate this point. The commenter argued that, where the floor in the work area is in poor condition but outside the scope of the renovation contract, the window replacement contractor should not be responsible for making sure the floor passes a clearance standard, which may not be possible without modifying the floor.

EPA disagrees that dust clearance testing and clearance should be components of the renovation activities subject to this final rule. Dust clearance testing is used in abatement to determine whether lead-based paint hazards have been eliminated. This test is part of a specific process that involves a specialized work force (e.g., inspector, risk-assessor), typically removal of residents, and modifications to the housing in some instances to eliminate lead-based hazards (e.g., removing carpet or refinishing or sealing uncarpeted floors). Dust clearance testing is needed to determine if lead-based paint hazards have been eliminated and residents can re-occupy a house and not be exposed to lead-based paint hazards. As noted by a commenter, a home may require clearance testing be conducted up to three times before the home is determined to be free of lead-based paint hazards and it may require that floors be refinished or that carpets be replaced.

The Disposal Cleaning Cloth Study showed that wet wipes can pick up accumulated grime from floors. Applying this to the renovation context, if EPA were to require clearance, renovators might be held responsible for cleaning up pre-existing lead dust hazards that had accumulated in the grime on the floor. Based on the Dust Study, EPA has determined that all of the leaded dust generated by the renovation will have been cleaned up by two wet wipes followed by one dry wipe, where necessary. EPA is concerned about the possibility of requiring potentially indefinite cleaning by renovation contractors, with the potential of making them responsible for cleaning up pre-existing dirt or grime, whether lead-contaminated or not. Even assuming EPA has authority to require replacement of carpets and floors under some circumstances as part of a renovation project, EPA does not think as a policy matter that such an approach in which pre-existing hazards must be eliminated is appropriate. It could fundamentally change the scope of a renovation job. The time and cost of conducting clearance testing and achieving clearance is an acceptable part of the time and cost of conducting the abatement given the goal of an

abatement, the range of activities that are inherent in an abatement, and the activities that are required to be conducted to achieve clearance. Given the effectiveness of the work practices being finalized in this rulemaking, including the role of cleaning verification in minimizing exposure to lead-based paint dust generated during renovations, dust clearance testing does not provide the added value to balance the time and effort and the cost to home and building owners associated with requiring this additional step to the work practices.

As discussed in Unit II.A.6.b., there are many differences between renovations and abatements. Renovations are different from abatements in intent, implementation, type of workforce, workforce makeup, funding, and goal. Renovations are focused not on eliminating lead-based paint hazards, but rather on making repairs or improvements to a building. The vast majority of abatements are either done with funding from HUD and/or a State or local government. In addition, residents are not typically present in a residence during an abatement while they are typically present in a residence during a renovation. Thus, the purpose of dust wipe clearance testing and clearance would necessarily be different if it were used in a renovation than in an abatement. For abatements, clearance testing and clearance are used to minimize potential exposure by eliminating lead-based paint hazards after completion of the job. Clearance acts as the means to ensure that minimization and signal the end of the job. For renovations, given the presence of residents, the concern is for potential exposure both during and after the job. Dust clearance testing and clearance would only address the second part of the exposure equation. Thus, dust clearance testing conducted after renovation activities have been completed would not provide the equivalent determination of potential exposure that it does for abatement. EPA has considered this difference as one factor in its determination that given the effectiveness of the work practices being finalized in this rulemaking, including the role of cleaning verification in minimizing exposure to lead-based paint dust generated during renovations, dust clearance testing does not provide the added value to balance the time and effort and the cost to home and building owners associated with requiring this additional step to the work practices.

Although renovators should be required to address lead-based paint dust generated by renovation activities,

the Agency is not requiring renovators to take the actions required under the abatement rules to achieve clearance for lead-based paint dust not associated with the renovation and to address housing conditions not associated with the renovation.

EPA agrees that having dust wipe samples collected by a qualified person and analyzed by a qualified laboratory is an effective way to determine the quantity of lead in dust remaining after a renovation activity, but it would not necessarily show that the dust was due to the specific renovation activity. EPA also notes that in addition to providing a numerical value, dust clearance testing costs more than cleaning verification and takes longer to produce results. Results can take from 24 to 48 hours or longer and cleaning, sampling and analysis may have to be repeated depending upon the initial results. During this period, the warning signs delineating the work area would need to be maintained to protect occupants and others from the risk of exposure to lead-based paint hazards created by the renovation. Thus, EPA believes that dust clearance sampling is a poor fit for renovation work for a variety of reasons, including the greater expense associated with clearance testing, the time necessary to obtain the results of the testing and the consequent delay in the completion of the job, and the potential to expand the scope of the renovation.

EPA believes that dust clearance testing and clearance are not necessary given that the Dust Study demonstrates that cleaning verification, as an effective component of the work practices, minimizes exposure to lead-based paint hazards created by the renovation, both during and after the renovation. The cleaning and feedback aspects of cleaning verification are important to its contribution to the effectiveness of the work practices. EPA notes that unlike dust wipe clearance testing in which a small part of the work area would be tested, cleaning verification is conducted over the whole work area. Each repetition of the cleaning verification protocol further cleans the surface.

The work practices, including cleaning verification, required by this final rule are expected to minimize exposure to any newly created lead-based paint hazards created by a renovation by removing newly deposited dust, while requiring cleanup of pre-existing hazards only incidentally, to the extent such cleanup is unavoidable to address the newly created hazards. The Dust Study demonstrates that the cleaning verification protocol, used in

conjunction with the other work practices in this final rule, is effective and reliable in achieving this result.

While the requirements of this rule will, in some cases, have the ancillary benefit of removing some pre-existing dust-lead hazards, it strikes the proper balance of addressing the lead-based paint hazards create during the renovation but at the same time not requiring renovators to remediate or eliminate hazards that are beyond the scope of the work they were hired to do.

iii. *Visual inspection in lieu of cleaning verification.* Some commenters urged EPA to require only visual inspection of the work area after the cleaning following a renovation. They contend that cleaning verification is not needed. Some commenters argued that thorough cleaning in combination with a requirement that no visible dust or debris remain is adequate to address the lead dust created by the renovation activity. Most of these commenters also noted that because renovation and abatement are different that it would be inappropriate for EPA to impose additional requirements on renovation firms beyond visual inspection. Some commenters contended that the lead dust from a renovation is usually in the form of debris such as chips and splinters that can be seen with the naked eye, and the presence of this debris is an indicator to workers that the job site requires additional cleaning until no visible debris remains.

One commenter contended that cleaning after the renovation activity until the worksite passed a visual inspection was the most important determinant of whether a job would pass a dust clearance test. In support of this contention, the commenter cited the Reissman study (Ref. 22). The commenter contended that the study demonstrates that when there was no visible dust and debris present after completion of renovation or remodeling activity, there was no added risk of a child having an elevated blood lead level as compared to the risk for children living in homes where there was no reported renovation or remodeling work.

Two commenters offered an analysis of two sets of data collected by an environmental testing firm. One dataset consists of post-renovation dust samples collected in Maryland apartment units; the other consists of dust samples collected for risk assessment purposes in 41 states. No information on renovation activity is provided for the second dataset. The commenters argue that because 96.7% of the Maryland post-renovation samples and 96.1% of the other samples were below the

applicable hazard standard for the surface (floor or windowsill) tested, this suggests that visual inspection in those cases was sufficient to ensure that no dust-lead hazard existed.

One commenter cited the Dust Study (Ref. 17), the NAHB Lead Safe Work Practices Survey (Ref. 19), and several other studies as supporting the conclusion that lead-safe work practices and modified lead-safe work practices, along with a two-step or three-step cleaning process using a HEPA-equipped vacuum and wet washing, greatly reduce dust lead levels and should be regarded as best management practices for renovation jobs. The commenter notes that the NAHB study found significant reductions in loading levels after cleanup using HEPA-equipped vacuum and then either wet washing or using a wet mopping system. The commenter argues that if the work area is cleaned using these practices, it is appropriate to adopt a visual clearance standard allowing no visible dust or debris in the work area at the conclusion of the job.

Other commenters contended that visual inspection following cleaning after a renovation is not a reliable method for determining whether a lead-based paint hazard remains after cleaning. Some commenters cited a study conducted by the National Center for Healthy Housing (NCHH) showing that 67% of the visual inspections that initially passed failed when checked more carefully and 54% that eventually passed a visual inspection were found to be above the hazard standard. However, one commenter contended this was a poorly conducted study. Another commenter referred to the study "An Evaluation of the Efficacy of the Lead Hazard Reduction Treatments Prescribed in Maryland Environmental Article 6-8" conducted by NCHH for the Baltimore City Health Department in which 53% of housing identified by visual inspection as being below the hazard standard was actually above the hazard standard. Another commenter argued that NIOSH research indicates that significant lead contamination may remain on surfaces that appear clean.

During inter-Agency review, one commenter pointed to 2007 studies from Maryland and Rochester, New York that they contend show trained workers and visual inspection for dust and debris can achieve 85–90% compliance with the hazard standards following renovations in previously occupied housing. Given the lateness of the submission, EPA did not review this information. However, EPA notes that in a cover letter, the commenter states that the 2007 Maryland Study was

conducted by workers that had taken a 2–day training course, which is more training than required by this rule. Even if the studies do demonstrate this effectiveness by highly trained workers, EPA does not believe that a 85–90% effectiveness is sufficiently protective for residents.

EPA disagrees with those commenters that contended that a visual inspection following cleaning after a renovation is sufficient to ensure the lead-based paint dust generated by a renovation has been sufficiently cleaned-up. The weight-of-the-evidence clearly demonstrates that visual inspection following cleaning after a renovation is insufficient at detecting dust-lead hazards, even at levels significantly above the regulatory hazard standards. Further, EPA disagrees with the implication that easily visible paint chips and splinters are necessarily the primary materials generated during a renovation. EPA studies, including the Dust Study, show that renovation activities generate dust as well as chips and splinters. Finally, EPA disagrees with those commenters who requested the work practices in this final rule not include any verification beyond visual inspection. In the Dust Study, there were 10 renovations performed in accordance with the 2006 proposed work practices that did not involve practices prohibited by this final rule. Of those 10 renovations, 5 needed the additional cleaning verification step in order to achieve EPA's regulatory dust-lead hazard standards for floors. (EPA notes that the Dust Study Protocol did not explicitly specify that all dust and debris be eliminated prior to the cleaning verification step, only that visible debris be removed. However, the contractor running the study for EPA reported that, in practice, the renovators participating in the study eliminated all visible dust and debris as part of their typical cleaning regimen. Thus, the study protocol was slightly different from the rule requirements, which state that the renovation firm must remove all dust and debris and conduct a visual inspection before beginning the cleaning verification procedure.)

EPA does not believe that the Reissman, *et al.* study is supportive of the contention that visual inspection of the work area is sufficient because it did not evaluate the effectiveness of a visual inspection requirement. The study did not measure dust lead levels, which are the basis for this rule. Instead, it characterized the relationships between elevated blood lead levels and renovation dust and debris that spread throughout the housing. EPA notes that Reissman, *et al.* concluded that there

was a correlation between renovation activities and elevated blood lead levels.

EPA concluded that the dataset referenced by one commenter that consists of dust samples collected for risk assessment purposes in 41 States is not informative because there was no information on renovation activity collected with these dust samples. With respect to the Maryland renovation study, 96.7% is an overstatement. The author who conducted the analysis stated that:

[W]hen the maximum test values are examined rather than the mean, 9.8% of the MD sample and 12.5% of the national sample of properties with LBP surpassed at least one of the hazard thresholds of 40 µg/sf for floors and 250 µg/sf for sills. As illustrated in Exhibit 1, a fairly sizable percentage of the lead tests exceed the clearance thresholds. The failure rates are about 20 percent lower for Maryland than for the national LBP sample. However, even for Maryland, nearly one in ten apartments would fail the hazard test.

Thus, even if these were the only data available, it would not support the conclusion that visual clearance is effective.

After reviewing the NAHB Lead Safe Work Practices Survey, EPA concluded that it does not support the contention that visual inspection is sufficient to detect whether lead-based paint dust remains. While EPA agrees that use of a HEPA-vacuum and wet-washing are effective at cleaning lead-based paint dust, this does not support the case for relying on visual inspection without subsequent cleaning verification. In the NAHB study, the levels of lead-based paint dust that remained after the renovation activities were sometimes higher and sometimes lower than at the start of the renovation, but they were always at relatively high levels after the renovation--as high as 11,400 µg/ft<sup>2</sup>.

In addition, the two studies conducted by the National Center for Healthy Housing as noted by commenters demonstrate that visual inspection was not effective at determining the presence of dust-lead hazards. The study "Evaluation of the HUD lead-Based Paint Hazard Control Grant Program" study conducted by NCHH corroborates these findings.

*iv. Carpets and other horizontal surfaces within the work area.* Some commenters were concerned that cleaning verification is not intended for use on carpeted floors. They were not confident that thorough cleaning was adequate to address potential lead hazards that might remain in carpet after the renovation. One commenter pointed to studies showing a significant correlation between dust lead in carpets and children's blood lead. As cleaning

verification is not required for carpet, commenters criticized the lack of a required method for determining that lead hazards in carpet had been eliminated. Commenters suggested EPA require clearance testing for carpeted rooms in the work area, which some argued has been demonstrated to be effective, or rely on the HUD protocol, which they asserted is widely accepted and used.

As discussed in detail in Unit IV.E. of the preamble to the 2006 Proposal, EPA did not design cleaning verification for use on carpeted floors. This was based on EPA's concerns about the validity of dust wipe sampling on carpeted floors. EPA noted that the decision to apply the clearance standard promulgated in the TSCA section 403 rulemaking to carpeted floors ultimately had little consequence, given the context in which clearance standards are used--to ensure that lead-based paint hazards have been eliminated. Typically, during an abatement, carpets that are in poor condition or are known to be highly contaminated are removed and disposed. EPA further notes that the HUD Lead-safe Housing Rule only requires HEPA vacuuming, not steam cleaning or shampooing.

While an abatement might require the removal of a lead-contaminated carpet, EPA has concluded that it is not appropriate to require carpet removal following a renovation. Even assuming EPA has authority to require removal of carpet following a renovation, this could significantly expand the cost of a renovation, and fundamentally expand the scope of the renovation activity contracted for by the homeowner or building owner by requiring removal of carpets as a result of pre-existing lead contamination.

Dust Study data on containment and information on the effectiveness of HEPA vacuums show that the use of containment and post-renovation cleaning with HEPA vacuums to remove the lead-based paint dust potentially deposited on the carpets during the renovation would reliably and effectively address lead-based paint dust generated during a renovation. Thus, rather than rely upon a dust clearance sample that may not be accurate and may require the replacement of the carpet for renovation projects in which a carpet is present, EPA is finalizing the work practices which require containment and the use of a HEPA vacuum equipped with a beater bar for cleaning.

In the absence of a practical, effective way of determining how much lead dust has been added to a carpet and whether it has been fully removed, EPA is

adopting a technology-based approach for carpets that differs from the approach used for hard-surfaced floors, by requiring use of a HEPA vacuum with a beater bar. EPA is not aware of, and commenters have not identified, a practicable approach similar to the one EPA has adopted for floors as a basis to evaluate the results of the application of work practice standards to carpets. In the absence of such an approach, EPA believes the approach adopted today is the most effective, reliable approach available for minimizing potential lead-based paint hazards in carpets created by renovations.

One commenter suggested that cleaning verification be required on other horizontal surfaces within the work area, in addition to windowsills and uncarpeted floors. EPA agrees with this commenter because the Dust Study demonstrated that, in nearly all cases, the cleaning verification step resulted in lower dust lead levels and, in most cases, the verification step was needed in order to achieve cleanup of all of the leaded dust deposited on the floors by the renovation. EPA is also concerned about the possible contamination of surfaces that are used to prepare, serve, and consume meals. EPA expects that movable surfaces, such as tables and desks, will be moved from the work area before work begins. Therefore, EPA has modified the rule to require cleaning verification on all countertops in the work area.

*v. Reliability of cleaning verification.* EPA received comments prior to the 2007 request for comments on the proposed work practices in light of the Dust Study. Those pre-Dust Study comments are summarized here. Commenters questioned whether cleaning verification had been demonstrated to be valid, reliable, effective, or efficient in establishing that the work area had been adequately cleaned or that the clearance standards were met. Some commenters contended that the cleaning verification method showed promise, but should be subjected to additional testing, including field trials, to demonstrate its effectiveness when used by certified renovators. Commenters on the 2006 Proposal observed that the cleaning verification protocol was supported by a single study that was conducted under conditions unlike those presented by the typical renovation. Specifically, a commenter noted that most of the housing units studied had undergone some form of abatement that would likely have reduced dust levels and the study used professional inspectors or other highly trained individuals to collect the samples according to

specified protocols. The commenter was concerned that a renovator with no experience with sample collection and little training could replicate the work of the professionals used in the study. The commenter pointed out that the study avoided testing the procedure on rough surfaces, a condition that will frequently occur in real world applications, and used a different set of wipe protocols than actually utilized by the EPA in the 2006 Proposal. Another commenter on the 2006 Proposal noted that cleaning verification had never been employed in a real-world practical setting. In addition, some of these commenters contended that the cleaning verification protocol was too complicated or too confusing to follow.

A number of commenters who provided comments in response to EPA's request for comments on the proposed work practices in light of the Dust Study quoted the sentence in the conclusion section of EPA's Dust Study that states that the cleaning verification protocol was not always accurate in identifying the presence of levels above EPA standards for floors and sills. Some of these commenters also noted the Dust Study report's discussion of factors that affected the effectiveness of cleaning verification, such as floor condition, contractor performance, job type, and dust particle characteristics. One commenter observed that while all interior experiments resulted in final passed cleaning cloths for all floor zones and for all windowsills, nearly half of the experiments in the study ended with average work room floor lead levels above EPA's dust lead hazard standard for floors of 40  $\mu\text{g}/\text{ft}^2$ . The Clean Air Scientific Advisory Committee, while not asked to comment on the efficacy of the cleaning verification, contended that in the Dust Study cleaning verification did not provide sufficiently reliable results, leading to an inaccurate assessment of cleaning efficiency.

EPA disagrees with these commenters. The Dust Study did provide a real-world practical setting in which to assess the use of cleaning verification. Local renovation contractors performed actual renovations for each experiment in the study. The contractors performed cleaning verification on floors of wood, vinyl, or tile, in good, fair, or poor condition. The Dust Study used the protocols that were consistent with those in the 2006 Proposal. While the Dust Study was not designed specifically to assess cleaning verification, it did assess the effectiveness of cleaning verification both when it was used as part of the proposed rule work practices and as a

separate step after the other experiments which did not follow all the proposed work practices. Each experiment included a cleaning verification step. The contractors were instructed in how to perform cleaning verification. They independently determined whether particular cloths matched or were lighter than the cleaning verification card. In most renovations not involving the practices that EPA is prohibiting in this rule, i.e., power planing (power sanding) and high temperature heat guns, cleaning verification in combination with the other work practices were effective at reducing dust lead levels on surfaces to or below the dust lead hazard standards, regardless of the condition of the floor. Cleaning verification, as well as the other components of the work practices being finalized today were not effective when high dust generation practices such as power planing (including power sanding) and high temperature heat guns were used. These practices, as well as torching, are being prohibited in this rulemaking. Thus, EPA, in its determination on the effectiveness of cleaning verification, is focusing on the results of the experiments in the Dust Study that did not involve these prohibited practices.

Of the 10 experiments in which the proposed rule practices were used and in which the practices being prohibited in this final rule were not used, all final lead-based paint dust levels were at or below the regulatory hazard standard (taking into account the accepted level of uncertainty, i.e., within plus or minus 20%, which is the performance criteria for the National Lead Laboratory Accreditation Program). In fact, four experiments resulted in levels that were less than 10  $\mu\text{g}/\text{ft}^2$ , three resulted in levels less than 30  $\mu\text{g}/\text{ft}^2$ , and three resulted in levels that were approximately 40  $\mu\text{g}/\text{ft}^2$  (all were well within the level of uncertainty for this value). In four of the experiments, at least one floor area failed verification on the first wet disposable cleaning cloth, all passed on the second wet cloth. In one of the experiments, a windowsill failed the first wet cloth, but passed the second. These results were seen on floors in a variety of conditions, including good, fair and poor conditions. As a general case, in the other experiments that did not follow all the proposed work practices, the use of cleaning verification after cleaning (both baseline cleaning and cleaning following the proposed work practices) reduced, often significantly, the amount of lead dust remaining.

EPA agrees with commenters that cleaning verification should not be used

for clearance. However, while cleaning verification is not clearance testing, as described above the use of cleaning verification consistently resulted in levels of lead-based paint dust at or below the hazard standard. Also, the use of cleaning verification consistently resulted in lower levels of lead-based paint dust than remained after all types of cleaning studied when only followed by visual inspection. There is sufficient consistency in the data to support the use of cleaning verification as an effective component of the work practices being finalized today.

In response to the comment that the Disposable Cleaning Cloth Study used professional inspectors or other highly trained individuals following specified protocols, EPA intends to include cleaning verification in its training course for renovators and will use the results of the Dust Study and the Agency's observations on the experience of the contractors in the study in its development of this course.

vi. *Subjectivity of cleaning verification.* Many commenters objected to the "white glove" standard as inherently subjective, and doubted whether it would be protective. The commenters were concerned that the effectiveness of cleaning verification relies upon a renovation worker's understanding and application of the protocol, ability to define the floor sampling area or areas, and use of the cleaning verification card to determine whether a surface has been adequately cleaned. One commenter contended that, based on its experience as a subcontractor to EPA on the Disposable Cleaning Cloth Study, making the visual pass/fail determination can be quite subjective and open to interpretation. The commenter believes that it may be unrealistic to expect that renovation workers will consistently make the proper decision using the proposed verification card. Some commenters speculated that the renovator's accuracy in comparing the cleaning cloth to the verification card could depend on factors such as the renovator's visual acuity, the lighting in the room, or simply differences in judgment among renovators. Another commenter thought that the lack of corrections for surface conditions, the experience of the person conducting the visual assessment, or pre-existing conditions might bias the results of testing.

EPA agrees that visual comparison of a cleaning cloth to a cleaning verification card has an element of subjectivity because the visual comparison of cloth to card requires some exercise of judgment on the part of the person doing the comparing.

However, this does not necessarily mean that the comparison is suspect. As previously stated, the Dust Study represents a real-world test of the ability of renovators to learn how to do cleaning verification and to apply it in the field. Although one participant in the Dust Study expressed concern about the subjectivity of the test, the fact remains that cleaning verification was successfully performed by the renovation contractors in all of the experiments involving the work practices being finalized in this final rule (excluding those involving power planing (power sanding) and high temperature heat guns) and was predictive of whether renovators had cleaned-up the lead-based paint hazards created during the renovation activity to the dust-lead standard, particularly when the proposed work practices were used. These cleaning verifications were conducted by various persons in various light conditions and on various surface conditions. Further, EPA notes that cleaning verification is not simply qualitative clearance. Unlike the sampling for dust clearance testing, the cleaning verification involves a cleaning component. The act of doing the cleaning verification has been shown to lower, often significantly, the dust lead levels. Finally, in the development of its training course for contractors, EPA plans to use its data on the contractors' use of cleaning verification in the Dust Study, including their use of the cleaning verification cards.

vii. *Cost of cleaning verification.* Some commenters were concerned that the cleaning verification protocols are too impractical, burdensome, or time-consuming for many contractors to perform. However, the Dust Study found that cleaning verification only took, on average, slightly less than 13 minutes for experiments where the proposed rule requirements were followed. EPA's Final Economic Analysis estimates that the average cost of cleaning verification ranges from less than \$10 to \$30 in residences, and in public and commercial building COFs it ranges from less than \$10 to less than \$50.

viii. *Availability of cleaning verification card.* One commenter asked about the availability of the cleaning verification card, specifically, who would produce them, where would they be available, and how often do they need to be replaced. EPA intends to produce the cleaning verification cards and to make them available at accredited renovator training courses and upon request from the National Lead Information Center.

ix. *Third-parties.* Several commenters argued that a third party should perform cleaning verification (or visual inspection, in the case of exterior jobs) rather than the certified renovator. Commenters saw a conflict of interest, since by performing the cleaning verification the certified renovator is evaluating the effectiveness of his or her own work. Some thought the subjective nature of the method left it open to misinterpretation or fraud. Commenters were concerned that given the competitive pressures of the renovation industry and lack of independent oversight, it was not realistic to expect all renovators to follow the cleaning verification protocol in good faith. Others worried that a renovator might feel pressured to produce a passing result, perhaps to the point of recording false results. One commenter stated that those who would not comply with the cleaning procedure are unlikely to comply with cleaning verification.

Again, as described above, EPA addressed potential conflicts-of-interest in its lead-based paint program in the preamble to the final Lead-based Paint Activities Regulations. That discussion outlined two reasons for not requiring that inspections or risk assessments, abatements, and post-abatement clearance testing all be performed by different entities. The first was the cost savings and convenience of being able to hire just one firm to perform all necessary lead-based paint activities. The second was the potential regional scarcity of firms to perform the work. EPA believes that these considerations may be equally applicable to renovations, and perhaps more compelling, given the objective of keeping this rule simple and relatively inexpensive. EPA is concerned that a requirement that contractors engage a third party for every renovation job will add undue complication and expense to home renovations, and that it could delay completion of renovation jobs. There are estimated to be 8.4 million renovation events annually. Moreover, as stated above, it is not uncommon for regulated entities to make determinations relating to their regulated status. Thus, after weighing these competing considerations, EPA has decided to take an approach that is consistent with the approach taken in the 402(a) Lead-based Paint Activities Regulation and not require third party visual inspections, testing, or cleaning verification.

x. *Relationship between cleaning verification and the regulatory lead-based paint hazard standards.* Some commenters contend that cleaning verification is not protective because it

was designed to pass based on the regulatory hazard standard for floors. These commenters contend that this level is too high to be protective and that continuing to use this level is unwarranted given more recent data that demonstrates that lead causes neurocognitive effects at levels much lower than 10 µg/dL, the current CDC blood lead level of concern which was used in establishing the regulatory hazard standards.

EPA interprets the statutory directive to take into account safety when promulgating work practice standards as meaning that such work practice standards should be established in relation to lead-based paint hazards—as identified pursuant to TSCA section 403. There is no level of lead exposure that can yet be clearly identified, with confidence, as clearly not being associated with potentially increased risk of deleterious health effects. EPA does not believe the intent of Congress was to require elimination of all possible risk arising from a renovation, nor is EPA aware of a method that could reliably and effectively accomplish this. Given that the hazard standards are the trigger for regulation under section 402(c)(3) and that they are set through rulemaking, EPA has concluded that it makes most sense to use the same standards as the target level for safe work practices. Otherwise, the potential is created for a scheme under which any renovation activities found not to create hazards are not regulated at all, whereas renovation activities found to create hazards trigger requirements designed to leave the renovation site cleaner than the unregulated renovations. Given the Congressional intent that the section 403 hazard standards apply for purposes of subchapter IV of TSCA, EPA is applying them as the target level for safe work practices, which include the cleaning verification process, in this rule.

8. *Consistency with HUD.* Several commenters recommended that EPA adopt HUD's clearance requirement for activities other than abatement, which some commenters noted has been successfully implemented in projects in federally assisted housing. One pointed out that renovators have accepted HUD's clearance testing protocol, and implementing the "white glove" method will cause confusion in the industry and give contractors a reason for not following lead-safe work practices. A commenter recommended that EPA adopt HUD's standard for exterior clearance of visual inspection of the work area and a soil test. Commenters expressed concern that the final rule could undermine more stringent State

and local standards, and asked EPA to make clear that more stringent state and local requirements for clearance would apply despite the lack of mandatory clearance in the final rule.

This final regulation does not supersede more stringent or different requirements for interim control projects or renovations regulated by HUD, the States, or local jurisdictions. Renovation firms are still responsible for complying with all applicable Federal, State, or local laws when conducting renovations. In some cases, this may mean that dust clearance testing must be performed at the conclusion of a renovation rather than cleaning verification. EPA believes that renovation firms will be able to integrate these new requirements into their existing business practices with very little difficulty.

EPA also notes that the scope of the housing covered by HUD is different than the scope covered by this final rule. As noted by the commenter, HUD covers activities in projects in federally assisted housing. The occupancy patterns, including turn-over, will be different than in the general population covered by this final rule. While there is some overlap, there are substantial differences. Thus, EPA believes that total consistency with HUD is not needed.

9. *Optional use of clearance.* In the 2006 Proposal, EPA proposed to allow optional dust clearance sampling at the completion of renovation activities instead of the post-renovation cleaning verification described in § 745.85(b). Some commenters agreed that the decision whether to perform clearance at the conclusion of the job should be left to the homeowner. One commenter asked EPA to require that, if a resident arranged for clearance testing and found lead hazards, the contractor would have to re-clean to the resident's satisfaction.

As discussed, dust clearance sampling and cleaning verification are not surrogates and EPA is not requiring renovation firms to perform an abatement, i.e., eliminate all lead-based paint hazards, as part of a renovation. The Dust Study demonstrated that cleaning verification is quite often needed to minimize exposure to dust-lead hazards created during renovations. EPA is concerned that if dust clearance sampling were allowed instead of cleaning verification, without an accompanying requirement that the renovation firm re-clean until clearance is achieved, the rule would actually be less protective because the surfaces in the work area could be left less clean than if cleaning verification were performed.

In response to these comments, EPA has further considered the issue and decided to allow dust clearance sampling instead of cleaning verification only in certain limited situations. EPA agrees with the commenters that, if the rule were to allow clearance sampling instead of verification, EPA would have to require the renovator to achieve clearance, otherwise, there would be no check on whether the renovation had been safely performed. HUD's Lead Safe Housing Rule requires clearance to be achieved in many situations, as do several States. For example, the State of New Jersey requires dust clearance sampling and clearance in certain situations in multi-unit rental housing. As noted in Unit III.G. of this preamble, States, Territories, and Tribes may choose to have as protective as or more protective requirements than this final rule. One example of a more protective requirement would be a requirement to perform dust clearance testing and achieve clearance after renovations. Another example may be requiring that trained renovation workers demonstrate achievement of clearance levels by other cleaning verification methods, such as using newer technologies. If a firm can demonstrate, for example, using data obtained in the field, that it regularly meets the clearance standards without using the EPA specified approach but rather by using newer technology or alternative methods, a State may request that EPA evaluate such a provision as being as protective as or more protective than the methods described in this final rule.

Therefore, in situations where the contract between the renovation firm and the property owner or another regulation, such as HUD's Lead-Safe Housing Rule or a state regulation, requires dust clearance sampling by a properly qualified person and requires the certified renovator or a worker under the direction of the certified renovator to re-clean until clearance is achieved, EPA will allow the renovation firm to use both dust clearance testing and clearance instead of the cleaning verification step.

Property owners in other situations may still choose to perform dust testing at any time, such as after a renovation, including cleaning verification, has been completed. EPA recommends that property owners who choose to have dust testing performed use certified dust sampling professionals such as inspectors, risk assessors, or dust sampling technicians. EPA also recommends that property owners who wish to have dust testing performed after a renovation reach an agreement

with the renovation firm up front as to what will happen based on the results of the dust testing, such as whether additional cleaning will be performed if the surfaces do not achieve the clearance standards in 40 CFR 745.227(e)(8)(viii).

#### F. Recordkeeping for Renovation Firms

1. *Recordkeeping—*a. *Pre-renovation education.* 40 CFR 745.86 already requires that persons performing renovations in target housing document compliance with the lead hazard information distribution provisions of the Pre-Renovation Education Rule. Consistent with the 2006 Proposal, this final rule deletes existing 40 CFR 745.88 because it contains only sample acknowledgment statements for the purpose of documenting compliance with the information distribution requirements and is thus unnecessary. EPA received no comments on this proposed deletion. In addition, EPA received no substantive comments on the sample acknowledgment form provided with the proposed rule. New sample acknowledgment forms incorporating language consistent with this final rule and reflecting commenter editorial suggestions are available on EPA's website at <http://www.epa.gov/lead> and from the National Lead Information Center at 1-(800)-424-LEAD (5323).

In addition, as proposed in the 2006 Proposal, EPA has modified paragraph (a) of 40 CFR 745.86 to make compliance with the recordkeeping requirements the responsibility of the renovation firm, not the certified renovator. Although, as discussed below, this final rule requires the certified renovator assigned to a renovation to certify compliance with the work practice requirements for that renovation, the renovation firm may choose to delegate other tasks associated with recordkeeping requirements to someone other than a certified renovator. For example, this rule does not require a certified renovator to distribute lead hazard information to owners and occupants before a renovation, nor does it require a certified renovator to obtain the necessary acknowledgment statements or certified mail receipts. The renovation firm may decide that it is more efficient to have someone other than the certified renovator perform these tasks.

As described in Unit III.B.2. of this preamble, this final rule expands the information distribution requirements to renovations in child-occupied facilities. In proposing this expansion, the 2007 Supplemental Proposal included

associated recordkeeping requirements for firms performing renovations in child-occupied facilities. Although EPA did receive comments on extending the information distribution requirements to child-occupied facilities, none of these comments specifically addressed the recordkeeping provisions themselves. EPA has determined that the recordkeeping requirements are an important part of monitoring compliance with and ensuring the effectiveness of the information distribution provisions of this rule. Therefore, this final rule retains the existing recordkeeping requirements for pre-renovation lead hazard information distribution in target housing and extends those recordkeeping requirements to renovations in child-occupied facilities. Firms performing renovations in target housing or child-occupied facilities must obtain and retain signed and dated acknowledgements of receipt of the lead hazard information from building owners or a certificate of mailing for such information. In addition, renovation firms must obtain and retain signed and dated acknowledgments of receipt from the occupant (the resident of the housing unit being renovated or the proprietor of the child-occupied facility) or certificates of mailing for such information, or the firm must prepare a certification that documents the attempts made to provide this information to the occupants. For renovations in common areas in target housing, the firm must also document the steps taken to provide information to the tenants with access to the common area being renovated. Finally, firms performing renovations in child-occupied facilities must take steps to provide information to the parents and guardians of children under age 6 using the facility. Firms may do this by either mailing each parent or guardian the lead hazard information pamphlet and a general description of the renovation or by posting informational signs where parents and guardians are likely to see them. Informational signs must be accompanied by a posted copy of the pamphlet or information on how to obtain the pamphlet at no charge to interested parents or guardians. The firm's activities with respect to parents and guardians must also be documented.

b. *Documentation of compliance with other regulatory provisions.* This final rule provides for a number of exceptions. Unit III.A.3. of this preamble describes an exception for renovations in owner-occupied target housing that is neither the residence of

a child under age 6 or apregnant woman, nor a child-occupied facility. In order for a renovation to be eligible for this exception, the renovation firm must obtain a signed statement from the owner of the housing to the effect that he or she is the owner of the housing to be renovated, that he or she resides in the housing to be renovated, that no child under 6 or no pregnant woman resides there, that the housing is not a child-occupied facility, and that the owner acknowledges that the work practices to be used during the renovation will not necessarily include all of the work practices contained in EPA's renovation, repair, and painting rule. Consistent with the 2006 Proposal and the 2007 Supplemental Proposal, this final rule requires renovation firms to maintain this signed statement, which must include the address of the housing being renovated, for 3 years after the completion of the renovation. Again, although EPA received comments on the merits of this exception, no comments were directed specifically to the recordkeeping requirement. EPA has determined that the recordkeeping requirement is necessary to allow EPA to monitor compliance with the terms of this exception.

This final rule also requires firms performing renovations to retain documentation of compliance with the work practices and other requirements of the rule. Specifically, the firm must document that a certified renovator was assigned to the project, that the certified renovator provided on-the-job training for workers used on the project, that the certified renovator performed or directed workers who performed the tasks required by this final rule, and that the certified renovator performed the post-renovation cleaning verification. This documentation must include a copy of the certified renovator's training certificate. Finally, the documentation must include a certification by the certified renovator that the work practices were followed with narration as applicable. The certification must include the specific information listed in § 745.86(b)(7). The firm must keep this information for 3 years after the completion of the renovation.

The 2006 Proposal also included a requirement that renovation firms maintain documentation of compliance with the renovator and worker training requirements and the work practice requirements. This documentation would have had to include signed and dated descriptions of how activities performed by the certified renovator were conducted in compliance with the proposed requirements. To demonstrate

how these recordkeeping requirements might be met, EPA prepared and placed into the docket a draft recordkeeping checklist.

EPA received many comments on the substance of these recordkeeping requirements and on the draft recordkeeping checklist. Some commenters thought that the purpose of the recordkeeping requirement should be to provide important information to consumers or to serve as part of the record of whether a particular structure was lead-safe. Some, but not all of these commenters suggested that there was no need for the renovation firm to retain the records it prepares. Rather, the records should be given to the owners and occupants of the building either before or after the renovation. However, as proposed, the recordkeeping requirement served two purposes. The first is to allow EPA or an authorized State to review a renovation firm's compliance with the substantive requirements of the regulation through reviewing the records maintained for all of the renovation jobs the firm has done. The second is to remind a renovation firm what it must do to comply. EPA envisioned that renovation firms would use the recordkeeping requirements and checklist as an aid to make sure that they have done everything that they are required to do for a particular renovation. For these two purposes, there is no substitute for recordkeeping by renovation firms.

However, EPA agrees with those commenters that felt that the recordkeeping requirements were vague, particularly in light of the draft recordkeeping checklist itself and the amount of time that EPA estimated it would take a renovation firm to complete the checklist. Many commenters said that it was unclear how much detail EPA would be looking for in descriptions of how the firm complied with the various work practices, and some noted that an extensive narrative would contribute no more to compliance or enforcement than a box checked to indicate that the requirements had been complied with.

In response to these commenters, EPA has revised that draft recordkeeping checklist to be more in the nature of a checklist, with a certification that the representations on the form are true and correct. Narrative information is still required where necessary, such as an identification of the brand of test kits used, the locations where they were used, and the results. EPA has also revised the regulatory text to describe the specific information that must be provided and the specific items for which a certification of compliance is

required. The regulatory text at 40 CFR 745.86(b)(7) now contains a list of work practice elements that must be certified as having been performed. In response to two commenters that suggested that the only person truly capable of certifying that the lead-safe work practices were followed on a particular job would be the certified renovator assigned to that job, EPA is requiring the certification to be completed by the certified renovator assigned to the renovation. EPA has determined that a review of the records maintained by renovation firms will be an effective method of determining whether a particular firm is generally complying with the regulations or not.

2. *Notification to EPA.* In the 2006 Proposal, EPA requested comment on, but did not propose, a requirement that renovation firms notify EPA before beginning a covered renovation project. Most commenters supported a notification requirement, arguing notifications would provide information to EPA about where renovation activities will be occurring, so EPA could inspect ongoing renovation projects for compliance with the requirements of this rule. These commenters stated that EPA would be unable to enforce the requirements of the rule without a notification provision. Some commenters also suggested that the act of informing EPA of their activities provides a powerful incentive for renovation firms to comply. Other commenters observed that prior notification for every covered renovation would be too burdensome for the regulated community and for the Agency. Some of these commenters suggested that notifications only be required for renovations involving high-risk methods, housing where a child under age 6 or a pregnant woman resides, or renovations involving multiple rooms in a housing unit.

This final rule does not include a prior notification requirement. EPA disagrees with the notion that there is no way to enforce this regulation without a prior notification requirement. As stated above in the discussion on recordkeeping, EPA believes that a review of a renovation firm's records will demonstrate whether or not a renovation firm generally complies with the regulations. In addition, as at least one commenter noted, many renovations require a building permit from the local permitting authority. EPA can work with the local authorities to identify inspection targets. EPA can also follow up on tips and complaints.

EPA agrees with those commenters that believe that prior notification for

every project is simply too burdensome for the regulated community and for the Agency. If the streamlined, telephone-based system recommended by some of the commenters were implemented, it would reduce the initial burden on the renovation firms. However, EPA would still have to process millions of such notifications annually, and the collective burden on renovation firms and the government would be considerable. Rather than require millions of notifications annually, the great majority of which would never be reviewed, EPA prefers to use other methods for targeting renovation projects for inspections.

An initially attractive option considered by EPA was a prior notification requirement for a subset of covered renovation projects. This option could potentially reduce the notifications received to a manageable level, while preserving the benefits of a prior notification requirement, but EPA was unable to develop appropriate criteria for defining which renovations would require prior notification. EPA considered requiring prior notification for renovations using certain high-risk practices, the practices prohibited by the HUD Lead Safe Housing Rule and EPA's Lead-based Paint Activities Regulations. However, EPA ultimately decided, as described in Unit III.E.6. of this preamble, to prohibit most of those practices for covered renovations. Requiring prior notifications only for renovations in housing where a child under age 6 resides and in child-occupied facilities would not significantly reduce the notifications that would be required. EPA determined that a prior notification requirement tied to project size would not be feasible or effective, because the hazard potential from a renovation job is a combination of the size of the project and the activity being performed.

With regard to the compliance mindset mentioned by some commenters, EPA believes that the recordkeeping requirements are a less burdensome way to achieve the same goal. In fact, a prior notification requirement could lead to EPA targeting for inspection those persons who are most likely to be making an effort to comply with the substantive requirements of the regulation. The person who would not bother to comply with the substantive provisions of this rule would most likely avoid filing a prior notification to EPA before beginning a covered renovation, repair, or painting project. These persons are more likely to be performing renovations in a non-compliant manner than are persons who have complied

with a prior notification requirement and told EPA where to find them.

EPA has therefore determined that a prior notification requirement is not an effective or efficient means of facilitating the monitoring of compliance with this regulation. States, Territories, and Tribes developing their own renovation, repair, and painting programs may come to a different conclusion. These jurisdictions are free to establish prior notification schemes that make sense for their community.

#### *G. State, Territorial, and Tribal Programs*

1. *In general.* Because of the enormous number of renovation activities that occur in this country on an annual basis, EPA welcomes the help of its State, Territorial, and Tribal partners to ensure that these renovations are performed by trained persons in accordance with this final rule. This final rule establishes, in accordance with TSCA section 404 and EPA's Policy for the Administration of Environmental Programs on Indian Reservations (Ref. 46), requirements for the authorization of State, Territorial, and Tribal renovation, repair, and painting programs. The process for obtaining authorization to operate these programs in lieu of the Federal program is the same process used to authorize State, Territorial, and Tribal lead-based Paint Activity or Pre-Renovation Education programs found in 40 CFR part 745, subpart Q.

Interested States, Territories, and Indian Tribes may apply for, and receive authorization to, administer and enforce all of the elements of the new subpart E, as amended. States, Territories and Tribes may choose to administer and enforce just the existing requirements of subpart E, the pre-renovation education elements, or all of the requirements of the proposed subpart E, as amended. The 2006 Proposal and the 2007 Supplemental Proposal would not have provided for the authorization of State, Territorial, or Tribal programs that include only the training, certification, accreditation, and work practice requirements for renovation, repair, and painting programs and not the pre-renovation education provisions of subpart E. EPA proposed this approach because the Agency believes that the pre-renovation education provisions are an integral part of ensuring that consumers have the information they need to make informed decisions about renovation practices in their homes and other buildings. In addition, consistent with the proposals, this final rule encourage renovation firms to use the existing pamphlet acknowledgment

process to provide owner-occupants of target housing with the opportunity to opt out of the training, certification, and work practice requirements of the rule if they reside in the housing to be renovated, there is no child under age 6 or pregnant woman in residence, the housing does not otherwise meet the definition of child-occupied facility, and the owner acknowledges that the work practices to be used during the renovation will not necessarily include all of the lead-safe work practices contained in EPA's renovation, repair, and painting rule.

One State commenter disagreed with EPA's proposed approach and requested that EPA authorize State, Territorial or Tribal programs that incorporate only the training, certification, accreditation, and work practices of this final rule because TSCA section 404 allows states to administer and enforce the standards, regulations, or other requirements established under TSCA section 402 or TSCA section 406 or both. EPA agrees with this commenter's reading of TSCA. Therefore, this final rule provides for the authorization of State, Territorial, or Tribal programs that include either the pre-renovation education requirements of 40 CFR part 745, subpart E, or the training, certification, accreditation and work practice requirements of this rule, or both.

States, Territories, and Tribes that wish to administer and enforce the pre-renovation education provisions of subpart E, as amended, must include both target housing and child-occupied facilities within the scope of their program. Similarly, States, Territories, and Tribes that are also interested in obtaining authorization to administer and enforce the training, certification, accreditation, work practice, and recordkeeping elements of subpart E, as amended, must include both target housing and child-occupied facilities within the scope of their program. States with existing authorized pre-renovation education programs are required to demonstrate that they have modified their programs to include child-occupied facilities. These States must provide this demonstration no later than the first report submitted pursuant to 40 CFR 745.324(h) on or after April 22, 2009.

**2. Process.** The authorization process currently codified at 40 CFR part 745, subpart Q, will be used for the purpose of authorizing State, Territorial, and Tribal renovation, repair, and painting programs. States, Territories, and Tribes seeking authority for their programs must obtain public input, then submit an application to EPA. Applications must contain a number of items,

including a description of the State, Territorial, or Tribal program, copies of all applicable statutes, regulations, and standards, and a certification by the State Attorney General, Tribal Counsel, or an equivalent official, that the applicable legislation and regulations provide adequate legal authority to administer and enforce the program. The program description must demonstrate that the State, Territorial, or Tribal program is at least as protective as the Federal program. In this case, the Federal program consists of the requirements for training, certification, and accreditation and the work practice standards of this final rule.

One commenter suggested that EPA require States with a currently authorized TSCA 402(a) lead-based paint activities program to submit only an amended application for incorporating the TSCA section 402(c)(3) renovation, repair, and painting program requirements since many of the required documents would be the same as those submitted for the original TSCA 402(a) application. Furthermore, the commenter recommended that a letter from the State agency identified in the original 402(a) authorization application with a synopsis detailing how the State proposes to administer and enforce the renovation, repair, and painting program serve as an amended application. EPA has determined that a new application for authorization for the renovation, repair, and painting program is necessary because there may be a different State agency or consortia of agencies implementing and enforcing this program, a long time may have elapsed since most States submitted their TSCA section 402(a) program application, and many of the requirements within the elements of the renovation, repair, and painting program differ from their counterparts in the lead-based paint activities program.

To be eligible for authorization to administer and enforce the training, certification, accreditation, and work practice requirements of this final rule, State, Territorial, and Tribal renovation programs must contain certain minimum elements, e.g., work practice standards and procedures and requirements for the certification of individuals and/or firms, that are very similar to the existing minimum elements specified in 40 CFR 745.326(a) for lead-based paint activities programs. In order to be authorized, State, Territorial, or Tribal programs must have procedures and requirements for the accreditation of training programs,

which can be as simple as procedures for accepting training provided by an EPA-accredited provider, or a provider accredited by another authorized State, Territorial, or Tribal program. Procedures and requirements for the certification of renovators are also necessary. At a minimum, these must include a requirement that certified renovators have taken accredited training, and procedures and requirements for re-certification. State, Territorial, and Tribal programs applying for authorization must also include work practice standards for renovations that ensure that renovations are conducted only by certified renovation firms and the renovations are conducted using work practices at least as protective as those of the Federal program. As is the current practice with lead-based paint activities, EPA will not require State, Territorial, or Tribal programs to certify both firms and individuals that perform renovations. States, Territories and Tribes may choose to certify either firms or individuals, so long as the individuals that perform the duties of renovators are required to take accredited training.

**3. Implementation.** In order to provide interested States, Territories and Tribes time to develop, or begin developing renovation, repair, and painting programs in accordance with this rule, EPA will not begin to actively implement the Federal program until April 22, 2009, at which time EPA will begin accepting applications for training program accreditation. Several commenters thought 1 year would be adequate for the purpose of allowing States, Territories, and Tribes to develop their own programs, while others expressed concern that 1 year would not be enough time to get these programs developed and authorized. Most commenters who expressed an opinion on this topic generally agreed that an implementation delay is necessary. Reasons given in support of a delay were conservation of State financial and administrative resources and the fact that some States have had difficulties in retraining contractors to new State-specific requirements after the contractors had become accustomed to working under the Federal program. In contrast, some commenters argued that, in light of the 2010 goal, no delay whatsoever was warranted. This final rule retains the 1 year implementation delay set forth in the 2006 Proposal. EPA has determined that this period of time represents an appropriate balance between the need to implement this rule quickly and concerns over potential duplication of effort and additional

costs incurred by the regulated community if EPA begins accrediting training providers and certifying firms in jurisdictions that are also working towards implementing their own programs. States, Territories, and Tribes may begin the authorization process at any time after the effective date of this final rule, even after the Federal program has been implemented in their jurisdiction.

Some commenters were concerned about the effect of this rule on existing State programs. Several commenters asked EPA to expressly state that this rule does not pre-empt existing State programs and that State programs that are more stringent than the Federal program will be eligible for authorization. One commenter noted that the number of houses with lead contaminated paint is disproportionately distributed throughout the U.S. This commenter pointed out that this apparent disparity supports the need for State control of lead programs and for EPA to practice "regulatory restraint." According to this commenter, this "regulatory restraint" will allow States with more severe lead paint problems to impose stricter standards and requirements regarding certification and work practices without imposing unnecessary burdens on States with less severe problems.

This final rule does not preempt existing programs that address renovations. However, to the extent that these programs are less protective than the requirements of this final rule, the requirements of this final rule will apply. To be eligible for authorization, State, Territorial, and Tribal programs need not exactly duplicate the Federal program contained in this final rule, but they must still meet the requirement of TSCA section 404 that they be "at least as protective as" the Federal program. It would be difficult for the Agency to describe specific requirements that would make a program more or less "protective." EPA will review each program application separately against the protections provided by this final rule.

Several commenters expressed concern regarding the uniformity and consistency of State programs. Some recommended that EPA take States' concerns into account, but guarantee uniformity of State programs by prohibiting States from arbitrarily deviating from program elements. Others noted that if there are uniform regulations for approved training courses for State certification, there should be reciprocity between States since many people work in multiple States. One commenter suggested that,

in an effort to promote consistency, States institute a lead-safety test that renovators must pass prior to receiving permits to conduct work. Several commenters noted that a lack of reciprocity between States and/or duplicative or divergent certification requirements will add an unnecessary burden and level of complexity for renovation and remodeling firms, especially those working in multi-State areas. One commenter argued that this could lead to a problem in maintaining certifications similar to the problem the commenter believes exists in maintaining lead-based paint inspector, risk assessor, and other certifications associated with TSCA section 402 abatements. One suggested that EPA should exert control over the right to refuse approval of State programs unless they provide for reciprocity with the Federal program and programs of other jurisdictions approved by EPA.

The standard of EPA review for State, Territorial, and Tribal programs under TSCA section 404 is that they be "at least as protective" as the Federal program. In addition, TSCA section 404 (e) reserves the right of States and their political subdivisions to impose requirements that are more stringent than the Federal program. EPA interprets this to mean that EPA cannot compel States, Territories, and Tribes to adopt programs identical to the Federal program or to establish reciprocity provisions. However, EPA continues to encourage States, Territories, and Tribes that may be considering establishing their own renovation programs to keep reciprocity in mind as they move forward. The benefits to be derived from reciprocity arrangements with the Federal program and other authorized jurisdictions include potential cost-savings from reducing duplicative activity and the development of a professional renovation workforce more quickly, thus providing maximum flexibility to State, Territorial, or Tribal residents. In addition, the Agency encourages States, Territories and Tribes to consider the use of existing certification and accreditation procedures as they develop their programs. These existing programs need not be limited to lead-based paint. For example, a State may choose to add lead-safe renovation requirements to their existing contractor licensing programs.

#### *H. Effective Date and Implementation Dates*

This final rule is effective on June 23, 2008. This final rule will be implemented according to the following schedule:

1. As of June 23, 2008.
  - a. States, Territories, and Tribes may begin applying for authorization to administer and enforce their own renovation, repair, and painting programs. EPA will begin authorizing States, Territories, and Tribes as soon as it receives their complete applications.
  - b. No training program may provide, offer, or claim to provide training or refresher training for EPA certification as a renovator or a dust sampling technician without accreditation from EPA under 40 CFR 745.225.
2. As of April 22, 2009. Training programs for renovators or dust sampling technicians may begin applying for accreditation under 40 CFR 745.225. EPA will begin accrediting training programs as soon as it receives complete applications from training providers. Individuals who wish to become certified renovators or dust sampling technicians may begin taking accredited training as soon as it is available.
3. As of October 22, 2009. Renovation firms may begin applying for certification under 40 CFR 745.89. EPA will begin certifying renovation firms as soon as it receives their complete applications.
4. As of April 22, 2010. The rule will be fully implemented.
  - a. No firm may perform, offer, or claim to perform renovations without certification from EPA under 40 CFR 745.89 in target housing or child-occupied facilities, unless, in the case of owner-occupied target housing, the firm has obtained a statement signed by the owner that the renovation will occur in the owner's residence, no child under age 6 resides there, the housing is not a child-occupied facility, and the owner acknowledges that the work practices to be used during the renovation will not necessarily include all of the lead-safe work practices contained in EPA's renovation, repair, and painting rule.
  - b. All renovations must be directed by renovators certified in accordance with 40 CFR 745.90(a) and performed by certified renovators or individuals trained in accordance with 40 CFR 745.90(b)(2) in target housing or child-occupied facilities, unless, in the case of owner-occupied target housing, the firm performing the renovation has obtained a statement signed by the owner that the renovation will occur in the owner's residence, no child under age 6 resides there, the housing is not a child-occupied facility, and the owner acknowledges that the work practices to be used during the renovation will not necessarily include all of the lead-safe work practices contained in EPA's renovation, repair, and painting rule.

c. All renovations must be performed in accordance with the work practice standards in 40 CFR 745.85 and the associated recordkeeping requirements in 40 CFR 745.86(b)(6) and (b)(7) in target housing or child-occupied facilities, unless, in the case of owner-occupied target housing, the firm performing the renovation has obtained a statement signed by the owner that the renovation will occur in the owner's residence, no child under age 6 resides there, the housing is not a child-occupied facility, and the owner acknowledges that the work practices to be used during the renovation will not necessarily include all of the lead-safe work practices contained in EPA's renovation, repair, and painting rule.

With respect to the new renovation-specific pamphlet and the requirements of the Pre-Renovation Education Rule, as of the effective date of the rule June 23, 2008, renovators or renovation firms performing renovations in States and Indian Tribal areas without an authorized Pre-Renovation Education Rule program may provide owners and occupants with either of the following EPA pamphlets: *Protect Your Family From Lead in Your Home*; or *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools*. As of December 22, 2008, *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools* must be used exclusively.

#### IV. References

The following is a list of the documents that are specifically referenced in this final rule and placed in the public docket that was established under Docket ID number EPA-HQ-OPPT-2005-0049. For information on accessing the docket, refer to the **ADDRESSES** unit at the beginning of this document.

1. U.S. Environmental Protection Agency (USEPA). Air Quality Criteria for Lead (September 29, 2006).
2. President's Task Force on Environmental Health Risks and Safety Risks to Children. Eliminating Childhood Lead Poisoning: A Federal Strategy Targeting Lead Paint Hazards (February 2000).
3. USEPA. Lead; Renovation, Repair, and Painting Program; Proposed Rule. **Federal Register** (71 FR 1588, January 10, 2006).
4. USEPA. Lead; Requirements for Lead-based Paint Activities; Final Rule. **Federal Register** (61 FR 45778, August 29, 1996).
5. USEPA. Lead; Fees for Accreditation of Training Programs and Certification of Lead-based Paint

Activities Contractors; Final Rule. **Federal Register** (64 FR 31091, June 9, 1999).

6. USEPA. Lead; Notification Requirements for Lead-Based Paint Abatement Activities and Training; Final Rule. **Federal Register** (69 FR 18489, April 8, 2004).

7. USEPA, Consumer Product Safety Commission (CPSC), U.S. Department of Housing and Urban Development (HUD). Protect Your Family From Lead in Your Home (EPA 747-K-99-001, June 2003).

8. USEPA. Lead; Requirements for Hazard Education Before Renovation of Target Housing; Final Rule. **Federal Register** (63 FR 29907, June 1, 1998).

9. USEPA. Lead; Identification of Dangerous Levels of Lead; Final Rule. **Federal Register** (66 FR 1206, January 5, 2001).

10. USEPA. Reducing Lead Hazards When Remodeling Your Home (EPA747-K-97-001, September 1997).

11. USEPA. Lead Exposure Associated With Renovation and Remodeling Activities: Phase I, Environmental Field Sampling Study (EPA 747-R-96-007, May 1997).

12. USEPA. Lead Exposure Associated With Renovation and Remodeling Activities: Phase II, Worker Characterization and Blood-Lead Study (EPA 747-R-96-006, May 1997).

13. USEPA. Lead Exposure Associated With Renovation and Remodeling Activities: Phase III, Wisconsin Childhood Blood-Lead Study (EPA 747-R-99-002, March 1999).

14. USEPA. Lead Exposure Associated With Renovation and Remodeling Activities: Phase IV, Worker Characterization and Blood-Lead Study of R&R Workers Who Specialize in Renovation of Old or Historic Homes (EPA 747-R-99-001, March 1999).

15. USEPA. Lead; Renovation, Repair, and Painting Program; Supplemental Notice of Proposed Rulemaking. **Federal Register** (72 FR 31022, June 5, 2007).

16. USEPA. Lead; Renovation, Repair, and Painting Program; Notice of Availability. **Federal Register** (72 FR 12582, March 16, 2007).

17. USEPA. Characterization of Dust Lead Levels After Renovation, Repair, And Painting Activities. (November 13, 2007).

18. USEPA. Lead Safety for Remodeling, Repair, And Painting. Joint EPA/HUD Renovation Training Curriculum (EPA 747-B-03-001/2, July 2003).

19. National Association of Home Builders (NAHB). Lead Safe Work Practices Survey Project Report. Prepared by Atrium Environmental

Health and Safety Services (November 9, 2006).

20. McMillan Associates. Response to SBREFA Panel Recommendations for Further Analysis of Existing Phase III Data (August 6, 2001).

21. U.S. Department of Health and Human Services (HHS), U.S. Public Health Service (PHS), CDC. Children with Elevated Blood Lead Levels Attributed to Home Renovation and Remolding Activities--New York, 1993-1994. Morbidity and Mortality Weekly Report (45(51); 1120-1123, January 3, 1997).

22. Reissman, Dori B., Thomas D. Matte, Karen L. Gurnite, Rachel B. Kaufmann, and Jessica Leighton. "Is Home Renovation or Repair a Risk Factor for Exposure to Lead Among Children Residing in New York City?" *Journal of Urban Health: Bulletin of the New York Academy of Medicine*. Vol. 79, No. 4, 502-511, (December 2005).

23. USEPA. Lead; Requirements for Lead-based Paint Activities; Proposed Rule. **Federal Register** (59 FR 45872, September 2, 1994).

24. USEPA. Office of Pollution Prevention and Toxics (OPPT) "Economic Analysis for the TSCA Lead Renovation, Repair, and Painting Program Final Rule for Target Housing and Child-Occupied Facilities" (March 2008).

25. S. Rep. 102-332, P.L. 102-550, Housing and Community Development Act of 1992 (July 23, 1992).

26. National Institute of Standards and Technology (NIST). Spot Test Kits for Detecting Lead in Household Paint, a Laboratory Evaluation (NISTIR 6398, May 2000).

27. HUD. National Survey of Lead and Allergens in Housing, Volume I: Analysis of Lead Hazards, Final Report, Revision 7.1. (October 31, 2002).

28. ASTM International. Standard Practice for Evaluating the Performance Characteristics of Qualitative Chemical Spot Test Kits for Lead in Paint (E 1828-01).

29. USEPA. Lead-Based Paint Pre-Renovation Education Rule; Interpretive Guidance, Part I (May 28, 1999).

30. USEPA and HUD. Lead; Requirements for Disclosure of Information Concerning Lead-Based Paint in Housing; Final Rule. **Federal Register** (61 FR 9064, March 6, 1996).

31. USEPA, HUD. Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools. (March 2008).

32. USEPA. Lead-Based Paint Pre-Renovation Education Rule; Interpretive Guidance, Part II (October 15, 1999).

33. USEPA. Lead Sampling Technician Course (EPA 747-B-00-002, July 2000).

34. HUD. Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing (June 1995).

35. USEPA. Lead Dust Minimization Work Practices for Renovation, Remodeling and Repainting; Draft Technical Manual (September 29, 1998).

36. National Institute for Occupational Safety and Health (NIOSH). Health Hazard Evaluation; Rhode Island Department of Health; HETA 96-0200-2799 (June 2000).

37. USEPA. Electrostatic Cloth and Wet Cloth Field Study in Residential Housing (September 2005).

38. United States Department of Energy. Office of Health, Safety and Security. <http://www.hss.energy.gov/csa/csp/hepa>.

39. Occupational Safety and Health Administration (OSHA), Department of Labor (DOL). Regulatory Flexibility Act Review of the Occupational Safety Standard for Lead in Construction Labor (72 FR 54826, September 27, 2007).

40. Rich, David Q. George G. Rhoads, Lih-Ming Yiin, Junfeng Zhang, Zhipeng Bai, John L. Adgate, Peter J. Ashley, and Paul J. Liroy. "Comparison of Home Lead Dust Reduction Techniques on Hard Surfaces: the New Jersey Assessment of Cleaning Techniques Trial." *Environmental Health Perspectives* 110(9): 889-893 (September 2002).

41. HUD. Evaluation of Household Vacuum Cleaners in the Removal of Settled Lead Dust from Hard Surface Floors. (December 27, 2002, revised February 2006).

42. Lih-Ming Yiin, George G. Rhoads, David Q. Rich, Junfeng Zhang, Zhipeng Bai, John L. Adgate, Peter J. Ashley, and Paul J. Liroy. "Comparison of Techniques to Reduce Residential Lead Dust on Carpet and Upholstery: the New Jersey Assessment of Cleaning Techniques Trial." *Environmental Health Perspectives* 110(12): 1233-1237. (December 2002).

43. Canadian Mortgage and Housing Corporation (CMHC). "Effectiveness of Clean up Techniques for Leaded Paint Dust." (1992).

44. USEPA. A Comparison of Post-Renovation and Remodeling Surface Cleaning Techniques. Prepared by Clemson Environmental Technologies Laboratory (December 14, 2001)

45. CMHC. "Evaluation of the Cleanup of Lead Paint Dust In Houses." Prepared by Pinchin Environmental Consultants (1995).

46. USEPA. EPA Policy for the Administration of Environmental Programs on Indian Reservations (November 8, 1984).

47. USEPA. ICR Final Rule Addendum for rulemaking entitled "Lead; Renovation, Repair, and Painting Program; Final Rule" (March 2008).

48. USEPA. Report of the Small Business Advocacy Review Panel on the Lead-based Paint Certification and Training; Renovation and Remodeling Requirements (March 3, 2000).

49. Final Regulatory Flexibility Analysis for the Lead; Renovation, Repair, and Painting Program; Final Rule (March 2008).

50. ASTM International. Standard Practice for Clearance Examinations Following Lead Hazard Reduction Activities in Single-Family Dwellings and Child-Occupied Facilities (E 2271-05).

51. ASTM International. Standard Guide for Evaluation, Management, and Control of Lead Hazards in Facilities (E 2052-99).

## V. Statutory and Executive Order Reviews

### A. Executive Order 12866

Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), it has been determined that this rule is a "significant regulatory action" under section 3(f)(1) of the Executive Order because EPA estimates that it will have an annual effect on the economy of \$100 million or more. Accordingly, this action was submitted to the Office of Management and Budget (OMB) for review under Executive Order 12866 and any changes made based on OMB recommendations have been documented in the public docket for this rulemaking as required by section 6(a)(3)(E) of the Executive Order.

In addition, EPA has prepared an analysis of the potential costs and benefits associated with this rulemaking. This analysis is contained in the Economic Analysis (Ref. 24), which is available in the docket for this action and is briefly summarized here.

1. *Types of facilities.* This rule applies to an estimated 37.8 million pre-1978 facilities. Of these, approximately 37.7 million facilities are located in target housing, either in rental housing, owner-occupied housing where a child under age 6 resides, or owner-occupied housing where no child under age 6 resides but that otherwise meets the definition of a child-occupied facility. Approximately 100,000 facilities are child-occupied facilities in pre-1978 public or commercial buildings.

2. *Options evaluated.* EPA considered a variety of options for addressing the risks presented by renovation, repair, and painting actions where lead-based

paint is present. The Economic Analysis analyzed several different options for the scope of the rule, which would limit the coverage of the rule's substantive provisions depending on when the facility was built (such as pre-1960 or pre-1978), and whether or not there are children under the age of 6 or a pregnant woman residing in owner-occupied housing. In some options, coverage of the rule was phased in over time. EPA also considered different options for work practices, such as containment, cleaning, and cleaning verification.

3. *Number of events and individuals affected.* In the first year that all of the rule requirements will be in effect, there will be an estimated 8.4 million renovation, repair, and painting events where lead-safe work practices will be used due to the rule. As a result, there will be approximately 1.4 million children under the age of 6 who will be affected by having their exposure to lead dust minimized due to the rule. There will also be about 5.4 million adults who will be affected. After improved test kits for determining whether a painted surface contains lead-based paint become available (which is assumed in the analysis to occur by the second year of the rule), the number of renovation, repair, and painting events using lead-safe work practices is expected to drop to 4.4 million events per year. No change in the number of exposures avoided due to the rule is expected because the improved test kit will more accurately identify paint without lead, thus reducing the number of events unnecessarily using the required work practices.

4. *Benefits.* The Economic Analysis describes the estimated benefits of the rulemaking in qualitative and quantitative terms. Benefits result from the prevention of adverse health effects attributable to lead exposure. These health effects include impaired cognitive function in children and several illnesses in children and adults. EPA estimated the benefits of avoided incidence of IQ loss due to reduced lead exposure to children under the age of 6. There are not sufficient data at this time to develop dose-response functions for other health effects in children or for pregnant women. The benefits of avoided exposure to adults were not quantified due to uncertainties about the exposure of adults to lead in dust from renovation, repair, and painting activities in these facilities.

The rule is estimated to result in quantified benefits of approximately \$700 million to \$1,700 million in the first year. The 50-year annualized benefits provide a measure of the

steady-state benefits. The quantified IQ benefits to children are expected to be approximately \$700 million to \$1,700 million per year when annualized using a 3% discount rate, and \$700 million to \$1,800 million per year when using a 7% discount rate. The estimated benefits for the other scope options range from approximately \$300 million to \$1,700 million using a 3% discount rate and from \$300 million to \$1,800 million using a 7% discount rate. The benefits from prohibiting certain paint preparation and removal practices in renovations requiring lead-safe work practices under the rule are estimated to be \$400 million to \$900 million per year using a 3% discount rate. There are additional unquantified benefits, including other avoided health effects in children and adults.

5. *Costs.* The Economic Analysis estimates the costs of complying with the rule. Costs may be incurred by contractors that perform renovation, repair, and painting work for compensation, landlords that use their own staff to perform renovation, repair, and painting work in leased buildings; and child-occupied facilities that use their own staff to perform renovation, repair, and painting work.

The rule is estimated to result in a total cost of approximately \$800 million in the first year that all of the rule requirements will be in effect. The cost is estimated to drop to approximately \$400 million per year in the second year when the improved test kits are assumed to become available. The 50-year annualized costs provide a measure of the steady-state cost. Annualized costs of the rule are estimated to be approximately \$400 million per year using either a 3% discount rate or a 7% discount rate. Annualized costs for the other scope options range from approximately \$300 million to approximately \$700 million per year using a 3% discount rate and \$400 million to \$700 million per year using a 7% discount rate. The cost of prohibiting certain paint preparation and removal practices is estimated to cost less than \$10 million per year using either a 3% or a 7% discount rate.

6. *Net benefits.* Net benefits are the difference between benefits and costs. The rule is estimated to result in net benefits of--\$50 million to \$1,000 million in the first year, based on children's IQ benefits alone. The 50-year annualized net benefits for the rule based on children's benefits are estimated to be \$300 million to \$1,300 million per year using either a 3% or a 7% discount rate. The annualized net benefits for the other scope options range from approximately--\$50 million

to \$1,300 million per year using either a 3% or a 7% discount rate. The net benefits of prohibiting certain paint preparation and removal practices for renovations requiring lead-safe work practices are estimated to be approximately \$400 million to \$900 million per year using either a 3% or a 7% discount rate. There are additional unquantified benefits, including other avoided health effects in children and adults that are not included in the net benefits estimates.

It is important to note that the EPA analysis generates certain results that seem to indicate that more stringent control options yield smaller improvements reducing the risks of elevated blood lead levels in children than do less stringent control options. For example, the analysis estimates that using only containment of dust and debris generated during a RRP activity yields higher benefits than using all of the rule's work practices (containment, specialized cleaning, and cleaning verification). This is the opposite of what one might expect and of what is observed in the Dust Study for the 10 experiments that used the proposed rule cleaning and containment, since the benefits analysis implies that the combination of rule-style containment with rule-style cleaning and verification would result in more exposure than when such containment is combined with conventional cleaning. This is inconsistent with the Dust Study which shows that the largest decreases were observed in the 10 experiments where this final rule's practices of containment, specialized cleaning, and cleaning verification were used. Therefore, the anomalous results are likely to be artifacts of sparse underlying data and modeling assumptions. Although EPA summarizes some of the potential causes of these unexpected results in the Economic Analysis, at this time EPA is unclear as to precisely what is leading to these unexpected results. Because EPA has not determined why the benefits analyses contain anomalous results, EPA has limited confidence in the estimated benefits. EPA does not view the results as being sufficiently robust to represent the difference in magnitude of the benefits across regulatory alternatives. Nevertheless, EPA is confident that there are positive benefits.

#### *B. Paperwork Reduction Act*

The information collection requirements contained in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction

Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document prepared by EPA, an amendment to an existing ICR and referred to as the ICR Final Rule Addendum (EPA ICR No. 1715.10, OMB Control Number 2070-0155) has been placed in the public docket for this rule (Ref. 47). The information collection requirements are not enforceable until OMB approves them.

The new information collection activities contained in this rule are designed to assist the Agency in meeting the core objectives of TSCA section 402, including ensuring the integrity of accreditation programs for training providers, providing for the certification of renovators, and determining whether work practice standards are being followed. EPA has carefully tailored the recordkeeping requirements so they will permit the Agency to achieve statutory objectives without imposing an undue burden on those firms that choose to be involved in renovation, repair, and painting activities.

Burden under the Paperwork Reduction Act means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Under this rule, the new information collection requirements may affect training providers and firms that perform renovation, repair, or painting for compensation. Although these firms have the option of choosing to engage in the covered activities, once a firm chooses to do so, the information collection activities contained in this rule become mandatory for that firm.

The ICR document provides a detailed presentation of the estimated burden and costs for 3 years of the program. The aggregate burden varies by year due to changes in the number of firms that will seek certification each year. The burden and cost to training providers and firms engaged in renovation, repair, and painting activities is summarized below.

It is estimated that approximately 170 training providers will incur burden to

notify EPA (or an authorizing State, Tribe, or Territory) before and after training courses. The average burden for training provider notifications is estimated at 20 to 100 hours per year, depending on the number of training courses provided. Total training provider burden is estimated to average 9,000 hours per year. There are approximately 211,000 firms estimated to become certified to engage in renovation, repair, or painting activities. The average certification burden is estimated to be 3.5 hours per firm in the year a firm is initially certified, and 0.5 hours in years that it is re-certified (which occurs every 5 years). Firms must also distribute lead hazard information to the owners and occupants of public or commercial buildings that contain child-occupied facilities and in target housing containing child-occupied facilities. Finally, firms must keep records of the work they perform; this recordkeeping is estimated to average approximately 5 hours per year per firm. Total burden for these certified firms is estimated to average 1,373,000 hours per year. Total respondent burden during the period covered by the ICR is estimated to average approximately 1,382,000 hours per year.

There are also government costs to administer the program. States, Tribes, and Territories are allowed, but are under no obligation, to apply for and receive authorization to administer these requirements. EPA will directly administer programs for States, Tribes, and Territories that do not become authorized. Because the number of States, Tribes, and Territories that will become authorized is not known, administrative costs are estimated assuming that EPA will administer the program everywhere. To the extent that other government entities become authorized, EPA's administrative costs will be lower.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations codified in Chapter 40 of the CFR, after appearing in the preamble of the final rule, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. When this ICR is approved by OMB, the Agency will publish a technical amendment to 40 CFR part 9 in the **Federal Register** to display the OMB control number for the approved

information collection requirements contained in this final rule.

### *C. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this rule on small entities, small entity is defined in accordance with section 601 of the RFA as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

Pursuant to section 603 of the RFA, EPA prepared an initial regulatory flexibility analysis (IRFA) for the proposed rule and convened a Small Business Advocacy Review Panel to obtain advice and recommendations of representatives of the regulated small entities. A summary of the IRFA, a description of the Panel process, and a summary of the Panel's recommendations can be found in Unit VIII.C. of the preamble to the 2006 Proposal (Ref. 3). A detailed discussion of the Panel's advice and recommendations is found in the Panel Report (Ref. 48).

As required by section 604 of the RFA, we also prepared a final regulatory flexibility analysis (FRFA) for this final rule. The FRFA addresses the issues raised by public comments on the IRFA, which was part of the proposal of this rule. The FRFA is available for review in the docket and is summarized below (Ref. 49).

1. *Legal basis and objectives for the rule.* As discussed in Unit II.A. of this preamble, TSCA section 402(c)(2) directs EPA to study the extent to which persons engaged in renovation, repair, and painting activities are exposed to lead or create lead-based paint hazards regularly or occasionally. After concluding this study, TSCA section 402(c)(3) further directs EPA to revise its Lead-based Paint Activities Regulations under TSCA section 402(a)

to apply to renovation or remodeling activities that create lead-based paint hazards. Because EPA's study found that activities commonly performed during renovation and remodeling create lead-based paint hazards, EPA is revising the TSCA section 402(a) regulatory scheme to apply to individuals and firms engaged in renovation, repair, and painting activities. In so doing, EPA has also taken into consideration the environmental, economic, and social impact of this final rule as provided in TSCA section 2(c). The primary objective of the rule is to minimize exposure to lead-based paint hazards created during renovation, repair, and painting activities in housing where children under age 6 reside and in housing where a pregnant woman resides and in housing or other buildings frequented by children under age 6.

2. *Potentially affected small entities.* Small entities include small businesses, small organizations, and small governmental jurisdictions. The small entities that are potentially directly regulated by this rule include: small businesses (including contractors and property owners and managers); small nonprofits (certain day care centers and private schools); and small governments (school districts).

In determining the number of small businesses affected by the rule, the Agency applied U.S. Economic Census data to the SBA's definition of small business. However, applying the U.S. Economic Census data requires either under or overestimating the number of small businesses affected by the rule. For example, for many construction establishments, the SBA defines small businesses as having revenues of less than \$13 million. With respect to those establishments, the U.S. Economic Census data groups all establishments with revenues of \$10 million or more into one revenue bracket. On the one hand, using data for the entire industry would overestimate the number of small businesses affected by the rule and would defeat the purpose of estimating impacts on small business. It would also underestimate the rule's impact on small businesses because the impacts would be calculated using the revenues of large businesses in addition to small businesses. On the other hand, applying the closest, albeit lower, revenue bracket would underestimate the number of small businesses affected by the rule while at the same time overestimating the impacts. Similar issues arose in estimating the fraction of property owners and managers that are small businesses. EPA has concluded that a

substantial number of small businesses will be affected by the rule. Consequently, EPA has chosen to be more conservative in estimating the cost impacts of the rule by using the closest, albeit lower, revenue bracket for which Census data is available. For other sectors (nonprofits operating day care centers or private schools), EPA assumed that all affected firms are small, which may overestimate the number of small entities affected by the rule.

The vast majority of entities in the industries affected by this rule are small. Using EPA's estimates, the renovation, repair, and painting program will affect an average of approximately 189,000 small entities.

3. *Potential economic impacts on small entities.* EPA evaluated two factors in its analysis of the rule's requirements on small entities, the number of firms that would experience the impact, and the size of the impact. Average annual compliance costs as a percentage of average annual revenues were used to assess the potential average impacts of the rule on small businesses and small governments. This ratio is a good measure of entities' ability to afford the costs attributable to a regulatory requirement, because comparing compliance costs to revenues provides a reasonable indication of the magnitude of the regulatory burden relative to a commonly available measure of economic activity. Where regulatory costs represent a small fraction of a typical entity's revenues, the financial impacts of the regulation on such entities may be considered as not significant. For non-profit organizations, impacts were measured by comparing rule costs to annual expenditures. When expenditure data were not available, however, revenue information was used as a proxy for expenditures. It is appropriate to calculate the impact ratios using annualized costs, because these costs are more representative of the continuing costs entities face to comply with the rule.

EPA estimates that there are an average of 189,000 small entities that would be affected by the renovation, repair, and painting activities program. Of these, there are an estimated 165,000 small businesses with an average impact of 0.7%, 17,000 small non-profits with an average impact of 0.1%, and 6,000 small governments with an average impact of 0.004%. These estimates are based on an average cost of approximately \$35 per renovation.

4. *Relevant Federal rules.* The requirements in this rulemaking will fit within an existing framework of other

Federal regulations that address lead-based paint. The Pre-Renovation Education Rule, discussed in Unit II.A.2. of this preamble, requires renovators to distribute a lead hazard information pamphlet to owners and occupants before conducting a renovation in target housing. This rule has been carefully crafted to harmonize with the existing pre-renovation education requirements.

Disposal of waste from renovation projects that would be regulated by this rule is covered by the Resource Conservation and Recovery Act (RCRA) regulations for solid waste. This rule does not contain specific requirements for the disposal of waste from renovations.

HUD has extensive regulations that address the conduct of interim controls, as well as other lead-based paint activities, in federally assisted housing. Some of HUD's interim controls are regulated under this rule as renovations, depending upon whether the particular interim control measure disturbs more than the threshold amount of paint. In most cases, the HUD regulations are comparable to, or more stringent than this rule. In general, persons performing HUD-regulated interim controls must have taken a course in lead-safe work practices, which is also a requirement of this rule. However, this rule does not require dust clearance testing, a process required by HUD after interim control activities that disturb more than a minimal amount of lead-based paint.

Finally, OSHA's Lead Exposure in Construction standard covers potential worker exposures to lead during many construction activities, including renovation, repair, and painting activities. Although this standard may cover many of the same projects as this final rule, the requirements themselves do not overlap. The OSHA rule addresses the protection of the worker, this EPA rule principally addresses the protection of the building occupants, particularly children under age 6 and pregnant women.

5. *Skills needed for compliance.* This rule establishes requirements for training renovators, other renovation workers, and dust sampling technicians; certifying renovators, dust sampling technicians, and entities engaged in renovation, repair, and painting activities; accrediting providers of renovation and dust sampling technician training; and for renovation work practices. Renovators and dust sampling technicians would have to take a course to learn the proper techniques for accomplishing the tasks they will perform during renovations. These courses are intended to provide

them with the information they would need to comply with the rule based on the skills they already have. Renovators would then provide on-the-job training in work practices to any other renovation workers used on a particular renovation. They would also need to document the work they have done during renovations. This does not require any special skills. Renovation firms would be required to apply for certification to perform renovations; this process does not require any special skills other than the ability to complete the application. Training providers must be knowledgeable about delivering technical training. Training providers would be required to apply for accreditation to offer renovator and dust sampling technician courses. They would also be required to provide prior notification of such courses and provide information on the students trained after each such course. Completing the accreditation application and providing the required notification information does not require any special skills.

6. *Small Business Advocacy Review Panel.* Since the earliest stages of planning for this regulation under section 402(c)(3) of TSCA, EPA has been concerned with potential small entity impacts. EPA conducted outreach to small entities, and, in 1999, convened a Small Business Advocacy Review (SBAR) Panel to obtain advice and recommendations of representatives of the small entities that would potentially be subject to this regulation's requirements. At that time, EPA was planning an initial regulation that would apply to renovations in target housing, with requirements for public and commercial building renovations, including child-occupied facility renovations, to follow at a later date. The small entity representatives (SERs) chosen for consultation reflect that initial emphasis. They included maintenance and renovation contractors, painting and decorating contractors, multi-family housing owners and operators, training providers/consultants, and representatives from several national contractor associations, the National Multi-Housing Council, and the National Association of Home Builders. After considering the existing Lead-based Paint Activities Regulations, and taking into account preliminary stakeholder feedback, EPA identified eight key elements of a potential renovation and remodeling regulation for the SBAR Panel's consideration. These elements were:

- Applicability and scope.
- Firm certification.

- Individual training and certification.
- Accreditation of training courses.
- Work practice standards.
- Prohibited practices.
- Exterior clearance.
- Interior clearance.

EPA also developed several options for each of these key elements. Although the scope and applicability options specifically presented to the SBAR Panel covered only target housing, background information presented to the SERs and to the SBAR Panel members shows that EPA was also considering a regulation covering child-occupied facilities. The 2007 Supplemental Proposal (Ref. 15) extended the potentially regulated universe to include child-occupied facilities. When the 2007 Supplemental Proposal was issued, EPA conducted a targeted mailing campaign to specifically solicit input on the rule from child-occupied facilities, such as child care providers and kindergartens, in public or commercial buildings. More information on the SBAR Panel, its recommendations, and how EPA implemented them in the development of the program, is provided in Unit VIII.C.6. of the preamble to the 2006 Proposal (Ref. 3).

7. *Alternatives considered.* The following is a discussion of significant alternatives to the rule, originated by EPA or by commenters, that could affect the economic impacts of the rule on small entities. These alternatives would have applied to both small and large entities, but, given the large number of small entities in the industry, these alternatives would primarily affect small entities. For the reasons described below, these alternatives are not consistent with the objectives of the rule.

a. *Applicability and scope.* EPA considered a number of options for the scope and applicability of the rule: include all pre-1978 housing, all pre-1978 rental housing, all pre-1960 housing, and all pre-1960 rental housing. Although the scope and applicability options specifically presented to the SBAR Panel covered only target housing, background information presented to the SERs and to the SBAR Panel members shows that EPA was also considering a regulation covering child-occupied facilities.

The SBAR Panel recommended that EPA request public comment in the proposal on the option of limiting the housing stock affected by the rule to that constructed prior to 1960, as well as the option of covering all pre-1978 housing and other options that may help to reduce costs while achieving the

protection of public health. EPA asked for comment in the proposed rule on alternative scope options, including an option limited to buildings constructed prior to 1960. After considering the public comments, EPA has determined that limiting the rule to exclude buildings constructed on or after 1960 is not consistent with the stated objectives of the rule, in part because this would not protect children under the age of 6 and pregnant women.

b. *Staged approach.* EPA proposed a staged approach that would initially address renovations in pre-1960 target housing and child-occupied facilities, or where a child had an increased blood-lead level. EPA requested comment about whether to delay implementation for post-1960 target housing and child-occupied facilities for 1 year. Most commenters objected to the phased implementation, expressing concerns about adding complexity to implementation and about potential exposures to children in buildings built between 1960 and 1978 during the first year. After reviewing the comments, EPA determined the reduced burdens of a staged approach did not outweigh the complexity that it added to implementation.

c. *Exclude categories of contractors or renovation activities.* EPA requested comment on whether to exclude any categories of specialty contractors and whether certain renovation activities should be specifically included or excluded. In response, no commenter offered any data to show that any category of contractor or type of renovation activity should be exempt because they do not create lead-based paint hazards. All of the renovation activities in the Dust Study and the other studies in the record for the rule created lead-based paint hazards. EPA determined that it had no basis on which to exempt any category of contractor or type of renovation. However, some small jobs will be exempt from the requirements of the rule under the minor maintenance exception.

d. *Prohibited practices.* The current abatement regulations in 40 CFR part 745, subpart L prohibit the following work practices during abatement projects: Open-flame burning or torching, machine sanding or grinding, abrasive blasting or sandblasting, dry scraping of large areas, and operating a heat gun in excess of 1100 degrees Fahrenheit. EPA presented four options to the SBAR Panel on this topic: prohibit these practices during renovations; allow dry scraping and exterior flame-burning or torching; allow dry scraping and interior and

exterior flame-burning or torching; or allow all of these practices. The SBAR Panel recognized industry concerns over the feasibility of prohibiting these practices, especially when no cost-effective alternatives exist. The SBAR Panel was also concerned about the potential risks associated with these practices, but noted that reasonable training, performance, containment, and clean-up requirements may adequately address these risks.

EPA followed the SBAR Panel's recommendation and requested public comment on the cost, benefit, and feasibility of prohibiting certain work practices. In response to its request for comment in the proposed rule, the Agency received information on techniques including benign strippers, steam stripping, closed planing with vacuums, infrared removal, and chemical stripping. Therefore, EPA believes that there are cost-effective alternatives to these prohibited or restricted practices. In addition, the Dust Study (*Characterization of Dust Lead Levels after Renovation, Repair, and Painting Activities*) found that most practices prohibited or restricted under EPA's Lead-based Paint Activities Regulations produce large quantities of lead dust, and that the use of the proposed work practices were not effective at containing or removing dust-lead hazards from the work area.

EPA has concluded that these practices should be prohibited or restricted during renovation, repair, and painting activities that disturb lead-based paint because the work practices in the rule are not effective at containing the spread of leaded dust when these practices are used, or at cleaning up lead-based paint hazards created by these practices. Thus, the work practices are not effective at minimizing exposure to lead-based paint hazards created during renovation activities when these activities are used.

e. *HEPA vacuums.* The proposed rule required the use of a HEPA vacuum as part of the work practice standards for renovation activities. One commenter stated that EPA did not have sufficient evidence showing that HEPA vacuums are significantly better at removing lead dust than non-HEPA vacuums. EPA has determined that the weight of the evidence provided by the studies it reviewed demonstrates that the HEPA vacuums consistently removed significant quantities of lead-based paint dust and reduced lead loadings to lower levels than did other vacuums. While there may be some vacuums cleaners that are as effective as HEPA vacuums, EPA has not been able to define quantitatively the specific attributes of

those vacuums. That is, EPA is not able to identify what criteria should be used to identify vacuums that are equivalent to HEPA vacuums in performance. Thus, EPA does not believe that it can identify in the final rule what types of vacuums can be used as substitutes for HEPA-vacuums. Therefore, EPA has not adopted this alternative.

f. *Visual inspection in lieu of cleaning verification.* EPA requested comment on whether cleaning verification is necessary given the cleaning required by the rule. Some commenters contended that a visual inspection following cleaning after a renovation is sufficient to ensure the lead-based paint dust generated by a renovation has been sufficiently cleaned-up. EPA disagrees with those commenters who requested that the work practices in the final rule not include any verification beyond visual inspection. The weight of the evidence clearly demonstrates that visual inspection following cleaning after a renovation is insufficient at detecting dust-lead hazards, even at levels significantly above the regulatory hazard standards. Further, EPA disagrees with the implication that easily visible paint chips and splinters are necessarily the primary materials generated during a renovation. EPA studies, including the Dust Study, show that renovation activities generate dust as well as chips and splinters. Therefore, EPA has not adopted this alternative.

8. *Significant issues raised by comments on the Initial Regulatory Flexibility Analysis.* A commenter requested that the plumbing-heating-cooling industry be exempted from the rule, claiming that the rule is impractical for the industry. The commenter did not provide any supporting data as to why the rule is impractical for the plumbing-heating-cooling industry, or any data indicating that renovations conducted by plumbing, heating, or cooling contractors do not create lead hazards. By contrast, the Dust Study indicated that cutting open drywall (an activity often performed by plumbing, heating, and cooling contractors) can create a lead hazard. Therefore, EPA believes that plumbing, heating, and cooling contractors who disturb more than an exempt amount of lead-based paint can create lead hazards. EPA does not believe that there is a factual basis for exempting this, or any other, industry from the rule.

Another commenter stated that EPA's proposed rule gave little deference to HUD's rules, and thus is inconsistent with the Regulatory Flexibility Act's requirements to fit new rules within the

framework of existing Federal regulations. The commenter stated that EPA's rule needed to give greater deference to the framework established in HUD's rules (especially HUD's requirements for independent clearance examinations and its prohibition of dangerous work practices), and to clearly explain how the Renovation, Repair and Painting Rule will interface with HUD's rules to avoid confusion.

Regarding HUD's requirements for independent clearance examinations, EPA's final rule clarifies that dust clearance sampling is allowed in lieu of post-renovation cleaning verification in cases where another Federal, State, Territorial, Tribal, or local regulation requires dust clearance testing and requires the renovation firm to clean the work area until it passes clearance. This would apply to HUD-regulated renovations. Regarding the prohibition of dangerous work practices, EPA's final rule prohibits the use of the following work practices during regulated renovations: Open flame burning or torching of lead-based paint; the use of machines that remove lead-based paint through high speed operation such as sanding, grinding, power planing, needle gun, abrasive blasting, or sandblasting unless such machines are used with HEPA exhaust control; and operating a heat gun above 1100 degrees Fahrenheit. EPA believes that the provisions in the final rule provide an appropriate measure of consistency with other regulatory programs (including HUD's), and will cause minimal disruption for renovation firms.

One commenter contended that EPA said that "[n]one of the housing authorities identified in section 8.2.1 as operating public housing that does not receive HUD funding qualifies as a small government under the Regulatory Flexibility Act." According to the commenter, public housing authorities are government entities, and hundreds of them are located in and are part of communities with a population of less than 50,000.

EPA's small entity analysis was not claiming that no small governments operate housing authorities, but that they would not be significantly impacted by the rule. EPA's reasoning was as follows:

- The only public housing authorities that EPA could identify that do not receive HUD funds are operated by Massachusetts, New York, Hawaii, Connecticut, and New York City.
- Massachusetts, New York, Hawaii, Connecticut, and New York City have populations over 50,000 and thus do not qualify as small governments.

- To the best of EPA's knowledge, governments with populations under 50,000 that operate public housing authorities all receive HUD funds.
- Public housing that receives funding from HUD already must comply with HUD regulations regarding lead paint and so are not likely to incur significant additional costs due to this rule.

The commenter has offered no factual information to dispute this reasoning. Therefore, the Agency believes its conclusions regarding public housing authorities operated by small governments were appropriate.

A commenter stated that the proposed rule will have a significant impact on small businesses, and that EPA's own economic analysis of this rule finds that residential property managers and lessors of residential real estate will bear the largest share of costs in association with the rule. EPA disagrees with the commenter's claim that residential property managers and lessors of residential real estate will bear the largest share of costs in association with the rule. EPA analyzed small business impacts by estimating the average cost impact ratio for each industry, calculated as the average annual compliance cost as a percentage of average annual revenues. The average cost impact ratio for lessors of real estate is below the average cost impact ratio for all small businesses under the rule. And while the average cost impact ratio for residential property managers is above the average cost impact for all small businesses under the rule, small residential property managers make up approximately 3% of the small entities impacted by the rule. Therefore, it is not accurate to claim that residential property managers and lessors of residential real estate will bear the largest share of costs in association with the rule.

Another commenter stated that given the lack of evidence showing that HEPA vacuums are significantly better at removing lead dust from floors, and because HEPA vacuums are significantly more costly than non-HEPA units, EPA should modify its proposed rule to allow cleanup with either a HEPA or non-HEPA vacuum. According to the commenter, doing so would reduce the cost to small entities in the renovation and lead mitigation businesses without compromising the level of lead dust clearance achieved by the standard.

EPA disagrees that it should modify its proposed rule to allow cleanup with a non-HEPA vacuum. EPA has determined that the weight of the evidence provided by various studies

demonstrate that the HEPA vacuums consistently removed significant quantities of lead-based paint dust and reduced lead loadings to lower levels than did other vacuums. While there may be some vacuums that are as effective as HEPA vacuums, EPA has not been able to define quantitatively the specific attributes of those vacuums. That is, EPA is not able to identify what criteria should be used to identify vacuums that are equivalent to HEPA vacuums in performance. Thus, EPA does not believe that it can identify what types of vacuums can be used as substitutes for HEPA-vacuums. EPA also notes that non-HEPA vacuums that perform as well as HEPA vacuums may not be less expensive than HEPA vacuums. For these reasons, EPA has determined that modifying its proposed rule to allow cleanup with non-HEPA vacuums would compromise the level of lead dust clearance achieved by the standard, and might not result in meaningful cost reductions.

As required by section 212 of SBREFA, EPA also is preparing a Small Entity Compliance Guide to help small entities comply with this rule. Before the date that this rule's requirements take effect for training providers, renovation firms, and renovators, the guide will be available on EPA's website at <http://www.epa.gov/lead> or from the National Lead Information Center by calling 1-800-424-LEAD (5323).

#### D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the

Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Under UMRA Title II, EPA has determined that this rule contains a Federal mandate that may result in expenditures that exceed the inflation-adjusted UMRA threshold of \$100 million by the private sector in any 1 year, but it will not result in such expenditures by State, local, and Tribal governments in the aggregate. Accordingly, EPA has prepared a written statement under section 202 of UMRA which has been placed in the public docket for this rulemaking and is summarized here.

1. *Authorizing legislation.* This rule is issued under the authority of TSCA sections 402(c)(3), 404, 406, and 407, 15 U.S.C. 2682(c)(3), 2684, 2686, and 2687.

2. *Cost-benefit analysis.* EPA has prepared an analysis of the costs and benefits associated with this rulemaking, a copy of which is available in the docket for this rulemaking (Ref. 24). The Economic Analysis presents the costs of the rule as well as various regulatory options and is summarized in Unit III.A. of this preamble. EPA has estimated that the total annualized costs of this rulemaking are approximately \$400 million per year using either a 3% or a 7% discount rate, and that benefits are approximately \$700 to \$1,700 million per year using a 3% discount rate and \$700 to \$1,800 million per year using a 7% discount.

3. *State, local, and Tribal government input.* EPA has sought input from State, local and Tribal government representatives throughout the development of the renovation, repair, and painting program. EPA's experience in administering the existing lead-based paint activities program under TSCA section 402(a) suggests that these governments will play a critical role in the successful implementation of a national program to reduce exposures to lead-based paint hazards associated with renovation, repair, and painting activities. Consequently, as discussed in

Unit III.C.2. of the preamble to the 2006 Proposal (Ref. 3), the Agency has met with State, local, and Tribal government officials on numerous occasions to discuss renovation issues.

4. *Least burdensome option.* EPA considered a wide variety of options for addressing the risks presented by renovation activities where lead-based paint is present. As part of the development of the renovation, repair, and painting program, EPA has considered different options for the scope of the rule, various combinations of training and certification requirements for individuals who perform renovations, various combinations of work practice requirements, and various methods for ensuring that no lead-based paint hazards are left behind by persons performing renovations. The Economic Analysis analyzed several different options for the scope of the rule. Additional information on the options considered is available in Unit VIII.C.6. of the preamble for the 2006 Proposal (Ref. 3), and in the Economic Analysis (Ref. 24). EPA has determined that the preferred option is the least burdensome option available that achieves the primary objective of this rule, which is to minimize exposure to lead-based paint hazards created during renovation, repair, and painting activities in housing where children under age 6 reside and where a pregnant woman resides and in housing or other buildings frequented by children under age 6.

This rule does not contain a significant Federal intergovernmental mandate as described by section 203 of UMRA. Based on the definition of "small government jurisdiction" in RFA section 601, no State governments can be considered small. Small Territorial or Tribal governments may apply for authorization to administer and enforce this program, which would entail costs, but these small jurisdictions are under no obligation to do so.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Small governments operate schools that are child-occupied facilities. EPA generally measures a significant impact under UMRA as being expenditures, in the aggregate, of more than 1% of small government revenues in any 1 year. As explained in Unit III.C.3., the rule is expected to result in small government impacts well under 1% of revenues. So EPA has determined that the rule does not significantly affect small governments. Nor does the rule uniquely affect small governments, as the rule is not targeted

at small governments, does not primarily affect small governments, and does not impose a different burden on small governments than on other entities that operate child-occupied facilities.

#### E. Federalism

Pursuant to Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999), EPA has determined that this rule does not have “federalism implications,” because it will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, Executive Order 13132 does not apply to this rule. States would be able to apply for, and receive authorization to administer these requirements, but would be under no obligation to do so. In the absence of a State authorization, EPA will administer these requirements. Nevertheless, in the spirit of the objectives of this Executive Order, and consistent with EPA policy to promote communications between the Agency and State and local governments, EPA has consulted with representatives of State and local governments in developing the renovation, repair, and painting program. These consultations are as described in the preamble to the 2006 Proposal (Ref. 3).

#### F. Tribal Implications

As required by Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (59 FR 22951, November 9, 2000), EPA has determined that this rule does not have tribal implications because it will not have substantial direct effects on tribal governments, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in the Order. Tribes would be able to apply for, and receive authorization to administer these requirements on Tribal lands, but Tribes would be under no obligation to do so. In the absence of a Tribal authorization, EPA will administer these requirements. While Tribes may operate child-occupied facilities covered by the rule such as kindergartens, pre-kindergartens, and day care facilities, EPA has determined that this rule would not have substantial direct effects on the Tribal governments that operate these facilities.

Thus, Executive Order 13175 does not apply to this rule. Although Executive Order 13175 does not apply to this rule, EPA consulted with Tribal officials and others by discussing potential renovation regulatory options for the renovation, repair, and painting program at several national lead program meetings hosted by EPA and other interested Federal agencies.

#### G. Children's Health Protection

Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997) applies to this rule because it is an “economically significant regulatory action” as defined by Executive Order 12866, and because the environmental health or safety risk addressed by this action may have a disproportionate effect on children. Accordingly, EPA has evaluated the environmental health or safety effects of renovation, repair, and painting projects on children. Various aspects of this evaluation are discussed in the preamble to the 2006 Proposal (Ref. 3).

The primary purpose of this rule is to minimize exposure to lead-based paint hazards created during renovation, repair, and painting activities in housing where children under age 6 reside and in housing or other buildings frequented by children under age 6. In the absence of this regulation, adequate work practices are not likely to be employed during renovation, repair, and painting activities. EPA's analysis indicates that there will be approximately 1.4 million children under age 6 affected by the rule. These children are projected to receive considerable benefits due to this regulation.

#### H. Energy Effects

This rule is not a “significant energy action” as defined in Executive Order 13211, entitled *Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) because it is not likely to have any adverse effect on the supply, distribution, or use of energy.

#### I. Technology Standards

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104–113, 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g.,

materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. In the 2006 Proposal, EPA proposed to adopt a number of work practice requirements that could be considered technical standards for performing renovation projects in residences that contain lead-based paint. As discussed in Unit VIII.I. of the 2006 Proposal, EPA identified two potentially applicable voluntary consensus standards (Ref. 3 at 1626). ASTM International (formerly the American Society for Testing and Materials) has developed two potentially applicable documents: *Standard Practice for Clearance Examinations Following Lead Hazard Reduction Activities in Single-Family Dwellings and Child-Occupied Facilities* (Ref. 50), and “Standard Guide for Evaluation, Management, and Control of Lead Hazards in Facilities” (Ref. 51). With respect to the first document, EPA did not propose to require traditional clearance examinations, including dust sampling, following renovation projects. However, EPA did propose to require that a visual inspection for dust, debris, and residue be conducted after cleaning and before post-renovation cleaning verification is performed. The first ASTM document does contain information on conducting a visual inspection before collecting dust clearance samples. The second ASTM document is a comprehensive guide to identifying and controlling lead-based paint hazards. Some of the information in this document is relevant to the work practices required by the rule. Each of these ASTM documents represents state-of-the-art knowledge regarding the performance of these particular aspects of lead-based paint hazard evaluation and control practices and EPA continues to recommend the use of these documents where appropriate. However, because each of these documents is extremely detailed and encompasses many circumstances beyond the scope of this rulemaking, EPA determined that it would be impractical to incorporate these voluntary consensus standards into the rule.

In addition, this final rule contains performance standards and a process for recognizing test kits that may be used by certified renovators to determine whether components to be affected by a renovation contain lead-based paint.

EPA will recognize those kits that meet certain performance standards for limited false positives and negatives. EPA will also recognize only those kits that have been properly validated by a laboratory independent of the kit manufacturer. For most kits, this will mean participating in EPA's Environmental Technology Verification (ETV) program. With stakeholder input, EPA is adapting a voluntary consensus standard, ASTM's "Standard Practice for Evaluating the Performance Characteristics of Qualitative Chemical Spot Test Kits for Lead in Paint" (Ref. 28), for use as a testing protocol to determine whether a particular kit has met the performance standards established in this final rule.

#### J. Environmental Justice

Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has assessed the potential impact of this rule on minority and low-income populations. The results of this assessment are presented in the Economic Analysis, which is available in the public docket for this rulemaking (Ref. 24). As a result of this assessment, the Agency has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population.

#### VI. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General

of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is a "major rule" as defined by 5 U.S.C. 804(2). This rule is effective June 23, 2008.

#### List of Subjects in 40 CFR Part 745

Environmental protection, Child-occupied facility, Housing renovation, Lead, Lead-based paint, Renovation, Reporting and recordkeeping requirements.

Dated: March 31, 2008,

**Steven L. Johnson**,  
Administrator.

■ Therefore, 40 CFR chapter I is amended as follows:

#### PART 745—[AMENDED]

■ 1. The authority citation for part 745 continues to read as follows:

**Authority:** 15 U.S.C. 2605, 2607, 2681-2692 and 42 U.S.C. 4852d.

■ 2. Section 745.80 is revised to read as follows:

##### § 745.80 Purpose.

This subpart contains regulations developed under sections 402 and 406 of the Toxic Substances Control Act (15 U.S.C. 2682 and 2686) and applies to all renovations performed for compensation in target housing and child-occupied facilities. The purpose of this subpart is to ensure the following:

(a) Owners and occupants of target housing and child-occupied facilities receive information on lead-based paint hazards before these renovations begin; and

(b) Individuals performing renovations regulated in accordance with § 745.82 are properly trained; renovators and firms performing these renovations are certified; and the work practices in § 745.85 are followed during these renovations.

■ 3. Section 745.81 is revised to read as follows:

##### § 745.81 Effective dates.

(a) *Training, certification and accreditation requirements and work practice standards.* The training, certification and accreditation requirements and work practice standards in this subpart are applicable in any State or Indian Tribal area that does not have a renovation program that is authorized under subpart Q of this

part. The training, certification and accreditation requirements and work practice standards in this subpart will become effective as follows:

(1) *Training programs.* Effective June 23, 2008, no training program may provide, offer, or claim to provide training or refresher training for EPA certification as a renovator or a dust sampling technician without accreditation from EPA under § 745.225. Training programs may apply for accreditation under § 745.225 beginning April 22, 2009.

(2) *Firms.* (i) Firms may apply for certification under § 745.89 beginning October 22, 2009.

(ii) On or after April 22, 2010, no firm may perform, offer, or claim to perform renovations without certification from EPA under § 745.89 in target housing or child-occupied facilities, unless the renovation qualifies for one of the exceptions identified in § 745.82(a) or (c).

(3) *Individuals.* On or after April 22, 2010, all renovations must be directed by renovators certified in accordance with § 745.90(a) and performed by certified renovators or individuals trained in accordance with § 745.90(b)(2) in target housing or child-occupied facilities, unless the renovation qualifies for one of the exceptions identified in § 745.82(a) or (c).

(4) *Work practices.* On or after April 22, 2010, all renovations must be performed in accordance with the work practice standards in § 745.85 and the associated recordkeeping requirements in § 745.86(b)(6) and (b)(7) in target housing or child-occupied facilities, unless the renovation qualifies for one of the exceptions identified in § 745.82(a) or (c).

(5) The suspension and revocation provisions in § 745.91 are effective April 22, 2010.

(b) *Renovation-specific pamphlet.* Before December 22, 2008, renovators or firms performing renovations in States and Indian Tribal areas without an authorized program may provide owners and occupants with either of the following EPA pamphlets: *Protect Your Family From Lead in Your Home* or *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools*. After that date, *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools* must be used exclusively.

(c) *Pre-Renovation Education Rule.* With the exception of the requirement to use the pamphlet entitled *Renovate Right: Important Lead Hazard Information for Families, Child Care*

*Providers and Schools*, the provisions of the Pre-Renovation Education Rule in this subpart have been in effect since June 1999.

■ 4. Section 745.82 is revised to read as follows:

**§ 745.82 Applicability.**

(a) This subpart applies to all renovations performed for compensation in target housing and child-occupied facilities, except for the following:

(1) Renovations in target housing or child-occupied facilities in which a written determination has been made by an inspector or risk assessor (certified pursuant to either Federal regulations at § 745.226 or a State or Tribal certification program authorized pursuant to § 745.324) that the components affected by the renovation are free of paint or other surface coatings that contain lead equal to or in excess of 1.0 milligrams/per square centimeter (mg/cm<sup>2</sup>) or 0.5% by weight, where the firm performing the renovation has obtained a copy of the determination.

(2) Renovations in target housing or child-occupied facilities in which a certified renovator, using an EPA recognized test kit as defined in § 745.83 and following the kit manufacturer's instructions, has tested each component affected by the renovation and determined that the components are free of paint or other surface coatings that contain lead equal to or in excess of 1.0 mg/cm<sup>2</sup> or 0.5% by weight. If the components make up an integrated whole, such as the individual stair treads and risers of a single staircase, the renovator is required to test only one of the individual components, unless the individual components appear to have been repainted or refinished separately.

(b) The information distribution requirements in § 745.84 do not apply to emergency renovations, which are renovation activities that were not planned but result from a sudden, unexpected event (such as non-routine failures of equipment) that, if not immediately attended to, presents a safety or public health hazard, or threatens equipment and/or property with significant damage. Interim controls performed in response to an elevated blood lead level in a resident child are also emergency renovations. Emergency renovations other than interim controls are also exempt from the warning sign, containment, waste handling, training, and certification requirements in §§ 745.85, 745.89, and 745.90 to the extent necessary to respond to the emergency. Emergency

renovations are not exempt from the cleaning requirements of § 745.85(a)(5), which must be performed by certified renovators or individuals trained in accordance with § 745.90(b)(2), the cleaning verification requirements of § 745.85(b), which must be performed by certified renovators, and the recordkeeping requirements of § 745.86(b)(6) and (b)(7).

(c) The training requirements in § 745.90 and the work practice standards for renovation activities in § 745.85 apply to all renovations covered by this subpart, except for renovations in target housing for which the firm performing the renovation has obtained a statement signed by the owner that the renovation will occur in the owner's residence, no child under age 6 resides there, no pregnant woman resides there, the housing is not a child-occupied facility, and the owner acknowledges that the renovation firm will not be required to use the work practices contained in EPA's renovation, repair, and painting rule. For the purposes of this section, a child resides in the primary residence of his or her custodial parents, legal guardians, and foster parents. A child also resides in the primary residence of an informal caretaker if the child lives and sleeps most of the time at the caretaker's residence.

■ 5. Section 745.83 is amended as follows:

■ a. Remove the definitions of "Emergency renovation operations" and "Multi-family housing."

■ b. Revise the definitions of "Pamphlet," "Renovation," and "Renovator."

■ c. Add 13 definitions in alphabetical order.

**§ 745.83 Definitions.**

\* \* \* \* \*

*Child-occupied facility* means a building, or portion of a building, constructed prior to 1978, visited regularly by the same child, under 6 years of age, on at least two different days within any week (Sunday through Saturday period), provided that each day's visit lasts at least 3 hours and the combined weekly visits last at least 6 hours, and the combined annual visits last at least 60 hours. Child-occupied facilities may include, but are not limited to, day care centers, preschools and kindergarten classrooms. Child-occupied facilities may be located in target housing or in public or commercial buildings. With respect to common areas in public or commercial buildings that contain child-occupied facilities, the child-occupied facility encompasses only those common areas

that are routinely used by children under age 6, such as restrooms and cafeterias. Common areas that children under age 6 only pass through, such as hallways, stairways, and garages are not included. In addition, with respect to exteriors of public or commercial buildings that contain child-occupied facilities, the child-occupied facility encompasses only the exterior sides of the building that are immediately adjacent to the child-occupied facility or the common areas routinely used by children under age 6.

*Cleaning verification card* means a card developed and distributed, or otherwise approved, by EPA for the purpose of determining, through comparison of wet and dry disposable cleaning cloths with the card, whether post-renovation cleaning has been properly completed.

*Component or building component* means specific design or structural elements or fixtures of a building or residential dwelling that are distinguished from each other by form, function, and location. These include, but are not limited to, interior components such as: Ceilings, crown molding, walls, chair rails, doors, door trim, floors, fireplaces, radiators and other heating units, shelves, shelf supports, stair treads, stair risers, stair stringers, newel posts, railing caps, balustrades, windows and trim (including sashes, window heads, jambs, sills or stools and troughs), built in cabinets, columns, beams, bathroom vanities, counter tops, and air conditioners; and exterior components such as: Painted roofing, chimneys, flashing, gutters and downspouts, ceilings, soffits, fascias, rake boards, cornerboards, bulkheads, doors and door trim, fences, floors, joists, lattice work, railings and railing caps, siding, handrails, stair risers and treads, stair stringers, columns, balustrades, windowsills or stools and troughs, casings, sashes and wells, and air conditioners.

*Dry disposable cleaning cloth* means a commercially available dry, electrostatically charged, white disposable cloth designed to be used for cleaning hard surfaces such as uncarpeted floors or counter tops.

*Firm* means a company, partnership, corporation, sole proprietorship or individual doing business, association, or other business entity; a Federal, State, Tribal, or local government agency; or a nonprofit organization.

*HEPA vacuum* means a vacuum cleaner which has been designed with a high-efficiency particulate air (HEPA) filter as the last filtration stage. A HEPA filter is a filter that is capable of

capturing particles of 0.3 microns with 99.97% efficiency. The vacuum cleaner must be designed so that all the air drawn into the machine is expelled through the HEPA filter with none of the air leaking past it.

*Interim controls* means a set of measures designed to temporarily reduce human exposure or likely exposure to lead-based paint hazards, including specialized cleaning, repairs, maintenance, painting, temporary containment, ongoing monitoring of lead-based paint hazards or potential hazards, and the establishment and operation of management and resident education programs.

*Minor repair and maintenance activities* are activities, including minor heating, ventilation or air conditioning work, electrical work, and plumbing, that disrupt 6 square feet or less of painted surface per room for interior activities or 20 square feet or less of painted surface for exterior activities where none of the work practices prohibited or restricted by § 745.85(a)(3) are used and where the work does not involve window replacement or demolition of painted surface areas. When removing painted components, or portions of painted components, the entire surface area removed is the amount of painted surface disturbed. Jobs, other than emergency renovations, performed in the same room within the same 30 days must be considered the same job for the purpose of determining whether the job is a minor repair and maintenance activity.

*Pamphlet* means the EPA pamphlet titled *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools* developed under section 406(a) of TSCA for use in complying with section 406(b) of TSCA, or any State or Tribal pamphlet approved by EPA pursuant to 40 CFR 745.326 that is developed for the same purpose. This includes reproductions of the pamphlet when copied in full and without revision or deletion of material from the pamphlet (except for the addition or revision of State or local sources of information). Before December 22, 2008, the term "pamphlet" also means any pamphlet developed by EPA under section 406(a) of TSCA or any State or Tribal pamphlet approved by EPA pursuant to § 745.326.

*Recognized test kit* means a commercially available kit recognized by EPA under § 745.88 as being capable of allowing a user to determine the presence of lead at levels equal to or in excess of 1.0 milligrams per square centimeter, or more than 0.5% lead by

weight, in a paint chip, paint powder, or painted surface.

*Renovation* means the modification of any existing structure, or portion thereof, that results in the disturbance of painted surfaces, unless that activity is performed as part of an abatement as defined by this part (40 CFR 745.223). The term renovation includes (but is not limited to): The removal, modification or repair of painted surfaces or painted components (e.g., modification of painted doors, surface restoration, window repair, surface preparation activity (such as sanding, scraping, or other such activities that may generate paint dust)); the removal of building components (e.g., walls, ceilings, plumbing, windows); weatherization projects (e.g., cutting holes in painted surfaces to install blown-in insulation or to gain access to attics, planing thresholds to install weather-stripping), and interim controls that disturb painted surfaces. A renovation performed for the purpose of converting a building, or part of a building, into target housing or a child-occupied facility is a renovation under this subpart. The term renovation does not include minor repair and maintenance activities.

*Renovator* means an individual who either performs or directs workers who perform renovations. A certified renovator is a renovator who has successfully completed a renovator course accredited by EPA or an EPA-authorized State or Tribal program.

*Training hour* means at least 50 minutes of actual learning, including, but not limited to, time devoted to lecture, learning activities, small group activities, demonstrations, evaluations, and hands-on experience.

*Wet disposable cleaning cloth* means a commercially available, pre-moistened white disposable cloth designed to be used for cleaning hard surfaces such as uncarpeted floors or counter tops.

*Wet mopping system* means a device with the following characteristics: A long handle, a mop head designed to be used with disposable absorbent cleaning pads, a reservoir for cleaning solution, and a built-in mechanism for distributing or spraying the cleaning solution onto a floor, or a method of equivalent efficacy.

*Work area* means the area that the certified renovator establishes to contain the dust and debris generated by a renovation.

**§ 745.84 [Removed]**

■ 6. Section 745.84 is removed.

**§ 745.85 [Redesignated as § 745.84]**

■ 7. Section 745.85 is redesignated as § 745.84.

■ 8. Newly designated § 745.84 is amended as follows:

■ a. Revise the introductory text of paragraph (a) and revise paragraph (a)(2)(i).

■ b. Revise the introductory text of paragraph (b) and revise paragraphs (b)(2) and (b)(4).

■ c. Redesignate paragraph (c) as paragraph (d).

■ d. Add a new paragraph (c).

■ e. Revise the introductory text of newly designated paragraph (d).

**§ 745.84 Information distribution requirements.**

(a) *Renovations in dwelling units.* No more than 60 days before beginning renovation activities in any residential dwelling unit of target housing, the firm performing the renovation must:

\* \* \* \* \*

(2) \* \* \*

(i) Obtain, from the adult occupant, a written acknowledgment that the occupant has received the pamphlet; or certify in writing that a pamphlet has been delivered to the dwelling and that the firm performing the renovation has been unsuccessful in obtaining a written acknowledgment from an adult occupant. Such certification must include the address of the unit undergoing renovation, the date and method of delivery of the pamphlet, names of the persons delivering the pamphlet, reason for lack of acknowledgment (e.g., occupant refuses to sign, no adult occupant available), the signature of a representative of the firm performing the renovation, and the date of signature.

\* \* \* \* \*

(b) *Renovations in common areas.* No more than 60 days before beginning renovation activities in common areas of multi-unit target housing, the firm performing the renovation must:

\* \* \* \* \*

(2) *Comply with one of the following.*

(i) Notify in writing, or ensure written notification of, each affected unit and make the pamphlet available upon request prior to the start of renovation. Such notification shall be accomplished by distributing written notice to each affected unit. The notice shall describe the general nature and locations of the planned renovation activities; the expected starting and ending dates; and a statement of how the occupant can obtain the pamphlet, at no charge, from the firm performing the renovation, or

(ii) While the renovation is ongoing, post informational signs describing the

general nature and locations of the renovation and the anticipated completion date. These signs must be posted in areas where they are likely to be seen by the occupants of all of the affected units. The signs must be accompanied by a posted copy of the pamphlet or information on how interested occupants can review a copy of the pamphlet or obtain a copy from the renovation firm at no cost to occupants.

\* \* \* \* \*

(4) If the scope, locations, or expected starting and ending dates of the planned renovation activities change after the initial notification, and the firm provided written initial notification to each affected unit, the firm performing the renovation must provide further written notification to the owners and occupants providing revised information on the ongoing or planned activities. This subsequent notification must be provided before the firm performing the renovation initiates work beyond that which was described in the original notice.

(c) *Renovations in child-occupied facilities.* No more than 60 days before beginning renovation activities in any child-occupied facility, the firm performing the renovation must:

(1)(i) Provide the owner of the building with the pamphlet, and comply with one of the following:

(A) Obtain, from the owner, a written acknowledgment that the owner has received the pamphlet.

(B) Obtain a certificate of mailing at least 7 days prior to the renovation.

(ii) If the child-occupied facility is not the owner of the building, provide an adult representative of the child-occupied facility with the pamphlet, and comply with one of the following:

(A) Obtain, from the adult representative, a written acknowledgment that the adult representative has received the pamphlet; or certify in writing that a pamphlet has been delivered to the facility and that the firm performing the renovation has been unsuccessful in obtaining a written acknowledgment from an adult representative. Such certification must include the address of the child-occupied facility undergoing renovation, the date and method of delivery of the pamphlet, names of the persons delivering the pamphlet, reason for lack of acknowledgment (e.g., representative refuses to sign), the signature of a representative of the firm performing the renovation, and the date of signature.

(B) Obtain a certificate of mailing at least 7 days prior to the renovation.

(2) Provide the parents and guardians of children using the child-occupied facility with the pamphlet and information describing the general nature and locations of the renovation and the anticipated completion date by complying with one of the following:

(i) Mail or hand-deliver the pamphlet and the renovation information to each parent or guardian of a child using the child-occupied facility.

(ii) While the renovation is ongoing, post informational signs describing the general nature and locations of the renovation and the anticipated completion date. These signs must be posted in areas where they can be seen by the parents or guardians of the children frequenting the child-occupied facility. The signs must be accompanied by a posted copy of the pamphlet or information on how interested parents or guardians can review a copy of the pamphlet or obtain a copy from the renovation firm at no cost to the parents or guardians.

(3) The renovation firm must prepare, sign, and date a statement describing the steps performed to notify all parents and guardians of the intended renovation activities and to provide the pamphlet.

(d) *Written acknowledgment.* The written acknowledgments required by paragraphs (a)(1)(i), (a)(2)(i), (b)(1)(i), (c)(1)(i)(A), and (c)(1)(ii)(A) of this section must:

\* \* \* \* \*

■ 9. Section 745.85 is added to subpart E to read as follows:

**§ 745.85 Work practice standards.**

(a) *Standards for renovation activities.* Renovations must be performed by certified firms using certified renovators as directed in § 745.89. The responsibilities of certified firms are set forth in § 745.89(d) and the responsibilities of certified renovators are set forth in § 745.90(b).

(1) *Occupant protection.* Firms must post signs clearly defining the work area and warning occupants and other persons not involved in renovation activities to remain outside of the work area. To the extent practicable, these signs must be in the primary language of the occupants. These signs must be posted before beginning the renovation and must remain in place and readable until the renovation and the post-renovation cleaning verification have been completed. If warning signs have been posted in accordance with 24 CFR 35.1345(b)(2) or 29 CFR 1926.62(m), additional signs are not required by this section.

(2) *Containing the work area.* Before beginning the renovation, the firm must isolate the work area so that no dust or

debris leaves the work area while the renovation is being performed. In addition, the firm must maintain the integrity of the containment by ensuring that any plastic or other impermeable materials are not torn or displaced, and taking any other steps necessary to ensure that no dust or debris leaves the work area while the renovation is being performed. The firm must also ensure that containment is installed in such a manner that it does not interfere with occupant and worker egress in an emergency.

(i) *Interior renovations.* The firm must:

(A) Remove all objects from the work area, including furniture, rugs, and window coverings, or cover them with plastic sheeting or other impermeable material with all seams and edges taped or otherwise sealed.

(B) Close and cover all ducts opening in the work area with taped-down plastic sheeting or other impermeable material.

(C) Close windows and doors in the work area. Doors must be covered with plastic sheeting or other impermeable material. Doors used as an entrance to the work area must be covered with plastic sheeting or other impermeable material in a manner that allows workers to pass through while confining dust and debris to the work area.

(D) Cover the floor surface, including installed carpet, with taped-down plastic sheeting or other impermeable material in the work area 6 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to contain the dust, whichever is greater.

(E) Use precautions to ensure that all personnel, tools, and other items, including the exteriors of containers of waste, are free of dust and debris before leaving the work area.

(ii) *Exterior renovations.* The firm must:

(A) Close all doors and windows within 20 feet of the renovation. On multi-story buildings, close all doors and windows within 20 feet of the renovation on the same floor as the renovation, and close all doors and windows on all floors below that are the same horizontal distance from the renovation.

(B) Ensure that doors within the work area that will be used while the job is being performed are covered with plastic sheeting or other impermeable material in a manner that allows workers to pass through while confining dust and debris to the work area.

(C) Cover the ground with plastic sheeting or other disposable impermeable material extending 10 feet beyond the perimeter of surfaces

undergoing renovation or a sufficient distance to collect falling paint debris, whichever is greater, unless the property line prevents 10 feet of such ground covering.

(D) In certain situations, the renovation firm must take extra precautions in containing the work area to ensure that dust and debris from the renovation does not contaminate other buildings or other areas of the property or migrate to adjacent properties.

(3) *Prohibited and restricted practices.* The work practices listed below shall be prohibited or restricted during a renovation as follows:

(i) Open-flame burning or torching of lead-based paint is prohibited.

(ii) The use of machines that remove lead-based paint through high speed operation such as sanding, grinding, power planing, needle gun, abrasive blasting, or sandblasting, is prohibited unless such machines are used with HEPA exhaust control.

(iii) Operating a heat gun on lead-based paint is permitted only at temperatures below 1100 degrees Fahrenheit.

(4) *Waste from renovations*—(i) Waste from renovation activities must be contained to prevent releases of dust and debris before the waste is removed from the work area for storage or disposal. If a chute is used to remove waste from the work area, it must be covered.

(ii) At the conclusion of each work day and at the conclusion of the renovation, waste that has been collected from renovation activities must be stored under containment, in an enclosure, or behind a barrier that prevents release of dust and debris out of the work area and prevents access to dust and debris.

(iii) When the firm transports waste from renovation activities, the firm must contain the waste to prevent release of dust and debris.

(5) *Cleaning the work area.* After the renovation has been completed, the firm must clean the work area until no dust, debris or residue remains.

(i) *Interior and exterior renovations.* The firm must:

(A) Collect all paint chips and debris and, without dispersing any of it, seal this material in a heavy-duty bag.

(B) Remove the protective sheeting. Mist the sheeting before folding it, fold the dirty side inward, and either tape shut to seal or seal in heavy-duty bags. Sheeting used to isolate contaminated rooms from non-contaminated rooms must remain in place until after the cleaning and removal of other sheeting. Dispose of the sheeting as waste.

(ii) *Additional cleaning for interior renovations.* The firm must clean all objects and surfaces in the work area and within 2 feet of the work area in the following manner, cleaning from higher to lower:

(A) *Walls.* Clean walls starting at the ceiling and working down to the floor by either vacuuming with a HEPA vacuum or wiping with a damp cloth.

(B) *Remaining surfaces.* Thoroughly vacuum all remaining surfaces and objects in the work area, including furniture and fixtures, with a HEPA vacuum. The HEPA vacuum must be equipped with a beater bar when vacuuming carpets and rugs.

(C) Wipe all remaining surfaces and objects in the work area, except for carpeted or upholstered surfaces, with a damp cloth. Mop uncarpeted floors thoroughly, using a mopping method that keeps the wash water separate from the rinse water, such as the 2-bucket mopping method, or using a wet mopping system.

(b) *Standards for post-renovation cleaning verification*—(1) *Interiors.* (i) A certified renovator must perform a visual inspection to determine whether dust, debris or residue is still present. If dust, debris or residue is present, these conditions must be removed by re-cleaning and another visual inspection must be performed.

(ii) After a successful visual inspection, a certified renovator must:

(A) Verify that each windowsill in the work area has been adequately cleaned, using the following procedure.

(1) Wipe the windowsill with a wet disposable cleaning cloth that is damp to the touch. If the cloth matches or is lighter than the cleaning verification card, the windowsill has been adequately cleaned.

(2) If the cloth does not match and is darker than the cleaning verification card, re-clean the windowsill as directed in paragraphs (a)(5)(ii)(B) and (a)(5)(ii)(C) of this section, then either use a new cloth or fold the used cloth in such a way that an unused surface is exposed, and wipe the surface again. If the cloth matches or is lighter than the cleaning verification card, that windowsill has been adequately cleaned.

(3) If the cloth does not match and is darker than the cleaning verification card, wait for 1 hour or until the surface has dried completely, whichever is longer.

(4) After waiting for the windowsill to dry, wipe the windowsill with a dry disposable cleaning cloth. After this wipe, the windowsill has been adequately cleaned.

(B) Wipe uncarpeted floors and countertops within the work area with a wet disposable cleaning cloth. Floors must be wiped using an application device with a long handle and a head to which the cloth is attached. The cloth must remain damp at all times while it is being used to wipe the surface for post-renovation cleaning verification. If the surface within the work area is greater than 40 square feet, the surface within the work area must be divided into roughly equal sections that are each less than 40 square feet. Wipe each such section separately with a new wet disposable cleaning cloth. If the cloth used to wipe each section of the surface within the work area matches the cleaning verification card, the surface has been adequately cleaned.

(1) If the cloth used to wipe a particular surface section does not match the cleaning verification card, re-clean that section of the surface as directed in paragraphs (a)(5)(ii)(B) and (a)(5)(ii)(C) of this section, then use a new wet disposable cleaning cloth to wipe that section again. If the cloth matches the cleaning verification card, that section of the surface has been adequately cleaned.

(2) If the cloth used to wipe a particular surface section does not match the cleaning verification card after the surface has been re-cleaned, wait for 1 hour or until the entire surface within the work area has dried completely, whichever is longer.

(3) After waiting for the entire surface within the work area to dry, wipe each section of the surface that has not yet achieved post-renovation cleaning verification with a dry disposable cleaning cloth. After this wipe, that section of the surface has been adequately cleaned.

(iii) When the work area passes the post-renovation cleaning verification, remove the warning signs.

(2) *Exteriors.* A certified renovator must perform a visual inspection to determine whether dust, debris or residue is still present on surfaces in and below the work area, including windowsills and the ground. If dust, debris or residue is present, these conditions must be eliminated and another visual inspection must be performed. When the area passes the visual inspection, remove the warning signs.

(c) *Optional dust clearance testing.* Cleaning verification need not be performed if the contract between the renovation firm and the person contracting for the renovation or another Federal, State, Territorial, Tribal, or local law or regulation requires:

(1) The renovation firm to perform dust clearance sampling at the conclusion of a renovation covered by this subpart.

(2) The dust clearance samples are required to be collected by a certified inspector, risk assessor or dust sampling technician.

(3) The renovation firm is required to re-clean the work area until the dust clearance sample results are below the clearance standards in § 745.227(e)(8) or any applicable State, Territorial, Tribal, or local standard.

(d) *Activities conducted after post-renovation cleaning verification.* Activities that do not disturb paint, such as applying paint to walls that have already been prepared, are not regulated by this subpart if they are conducted after post-renovation cleaning verification has been performed.

■ 10. Section 745.86 is revised to read as follows:

**§ 745.86 Recordkeeping and reporting requirements.**

(a) Firms performing renovations must retain and, if requested, make available to EPA all records necessary to demonstrate compliance with this subpart for a period of 3 years following completion of the renovation. This 3-year retention requirement does not supersede longer obligations required by other provisions for retaining the same documentation, including any applicable State or Tribal laws or regulations.

(b) Records that must be retained pursuant to paragraph (a) of this section shall include (where applicable):

(1) Reports certifying that a determination had been made by an inspector (certified pursuant to either Federal regulations at § 745.226 or an EPA-authorized State or Tribal certification program) that lead-based paint is not present on the components affected by the renovation, as described in § 745.82(b)(1).

(2) Signed and dated acknowledgments of receipt as described in § 745.84(a)(1)(i), (a)(2)(i), (b)(1)(i), (c)(1)(i)(A), and (c)(1)(ii)(A).

(3) Certifications of attempted delivery as described in § 745.84(a)(2)(i) and (c)(1)(ii)(A).

(4) Certificates of mailing as described in § 745.84(a)(1)(ii), (a)(2)(ii), (b)(1)(ii), (c)(1)(i)(B), and (c)(1)(ii)(B).

(5) Records of notification activities performed regarding common area renovations, as described in § 745.84(b)(3) and (b)(4), and renovations in child-occupied facilities, as described in § 745.84(c)(2).

(6) Any signed and dated statements received from owner-occupants

documenting that the requirements of § 745.85 do not apply. These statements must include a declaration that the renovation will occur in the owner's residence, a declaration that no children under age 6 reside there, a declaration that no pregnant woman resides there, a declaration that the housing is not a child-occupied facility, the address of the unit undergoing renovation, the owner's name, an acknowledgment by the owner that the work practices to be used during the renovation will not necessarily include all of the lead-safe work practices contained in EPA's renovation, repair, and painting rule, the signature of the owner, and the date of signature. These statements must be written in the same language as the text of the renovation contract, if any.

(7) Documentation of compliance with the requirements of § 745.85, including documentation that a certified renovator was assigned to the project, that the certified renovator provided on-the-job training for workers used on the project, that the certified renovator performed or directed workers who performed all of the tasks described in § 745.85(a), and that the certified renovator performed the post-renovation cleaning verification described in § 745.85(b). If the renovation firm was unable to comply with all of the requirements of this rule due to an emergency as defined in § 745.82, the firm must document the nature of the emergency and the provisions of the rule that were not followed. This documentation must include a copy of the certified renovator's training certificate, and a certification by the certified renovator assigned to the project that:

(i) Training was provided to workers (topics must be identified for each worker).

(ii) Warning signs were posted at the entrances to the work area.

(iii) If test kits were used, that the specified brand of kits was used at the specified locations and that the results were as specified.

(iv) The work area was contained by:

(A) Removing or covering all objects in the work area (interiors).

(B) Closing and covering all HVAC ducts in the work area (interiors).

(C) Closing all windows in the work area (interiors) or closing all windows in and within 20 feet of the work area (exteriors).

(D) Closing and sealing all doors in the work area (interiors) or closing and sealing all doors in and within 20 feet of the work area (exteriors).

(E) Covering doors in the work area that were being used to allow passage but prevent spread of dust.

(F) Covering the floor surface, including installed carpet, with taped-down plastic sheeting or other impermeable material in the work area 6 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to contain the dust, whichever is greater (interiors) or covering the ground with plastic sheeting or other disposable impermeable material anchored to the building extending 10 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to collect falling paint debris, whichever is greater, unless the property line prevents 10 feet of such ground covering, weighted down by heavy objects (exteriors).

(G) Installing (if necessary) vertical containment to prevent migration of dust and debris to adjacent property (exteriors).

(v) Waste was contained on-site and while being transported off-site.

(vi) The work area was properly cleaned after the renovation by:

(A) Picking up all chips and debris, misting protective sheeting, folding it dirty side inward, and taping it for removal.

(B) Cleaning the work area surfaces and objects using a HEPA vacuum and/or wet cloths or mops (interiors).

(vii) The certified renovator performed the post-renovation cleaning verification (the results of which must be briefly described, including the number of wet and dry cloths used).

(c) When test kits are used, the renovation firm must, within 30 days of the completion of the renovation, provide identifying information as to the manufacturer and model of the test kits used, a description of the components that were tested including their locations, and the test kit results to the person who contracted for the renovation.

(d) If dust clearance sampling is performed in lieu of cleaning verification as permitted by § 745.85(c), the renovation firm must provide, within 30 days of the completion of the renovation, a copy of the dust sampling report to the person who contracted for the renovation.

■ 11. Section 745.87 is amended by revising paragraph (e) to read as follows:

**§ 745.87 Enforcement and inspections.**

\* \* \* \* \*

(e) Lead-based paint is assumed to be present at renovations covered by this subpart. EPA may conduct inspections and issue subpoenas pursuant to the provisions of TSCA section 11 (15 U.S.C. 2610) to ensure compliance with this subpart.

■ 12. Section 745.88 is revised to read as follows:

**§ 745.88 Recognized test kits.**

(a) Effective June 23, 2008, EPA recognizes the test kits that have been determined by National Institute of Standards and Technology research to meet the negative response criteria described in paragraph (c)(1) of this section. This recognition will last until EPA publicizes its recognition of the first test kit that meets both the negative response and positive response criteria in paragraph (c) of this section.

(b) No other test kits will be recognized until they are tested through EPA's Environmental Technology Verification Program or other equivalent EPA approved testing program.

(1) Effective September 1, 2008, to initiate the testing process, a test kit manufacturer must submit a sufficient number of kits, along with the instructions for using the kits, to EPA. The test kit manufacturer should first visit the following website for information on where to apply: <http://www.epa.gov/etv/howtoapply.html>.

(2) After the kit has been tested through the Environmental Technology Verification Program or other equivalent approved EPA testing program, EPA will review the report to determine whether the required criteria have been met.

(3) Before September 1, 2010, test kits must meet only the negative response criteria in paragraph (c)(1) of this section. The recognition of kits that meet only this criteria will last until EPA publicizes its recognition of the first test kits that meets both of the criteria in paragraph (c) of this section.

(4) After September 1, 2010, test kits must meet both of the criteria in paragraph (c) of this section.

(5) If the report demonstrates that the kit meets the required criteria, EPA will issue a notice of recognition to the kit manufacturer, provide them with the report, and post the information on EPA's website.

(6) If the report demonstrates that the kit does not meet the required criteria, EPA will notify the kit manufacturer and provide them with the report.

(c) *Response criteria*—(1) *Negative response criteria*. For paint containing lead at or above the regulated level, 1.0 mg/cm<sup>2</sup> or 0.5% by weight, a demonstrated probability (with 95% confidence) of a negative response less than or equal to 5% of the time.

(2) *Positive response criteria*. For paint containing lead below the regulated level, 1.0 mg/cm<sup>2</sup> or 0.5% by weight, a demonstrated probability (with 95% confidence) of a positive

response less than or equal to 10% of the time.

■ 13. Section 745.89 is added to subpart E to read as follows:

**§ 745.89 Firm certification.**

(a) *Initial certification*. (1) Firms that perform renovations for compensation must apply to EPA for certification to perform renovations or dust sampling. To apply, a firm must submit to EPA a completed "Application for Firms," signed by an authorized agent of the firm, and pay at least the correct amount of fees. If a firm pays more than the correct amount of fees, EPA will reimburse the firm for the excess amount.

(2) After EPA receives a firm's application, EPA will take one of the following actions within 90 days of the date the application is received:

(i) EPA will approve a firm's application if EPA determines that it is complete and that the environmental compliance history of the firm, its principals, or its key employees does not show an unwillingness or inability to maintain compliance with environmental statutes or regulations. An application is complete if it contains all of the information requested on the form and includes at least the correct amount of fees. When EPA approves a firm's application, EPA will issue the firm a certificate with an expiration date not more than 5 years from the date the application is approved. EPA certification allows the firm to perform renovations covered by this section in any State or Indian Tribal area that does not have a renovation program that is authorized under subpart Q of this part.

(ii) EPA will request a firm to supplement its application if EPA determines that the application is incomplete. If EPA requests a firm to supplement its application, the firm must submit the requested information or pay the additional fees within 30 days of the date of the request.

(iii) EPA will not approve a firm's application if the firm does not supplement its application in accordance with paragraph (a)(2)(ii) of this section or if EPA determines that the environmental compliance history of the firm, its principals, or its key employees demonstrates an unwillingness or inability to maintain compliance with environmental statutes or regulations. EPA will send the firm a letter giving the reason for not approving the application. EPA will not refund the application fees. A firm may reapply for certification at any time by filing a new, complete application that includes the correct amount of fees.

(b) *Re-certification*. To maintain its certification, a firm must be re-certified by EPA every 5 years.

(1) *Timely and complete application*. To be re-certified, a firm must submit a complete application for re-certification. A complete application for re-certification includes a completed "Application for Firms" which contains all of the information requested by the form and is signed by an authorized agent of the firm, noting on the form that it is submitted as a re-certification. A complete application must also include at least the correct amount of fees. If a firm pays more than the correct amount of fees, EPA will reimburse the firm for the excess amount.

(i) An application for re-certification is timely if it is postmarked 90 days or more before the date the firm's current certification expires. If the firm's application is complete and timely, the firm's current certification will remain in effect until its expiration date or until EPA has made a final decision to approve or disapprove the re-certification application, whichever is later.

(ii) If the firm submits a complete re-certification application less than 90 days before its current certification expires, and EPA does not approve the application before the expiration date, the firm's current certification will expire and the firm will not be able to conduct renovations until EPA approves its re-certification application.

(iii) If the firm fails to obtain re-certification before the firm's current certification expires, the firm must not perform renovations or dust sampling until it is certified anew pursuant to paragraph (a) of this section.

(2) *EPA action on an application*. After EPA receives a firm's application for re-certification, EPA will review the application and take one of the following actions within 90 days of receipt:

(i) EPA will approve a firm's application if EPA determines that it is timely and complete and that the environmental compliance history of the firm, its principals, or its key employees does not show an unwillingness or inability to maintain compliance with environmental statutes or regulations. When EPA approves a firm's application for re-certification, EPA will issue the firm a new certificate with an expiration date 5 years from the date that the firm's current certification expires. EPA certification allows the firm to perform renovations or dust sampling covered by this section in any State or Indian Tribal area that does not have a renovation program that is authorized under subpart Q of this part.

(ii) EPA will request a firm to supplement its application if EPA determines that the application is incomplete.

(iii) EPA will not approve a firm's application if it is not received or is not complete as of the date that the firm's current certification expires, or if EPA determines that the environmental compliance history of the firm, its principals, or its key employees demonstrates an unwillingness or inability to maintain compliance with environmental statutes or regulations. EPA will send the firm a letter giving the reason for not approving the application. EPA will not refund the application fees. A firm may reapply for certification at any time by filing a new application and paying the correct amount of fees.

(c) *Amendment of certification.* A firm must amend its certification within 90 days of the date a change occurs to information included in the firm's most recent application. If the firm fails to amend its certification within 90 days of the date the change occurs, the firm may not perform renovations or dust sampling until its certification is amended.

(1) To amend a certification, a firm must submit a completed "Application for Firms," signed by an authorized agent of the firm, noting on the form that it is submitted as an amendment and indicating the information that has changed. The firm must also pay at least the correct amount of fees.

(2) If additional information is needed to process the amendment, or the firm did not pay the correct amount of fees, EPA will request the firm to submit the necessary information or fees. The firm's certification is not amended until the firm complies with the request.

(3) Amending a certification does not affect the certification expiration date.

(d) *Firm responsibilities.* Firms performing renovations must ensure that:

(1) All individuals performing renovation activities on behalf of the firm are either certified renovators or have been trained by a certified renovator in accordance with § 745.90.

(2) A certified renovator is assigned to each renovation performed by the firm and discharges all of the certified renovator responsibilities identified in § 745.90.

(3) All renovations performed by the firm are performed in accordance with the work practice standards in § 745.85.

(4) The pre-renovation education requirements of § 745.84 have been performed.

(5) The recordkeeping requirements of § 745.86 are met.

■ 14. Section 745.90 is added to subpart E to read as follows:

**§ 745.90 Renovator certification and dust sampling technician certification.**

(a) *Renovator certification and dust sampling technician certification.* (1) To become a certified renovator or certified dust sampling technician, an individual must successfully complete the appropriate course accredited by EPA under § 745.225 or by a State or Tribal program that is authorized under subpart Q of this part. The course completion certificate serves as proof of certification. EPA renovator certification allows the certified individual to perform renovations covered by this section in any State or Indian Tribal area that does not have a renovation program that is authorized under subpart Q of this part. EPA dust sampling technician certification allows the certified individual to perform dust clearance sampling under § 745.85(c) in any State or Indian Tribal area that does not have a renovation program that is authorized under subpart Q of this part.

(2) Individuals who have successfully completed an accredited abatement worker or supervisor course, or individuals who have successfully completed an EPA, HUD, or EPA/HUD model renovation training course may take an accredited refresher renovator training course in lieu of the initial renovator training course to become a certified renovator.

(3) Individuals who have successfully completed an accredited lead-based paint inspector or risk assessor course may take an accredited refresher dust sampling technician course in lieu of the initial training to become a certified dust sampling technician.

(4) To maintain renovator certification or dust sampling technician certification, an individual must complete a renovator or dust sampling technician refresher course accredited by EPA under § 745.225 or by a State or Tribal program that is authorized under subpart Q of this part within 5 years of the date the individual completed the initial course described in paragraph (a)(1) of this section. If the individual does not complete a refresher course within this time, the individual must re-take the initial course to become certified again.

(b) *Renovator responsibilities.* Certified renovators are responsible for ensuring compliance with § 745.85 at all renovations to which they are assigned. A certified renovator:

(1) Must perform all of the tasks described in § 745.85(b) and must either perform or direct workers who perform all of the tasks described in § 745.85(a).

(2) Must provide training to workers on the work practices they will be using in performing their assigned tasks.

(3) Must be physically present at the work site when the signs required by § 745.85(a)(1) are posted, while the work area containment required by § 745.85(a)(2) is being established, and while the work area cleaning required by § 745.85(a)(5) is performed.

(4) Must regularly direct work being performed by other individuals to ensure that the work practices are being followed, including maintaining the integrity of the containment barriers and ensuring that dust or debris does not spread beyond the work area.

(5) Must be available, either on-site or by telephone, at all times that renovations are being conducted.

(6) When requested by the party contracting for renovation services, must use an acceptable test kit to determine whether components to be affected by the renovation contain lead-based paint.

(7) Must have with them at the work site copies of their initial course completion certificate and their most recent refresher course completion certificate.

(8) Must prepare the records required by § 745.86(b)(7).

(c) *Dust sampling technician responsibilities.* When performing optional dust clearance sampling under § 745.85(c), a certified dust sampling technician:

(1) Must collect dust samples in accordance with § 745.227(e)(8), must send the collected samples to a laboratory recognized by EPA under TSCA section 405(b), and must compare the results to the clearance levels in accordance with § 745.227(e)(8).

(2) Must have with them at the work site copies of their initial course completion certificate and their most recent refresher course completion certificate.

■ 15. Section 745.91 is added to subpart E to read as follows:

**§ 745.91 Suspending, revoking, or modifying an individual's or firm's certification.**

(a)(1) *Grounds for suspending, revoking, or modifying an individual's certification.* EPA may suspend, revoke, or modify an individual's certification if the individual fails to comply with Federal lead-based paint statutes or regulations. EPA may also suspend, revoke, or modify a certified renovator's certification if the renovator fails to ensure that all assigned renovations comply with § 745.85. In addition to an administrative or judicial finding of violation, execution of a consent

agreement in settlement of an enforcement action constitutes, for purposes of this section, evidence of a failure to comply with relevant statutes or regulations.

(2) *Grounds for suspending, revoking, or modifying a firm's certification.* EPA may suspend, revoke, or modify a firm's certification if the firm:

(i) Submits false or misleading information to EPA in its application for certification or re-certification.

(ii) Fails to maintain or falsifies records required in § 745.86.

(iii) Fails to comply, or an individual performing a renovation on behalf of the firm fails to comply, with Federal lead-based paint statutes or regulations. In addition to an administrative or judicial finding of violation, execution of a consent agreement in settlement of an enforcement action constitutes, for purposes of this section, evidence of a failure to comply with relevant statutes or regulations.

(b) *Process for suspending, revoking, or modifying certification.* (1) Prior to taking action to suspend, revoke, or modify an individual's or firm's certification, EPA will notify the affected entity in writing of the following:

(i) The legal and factual basis for the proposed suspension, revocation, or modification.

(ii) The anticipated commencement date and duration of the suspension, revocation, or modification.

(iii) Actions, if any, which the affected entity may take to avoid suspension, revocation, or modification, or to receive certification in the future.

(iv) The opportunity and method for requesting a hearing prior to final suspension, revocation, or modification.

(2) If an individual or firm requests a hearing, EPA will:

(i) Provide the affected entity an opportunity to offer written statements in response to EPA's assertions of the legal and factual basis for its proposed action.

(ii) Appoint an impartial official of EPA as Presiding Officer to conduct the hearing.

(3) The Presiding Officer will:

(i) Conduct a fair, orderly, and impartial hearing within 90 days of the request for a hearing.

(ii) Consider all relevant evidence, explanation, comment, and argument submitted.

(iii) Notify the affected entity in writing within 90 days of completion of the hearing of his or her decision and order. Such an order is a final agency action which may be subject to judicial review. The order must contain the commencement date and duration of the suspension, revocation, or modification.

(4) If EPA determines that the public health, interest, or welfare warrants immediate action to suspend the certification of any individual or firm prior to the opportunity for a hearing, it will:

(i) Notify the affected entity in accordance with paragraph (b)(1)(i) through (b)(1)(iii) of this section, explaining why it is necessary to suspend the entity's certification before an opportunity for a hearing.

(ii) Notify the affected entity of its right to request a hearing on the immediate suspension within 15 days of the suspension taking place and the procedures for the conduct of such a hearing.

(5) Any notice, decision, or order issued by EPA under this section, any transcript or other verbatim record of oral testimony, and any documents filed by a certified individual or firm in a hearing under this section will be available to the public, except as otherwise provided by section 14 of TSCA or by part 2 of this title. Any such hearing at which oral testimony is presented will be open to the public, except that the Presiding Officer may exclude the public to the extent necessary to allow presentation of information which may be entitled to confidential treatment under section 14 of TSCA or part 2 of this title.

(6) EPA will maintain a publicly available list of entities whose certification has been suspended, revoked, modified, or reinstated.

(7) Unless the decision and order issued under paragraph (b)(3)(iii) of this section specify otherwise:

(i) An individual whose certification has been suspended must take a refresher training course (renovator or dust sampling technician) in order to make his or her certification current.

(ii) An individual whose certification has been revoked must take an initial renovator or dust sampling technician course in order to become certified again.

(iii) A firm whose certification has been revoked must reapply for certification after the revocation ends in order to become certified again. If the firm's certification has been suspended and the suspension ends less than 5 years after the firm was initially certified or re-certified, the firm does not need to do anything to re-activate its certification.

■ 16. Section 745.220 is amended by revising paragraph (a) to read as follows:

**§ 745.220 Scope and applicability.**

(a) This subpart contains procedures and requirements for the accreditation of training programs for lead-based

paint activities and renovations, procedures and requirements for the certification of individuals and firms engaged in lead-based paint activities, and work practice standards for performing such activities. This subpart also requires that, except as discussed below, all lead-based paint activities, as defined in this subpart, be performed by certified individuals and firms.

\* \* \* \* \*

■ 17. Section 745.225 is amended as follows:

■ a. Revise paragraph (a).

■ b. Revise the introductory text of paragraph (b), revise paragraph (b)(1)(ii), and add paragraph (b)(1)(iv)(C).

■ c. Revise the introductory text of paragraph (c), add paragraphs (c)(6)(vi), (c)(6)(vii), (c)(8)(vi), and (c)(8)(vii), and revise paragraphs (c)(8)(iv) and (c)(10).

■ d. Remove the phrase "lead-based paint activities" and add in its place the phrase "renovator, dust sampling technician, or lead-based paint activities" wherever it appears in paragraph (c)(13).

■ e. Add paragraph (c)(14)(ii)(D)(6).

■ f. Add paragraphs (d)(6) and (d)(7).

■ g. Revise the introductory text of paragraph (e).

■ h. Remove the word "activities" wherever it appears in paragraph (e)(1).

■ i. Revise paragraph (e)(2).

**§ 745.225 Accreditation of training programs; target housing and child-occupied facilities.**

(a) *Scope.* (1) A training program may seek accreditation to offer courses in any of the following disciplines: Inspector, risk assessor, supervisor, project designer, abatement worker, renovator, and dust sampling technician. A training program may also seek accreditation to offer refresher courses for each of the above listed disciplines.

(2) Training programs may first apply to EPA for accreditation of their lead-based paint activities courses or refresher courses pursuant to this section on or after August 31, 1998. Training programs may first apply to EPA for accreditation of their renovator or dust sampling technician courses or refresher courses pursuant to this section on or after April 22, 2009.

(3) A training program must not provide, offer, or claim to provide EPA-accredited lead-based paint activities courses without applying for and receiving accreditation from EPA as required under paragraph (b) of this section on or after March 1, 1999. A training program must not provide, offer, or claim to provide EPA-accredited renovator or dust sampling technician courses without applying for

and receiving accreditation from EPA as required under paragraph (b) of this section on or after June 23, 2008.

(b) *Application process.* The following are procedures a training program must follow to receive EPA accreditation to offer lead-based paint activities courses, renovator courses, or dust sampling technician courses:

(1) \* \* \*

(ii) A list of courses for which it is applying for accreditation. For the purposes of this section, courses taught in different languages are considered different courses, and each must independently meet the accreditation requirements.

\* \* \* \* \*

(iv) \* \* \*

(C) When applying for accreditation of a course in a language other than English, a signed statement from a qualified, independent translator that they had compared the course to the English language version and found the translation to be accurate.

\* \* \* \* \*

(c) *Requirements for the accreditation of training programs.* For a training program to obtain accreditation from EPA to offer lead-based paint activities courses, renovator courses, or dust sampling technician courses, the program must meet the following requirements:

\* \* \* \* \*

(6) \* \* \*

(vi) The renovator course must last a minimum of 8 training hours, with a minimum of 2 hours devoted to hands-on training activities. The minimum curriculum requirements for the renovator course are contained in paragraph (d)(6) of this section. Hands-on training activities must cover renovation methods that minimize the creation of dust and lead-based paint hazards, interior and exterior containment and cleanup methods, and post-renovation cleaning verification.

(vii) The dust sampling technician course must last a minimum of 8 training hours, with a minimum of 2 hours devoted to hands-on training activities. The minimum curriculum requirements for the dust sampling technician course are contained in paragraph (d)(7) of this section. Hands-on training activities must cover dust sampling methodologies.

\* \* \* \* \*

(8) \* \* \*

(iv) For initial inspector, risk assessor, project designer, supervisor, or abatement worker course completion certificates, the expiration date of

interim certification, which is 6 months from the date of course completion.

\* \* \* \* \*

(vi) The language in which the course was taught.

(vii) For renovator and dust sampling technician course completion certificates, a photograph of the individual.

\* \* \* \* \*

(10) Courses offered by the training program must teach the work practice standards contained in § 745.85 or § 745.227, as applicable, in such a manner that trainees are provided with the knowledge needed to perform the renovations or lead-based paint activities they will be responsible for conducting.

\* \* \* \* \*

(14) \* \* \*

(ii) \* \* \*

(D) \* \* \*

(6) A digital photograph of the student.

(d) \* \* \*

(6) *Renovator.* (i) Role and responsibility of a renovator.

(ii) Background information on lead and its adverse health effects.

(iii) Background information on EPA, HUD, OSHA, and other Federal, State, and local regulations and guidance that pertains to lead-based paint and renovation activities.

(iv) Procedures for using acceptable test kits to determine whether paint is lead-based paint.

(v) Renovation methods to minimize the creation of dust and lead-based paint hazards.

(vi) Interior and exterior containment and cleanup methods.

(vii) Methods to ensure that the renovation has been properly completed, including cleaning verification, and clearance testing.

(viii) Waste handling and disposal.

(ix) Providing on-the-job training to other workers.

(x) Record preparation.

(7) *Dust sampling technician.* (i) Role and responsibility of a dust sampling technician.

(ii) Background information on lead and its adverse health effects.

(iii) Background information on Federal, State, and local regulations and guidance that pertains to lead-based paint and renovation activities.

(iv) Dust sampling methodologies.

(v) Clearance standards and testing.

(vi) Report preparation.

\* \* \* \* \*

(e) *Requirements for the accreditation of refresher training programs.* A training program may seek accreditation to offer refresher training courses in any

of the following disciplines: Inspector, risk assessor, supervisor, project designer, abatement worker, renovator, and dust sampling technician. To obtain EPA accreditation to offer refresher training, a training program must meet the following minimum requirements:

\* \* \* \* \*

(2) Refresher courses for inspector, risk assessor, supervisor, and abatement worker must last a minimum of 8 training hours. Refresher courses for project designer, renovator, and dust sampling technician must last a minimum of 4 training hours.

\* \* \* \* \*

■ 18. Section 745.320 is amended by revising paragraph (c) to read as follows:

**§ 745.320 Scope and purpose.**

\* \* \* \* \*

(c) A State or Indian Tribe may seek authorization to administer and enforce all of the provisions of subpart E of this part, just the pre-renovation education provisions of subpart E of this part, or just the training, certification, accreditation, and work practice provisions of subpart E of this part. The provisions of §§ 745.324 and 745.326 apply for the purposes of such program authorizations.

\* \* \* \* \*

■ 19. Section 745.324 is amended as follows:

■ a. Revise paragraph (a)(1).

■ b. Remove the phrase “lead-based paint training accreditation and certification” from the second sentence of paragraph (b)(1)(iii).

■ c. Revise paragraph (b)(2)(ii).

■ d. Revise paragraphs (e)(2)(i) and (e)(4).

■ e. Revise paragraph (f)(2).

■ f. Revise paragraph (i)(8).

**§ 745.324 Authorization of State or Tribal programs.**

(a) *Application content and procedures.* (1) Any State or Indian Tribe that seeks authorization from EPA to administer and enforce the provisions of subpart E or subpart L of this part must submit an application to the Administrator in accordance with this paragraph.

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(ii) An analysis of the State or Tribal program that compares the program to the Federal program in subpart E or subpart L of this part, or both. This analysis must demonstrate how the program is, in the State’s or Indian Tribe’s assessment, at least as protective as the elements in the Federal program at subpart E or subpart L of this part, or

both. EPA will use this analysis to evaluate the protectiveness of the State or Tribal program in making its determination pursuant to paragraph (e)(2)(i) of this section.

\* \* \* \* \*  
(e) \* \* \*  
(2) \* \* \*

(i) The State or Tribal program is at least as protective of human health and the environment as the corresponding Federal program under subpart E or subpart L of this part, or both; and

\* \* \* \* \*

(4) If the State or Indian Tribe applies for authorization of State or Tribal programs under both subpart E and subpart L, EPA may, as appropriate, authorize one program and disapprove the other.

\* \* \* \* \*  
(f) \* \* \*

(2) If a State or Indian Tribe does not have an authorized program to administer and enforce the pre-renovation education requirements of subpart E of this part by August 31, 1998, the Administrator will, by such date, enforce those provisions of subpart E of this part as the Federal program for that State or Indian Country. If a State or Indian Tribe does not have an authorized program to administer and enforce the training, certification and accreditation requirements and work practice standards of subpart E of this part by April 22, 2009, the Administrator will, by such date, enforce those provisions of subpart E of this part as the Federal program for that State or Indian Country.

\* \* \* \* \*  
(j) \* \* \*

(8) By the date of such order, the Administrator will establish and enforce the provisions of subpart E or subpart L of this part, or both, as the Federal program for that State or Indian Country.

■ 20. Section 745.326 is revised to read as follows:

**§ 745.326 Renovation: State and Tribal program requirements.**

(a) *Program elements.* To receive authorization from EPA, a State or Tribal program must contain the following program elements:

(1) For pre-renovation education programs, procedures and requirements for the distribution of lead hazard information to owners and occupants of target housing and child-occupied facilities before renovations for compensation.

(2) For renovation training, certification, accreditation, and work practice standards programs:

(i) Procedures and requirements for the accreditation of renovation and dust sampling technician training programs.

(ii) Procedures and requirements for the certification of renovators and dust sampling technicians.

(iii) Procedures and requirements for the certification of individuals and/or firms.

(iv) Requirements that all renovations be conducted by appropriately certified individuals and/or firms.

(v) Work practice standards for the conduct of renovations.

(3) For all renovation programs, development of the appropriate infrastructure or government capacity to effectively carry out a State or Tribal program.

(b) *Pre-renovation education.* To be considered at least as protective as the Federal program, the State or Tribal program must:

(1) Establish clear standards for identifying renovation activities that trigger the information distribution requirements.

(2) Establish procedures for distributing the lead hazard information to owners and occupants of housing and child-occupied facilities prior to renovation activities.

(3) Require that the information to be distributed include either the pamphlet titled *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools*, developed by EPA under section 406(a) of TSCA, or an alternate pamphlet or package of lead hazard information that has been submitted by the State or Tribe, reviewed by EPA, and approved by EPA for that State or Tribe. Such information must contain renovation-specific information similar to that in *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools*, must meet the content requirements prescribed by section 406(a) of TSCA, and must be in a format that is readable to the diverse audience of housing and child-occupied facility owners and occupants in that State or Tribe.

(i) A State or Tribe with a pre-renovation education program approved before June 23, 2008, must demonstrate that it meets the requirements of this section no later than the first report that it submits pursuant to § 745.324(h) on or after April 22, 2009.

(ii) A State or Tribe with an application for approval of a pre-renovation education program submitted but not approved before June 23, 2008, must demonstrate that it meets the requirements of this section either by amending its application or in the first report that it submits pursuant

to § 745.324(h) of this part on or after April 22, 2009.

(iii) A State or Indian Tribe submitting its application for approval of a pre-renovation education program on or after June 23, 2008, must demonstrate in its application that it meets the requirements of this section.

(c) *Accreditation of training programs.* To be considered at least as protective as the Federal program, the State or Tribal program must meet the requirements of either paragraph (c)(1) or (c)(2) of this section:

(1) The State or Tribal program must establish accreditation procedures and requirements, including:

(i) Procedures and requirements for the accreditation of training programs, including, but not limited to:

- (A) Training curriculum requirements.
- (B) Training hour requirements.
- (C) Hands-on training requirements.
- (D) Trainee competency and proficiency requirements.
- (E) Requirements for training program quality control.

(ii) Procedures and requirements for the re-accreditation of training programs.

(iii) Procedures for the oversight of training programs.

(iv) Procedures and standards for the suspension, revocation, or modification of training program accreditations; or

(2) The State or Tribal program must establish procedures and requirements for the acceptance of renovation training offered by training providers accredited by EPA or a State or Tribal program authorized by EPA under this subpart.

(d) *Certification of renovators.* To be considered at least as protective as the Federal program, the State or Tribal program must:

(1) Establish procedures and requirements for individual certification that ensure that certified renovators are trained by an accredited training program.

(2) Establish procedures and requirements for re-certification.

(3) Establish procedures for the suspension, revocation, or modification of certifications.

(e) *Work practice standards for renovations.* To be considered at least as protective as the Federal program, the State or Tribal program must establish standards that ensure that renovations are conducted reliably, effectively, and safely. At a minimum, the State or Tribal program must contain the following requirements:

(1) Renovations must be conducted only by certified contractors.

(2) Renovations are conducted using lead-safe work practices that are at least

as protective to occupants as the requirements in § 745.85.

(3) Certified contractors must retain appropriate records.

■ 21. Section 745.327 is amended by revising paragraphs (b)(1)(iv) and (b)(2)(ii) to read as follows:

**§ 745.327 State or Indian Tribal lead-based paint compliance and enforcement programs.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(iv) Requirements that regulate the conduct of renovation activities as described at § 745.326.

(2) \* \* \*

(ii) For the purposes of enforcing a renovation program, State or Tribal officials must be able to enter a firm's place of business or work site.

\* \* \* \* \*

■ 22. Section 745.339 is revised to read as follows:

**§ 745.339 Effective date.**

States and Indian Tribes may seek authorization to administer and enforce subpart L of this part pursuant to this subpart at any time. States and Indian Tribes may seek authorization to administer and enforce the pre-renovation education provisions of subpart E of this part pursuant to this subpart at any time. States and Indian Tribes may seek authorization to administer and enforce all of subpart E of this part pursuant to this subpart effective June 23, 2008.

[FR Doc. E8-8141 Filed 4-21-08; 8:45 am]

BILLING CODE 6560-50-S

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 745**

[EPA-HQ-OPPT-2004-0126; FRL-8358-6]

**Lead Hazard Information Pamphlet; Notice of Availability**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of availability.

**SUMMARY:** This notice announces the availability of EPA's new lead hazard information pamphlet for renovation activities, *Renovate Right: Lead Hazard Information for Families, Child Care Providers and Schools (Renovate Right)*. There is an increased risk of exposure to lead-based paint hazards during renovation activities, particularly for children under 6 years of age. To better inform families, child care providers, and schools about the risks and to

encourage greater public health and safety during renovation activities in target housing and child-occupied facilities, EPA has developed a renovation-specific information pamphlet. This new pamphlet gives information on lead-based paint hazards, lead testing, how to select a contractor, what precautions to take during the renovation, and proper cleanup activities.

**DATES:** After June 23, 2008, the new pamphlet or *Protect Your Family From Lead in Your Home* may be used for compliance with the Pre-Renovation Education Rule under TSCA section 406(b). After December 22, 2008, the new pamphlet must be used exclusively.

**FOR FURTHER INFORMATION CONTACT:** For general information contact: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 554-1404; e-mail address: [TSCA-Hotline@epa.gov](mailto:TSCA-Hotline@epa.gov).

For technical information contact: Mike Wilson, National Program Chemicals Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number (201) 566-0521; e-mail address: [wilson.mike@epa.gov](mailto:wilson.mike@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does this Action Apply to Me?*

You may be potentially affected by this action if you perform renovations of target housing or child-occupied facilities for compensation. "Target housing" is defined in section 401 of TSCA as any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child under age 6 resides or is expected to reside in such housing) or any 0-bedroom dwelling. EPA's Renovation, Repair, and Painting rule defines a child-occupied facility as a building, or a portion of a building, constructed prior to 1978, visited regularly by the same child, under 6 years of age, on at least 2 different days within any week (Sunday through Saturday period), provided that each day's visit lasts at least 3 hours and the combined weekly visits last at least 6 hours, and the combined annual visits last at least 60 hours. Child-occupied facilities may be located in public or commercial buildings or in target housing.

Potentially affected entities may include, but are not limited to:

- Building construction (NAICS code 236), e.g., single family housing construction, multi-family housing construction, residential remodelers.
- Specialty trade contractors (NAICS code 238), e.g., plumbing, heating, and air-conditioning contractors, painting and wall covering contractors, electrical contractors, finish carpentry contractors, drywall and insulation contractors, siding contractors, tile and terrazzo contractors, glass and glazing contractors.
- Real estate (NAICS code 531), e.g., lessors of residential buildings and dwellings, residential property managers.
- Child day care services (NAICS code 624410).
- Elementary and secondary schools (NAICS code 611110), e.g., elementary schools with kindergarten classrooms.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in 40 CFR 745.82. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Get Copies of the Pamphlet and Other Related Information?*

1. *The pamphlet.* Single copies of the pamphlet may be obtained by calling the National Lead Information Clearinghouse (NLIC) at 1-800-424-LEAD or TDD: 1-800-526-5456, or the EPA Public Information Center at (202) 260-2080. Multiple copies are available through the Government Printing Office (GPO). The public may order by calling the GPO Order Desk at (202) 512-1800, faxing (202) 512-2233, or writing to Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954. Request the publication by title, *Renovate Right: Lead Hazard Information for Families, Child Care Providers and Schools*. The pamphlet is also available on EPA's website at <http://www.epa.gov/lead>. The pamphlet may be reproduced by an individual or corporation without permission from EPA.

## LEAD ABATEMENT ACT

Act Nos. 219 & 220, Public Acts of 1998  
Act No. 644, Public Acts of 2002  
Act Nos. 400, 431, 432, 433, 434; Public Acts of 2004  
Amendments to Michigan Public Health Code  
Act 368 of Public Acts of 1978

### PART 54A LEAD ABATEMENT

#### MCL 333.5451 Short title of part.

**Sec. 5451.** This part shall be known and may be cited as the “lead abatement act”.

*History: Add. 1998, Act 219, Imd. Eff. July 1, 1998.*

#### MCL 333.5452 Words and phrases; meanings.

**Sec. 5452.** For purposes of this part, the words and phrases defined in sections 5453 to 5460 have the meanings ascribed to them unless the context requires otherwise.

*History: Add. 1998, Act 220, Imd. Eff. July 1, 1998.*

#### MCL 333.5453 Definitions; A.

**Sec. 5453** (1) *Abatement*, except as otherwise provided in subsection (2), means a measure or set of measures designed to permanently eliminate lead-based paint hazards. Abatement includes all of the following:

(a) The removal of lead-based paint and dust lead hazards, the permanent enclosure or encapsulation of lead based paint, the replacement of lead-painted surfaces or fixtures, the removal or covering of soil lead hazards, and all preparation, cleanup, disposal, and post-abatement clearance testing activities associated with such measures.

(b) A project for which there is a written contract or other documentation that provides that a person will be conducting activities in or to a residential dwelling or child occupied facility that will result in the permanent elimination of lead-based paint hazards or that are designed to permanently eliminate lead-based paint hazards.

(c) A project resulting in the permanent elimination of lead-based paint hazards, conducted by a person certified under this part, except a project that is exempt from this part.

(d) A project resulting in the permanent elimination of lead-based paint hazards, conducted by a person who, through their company name or promotional literature, represents, advertises, or holds themselves out to be in the business of performing lead-based paint activities, except a project that is exempt from this part.

(e) A project resulting in the permanent elimination of lead-based paint hazards that is conducted in response to a state or local government abatement order.

(2) Abatement does not include any of the following:

(a) Renovation, remodeling, landscaping, or other activity, if the activity is not designed to permanently eliminate lead-based paint hazards, but is instead designed to repair, restore, or remodel a structure, target housing, or dwelling even though the activity may incidentally result in a reduction or elimination of a lead-based paint hazard.

(b) An interim control, operation and maintenance activity, or other measure or activity designed to temporarily, but not permanently, reduce a lead-based paint hazard.

(c) Any lead-based paint activity performed by the owner of an owner-occupied residential dwelling or an owner-occupied multifamily dwelling containing 4 or fewer units, if the activity is performed only in that owner-occupied unit of the multifamily dwelling.

**MCL 333.5453** (con't)

(3) **Accredited training program** means a training program that has been accredited by the department under this part to provide training for individuals engaged in lead-based paint activities.

(4) **Adequate quality control** means a plan or design that ensures the authenticity, integrity, and accuracy of a sample including, but not limited to, a dust sample, a soil or paint chip sample, or a paint film sample. Adequate quality control also includes a provision in a plan or design described in this subsection for representative sampling.

*History: Add. 1998, Act 220, Imd. Eff. July 1, 1998; -Am. 2002, Act 644, Imd. Eff. December 23, 2002.*

**MCL 333.5454**                    **Definitions; C.**

**Sec. 5454.** (1) **Certified abatement worker** means an individual who has been trained to perform abatements by an accredited training program and who is certified by the department under this part to perform abatement.

(2) **Certified clearance technician** means an individual who has completed an approved training course and been certified by the department under this part to conduct clearance testing following interim controls.

(3) **Certified firm** means a person that performs a lead-based paint activity for which the department has issued a certificate of approval under this part.

(4) **Certified inspector** means an individual who has been trained by an accredited training program and certified by the department under this part to conduct inspections and take samples for the presence of lead in paint, dust and soil for the purpose of abatement clearance testing.

(5) **Certified project designer** means an individual who has been trained by an accredited training program and certified by the department under this part to prepare abatement project designs, occupant protection plans, and abatement reports.

(6) **Certified risk assessor** means an individual who has been trained by an accredited training program and certified by the department under this part to conduct inspections and risk assessments and to take samples for the presence of lead in paint, dust, and soil for the purposes of abatement clearance testing.

(7) **Certified supervisor** means an individual who has been trained by an accredited training program and certified by the department under this part to supervise and conduct abatements and to prepare occupant protection plans and abatement reports.

(8) **Child occupied facility** means a building or portion of a building constructed before 1978 that is visited regularly by a child who is 6 years of age or less, on at least 2 different days within a given week, if each day's visit is at least 3 hours and the combined weekly visit is at least 6 hours in length, and the combined annual visits are at least 60 hours in length. Child occupied facility includes, but is not limited to, a day-care center, a preschool, and a kindergarten classroom.

*History: Add. 1998, Act 220, Imd. Eff. July 1, 1998; -Am. 2002, Act 644, Imd. Eff. December 23, 2002..*

**MCL 333.5455**                    **Definitions; C.**

**Sec. 5455.** (1) **Clearance levels** means the values that indicate the maximum amount of lead permitted in dust on a surface following completion of an abatement activity as listed in rules promulgated by the department.

**MCL 333.5455** (con't)

(2) **Clearance professional** means 1 or more of the following individuals when performing clearance testing:

- (a) A certified inspector.
- (b) A certified risk assessor.
- (c) A certified clearance technician.

(3) **Common area** means a portion of a building that is generally accessible to all occupants of the building. Common area includes, but is not limited to, a hallway, a stairway, a laundry and recreational room, a playground, a community center, a garage, and a boundary fence.

(4) **Component or building component** means a specific design or structural element or fixture of a building, residential dwelling, or child occupied facility that is distinguished by its form, function, and location. Component or building component includes, but is not limited to, a specific interior or exterior design or structural element or fixture.

(5) **Containment** means a process to protect workers and the environment by controlling exposure to the dust lead hazard and debris created during abatement.

(6) **Course agenda** means an outline of the key topics to be covered during an accredited training program, including the time allotted to teach each topic.

(6) **Course test** means an evaluation of the overall effectiveness of the accredited training program by testing a trainee's knowledge and retention of the topics covered during the accredited training program.

(7) **Course test blueprint** means written documentation identifying the proportion of course test questions devoted to each major topic in the accredited training program curriculum.

*History: Add. 1998, Act 220, Imd. Eff. July 1, 1998; -Am. 2002, Act 644, Imd. Eff. December 23, 2002.*

**MCL 333.5456**                      **Definitions; D, E.**

**Sec. 5456** (1) **Department** means the department of community health.

(2) **Deteriorated paint** means paint or other surface coating that is cracking, flaking, chipping, peeling, or otherwise damaged or separating from the substrate of a building component.

(3) **Discipline** means 1 of the specific types or categories of lead-based paint activities identified in this part for which an individual may receive training from an accredited training program and become certified by the department.

(4) **Distinct painting history** means the application history, as indicated by its visual appearance or a record of application, over time, of paint or other surface coatings to a component or room.

(5) **Documented methodology** means a method or protocol used to do either or both of the following:  
(a) Sample and test for the presence of lead in paint, dust, and soil.  
(b) Perform related work practices as described in rules promulgated under this part.

(6) **Dust lead hazard** means surface dust in a residential dwelling or child occupied facility that contains a concentration of lead at or in excess of levels identified by the EPA pursuant to section 403 of title IV of the toxic substances control act, Public Law 94-469, 15 U.S.C. 2683, or as otherwise defined by rule.

**MCL 333.5456** (con't)

(7) **Elevated blood level** or **EBL** means for purposes of lead abatement, an excessive absorption of lead that is a confirmed concentration of lead in whole blood of 20 ug/dl, micrograms of lead per deciliter of whole blood, for a single venous test or of 15-19 ug/dl in 2 consecutive tests taken 3 to 4 months apart. For purposes of case management of children 6 years of age or less, elevated blood level means an excessive absorption of lead that is a confirmed concentration of lead in whole blood of 10 ug/dl.

(8) **Encapsulant** means a substance that forms a barrier between lead-based paint and the environment using a liquid-applied coating, with or without reinforcement materials, or an adhesively bonded covering material.

(9) **Encapsulation** means the application of an encapsulant.

(10) **Enclosure** means the use of rigid, durable construction materials that are mechanically fastened to the substrate in order to act as a barrier between lead-based paint and the environment.

(11) **EPA** means the United States Environmental Protection Agency.

*History: Add. 1998, Act 220, Imd. Eff. July 1, 1998; -Am. 2002, Act 644, Imd. Eff. December 23, 2002.*

**MCL 333.5457**                    **Definitions; G to I.**

**Sec. 5457.** (1) **Guest instructor** means an individual designated by the manager or principal instructor of an accredited training program to provide instruction specific to the lecture, hands-on activities, or work practice components of a course in the accredited training program.

(2) **Hands-on skills assessment** means an evaluation that tests a trainee's ability to satisfactorily perform the work practices, work procedures, or any other skill taught in an accredited training program.

(3) **Hazardous waste** means waste as defined in 40 CFR 261.3.

(4) **Inspection** means a surface-by-surface investigation to determine the presence of lead-based paint in target housing or child-occupied facility, and the provision of a report explaining the results of the investigation.

(5) **Interim controls** means a set of measures designed to temporarily reduce human exposure, or likely exposure, to lead-based paint hazards including, but not limited to, specialized cleaning, repairs, maintenance, painting, temporary containment, ongoing monitoring of lead-based paint hazards or potential hazards, and the establishment and operation of management and resident education programs.

*History: Add. 1998, Act 219, Imd. Eff. July 1, 1998; -Am. 2002, Act 644, Imd. Eff. December 23, 2002.*

**MCL 333.5458**                    **Definitions; L.**

**Sec. 5458.** (1) **Lead-based paint** means paint or other surface coatings that contain lead equal to or in excess of 1.0 milligrams per square centimeter or more than 0.5% by weight.

(2) **Lead-based paint activity** means inspection, risk assessment, and abatement in target housing and child occupied facilities, or in any part thereof.

(3) **Lead-based paint hazard** means any of the following conditions:

- (a) Any lead-based paint on a friction surface that is subject to abrasion and where the lead dust levels on the nearest horizontal surface are equal to or greater than the dust lead hazard levels identified in rules promulgated under this part.

**MCL 333.5458 (con't)**

(b) Any damaged or otherwise deteriorated lead-based paint on an impact surface that is caused by impact from a related building component.

(c) Any chewable lead-based painted surface on which there is evidence of teeth marks.

(d) Any other deteriorated lead-based paint in or on any residential building or child occupied facility.

(e) Surface dust in a residential dwelling or child occupied facility that contains lead in a mass-per-area concentration equal to or exceeding the levels established by rules promulgated under this part.

(f) Bare soil on residential real property or property of a child occupied facility that contains lead equal to or exceeding levels established by rules promulgated under this part.

(4) ***Lead-based paint investigation*** means an activity designed to determine the presence of lead-based paint or lead-based paint hazards in target housing and child occupied facilities.

(5) ***Living area*** means an area of a residential dwelling used by 1 or more children age 6 and under including, but not limited to, a living room, kitchen area, den, playroom, and a children's bedroom.

*History: Add. 1998, Act 219, Imd. Eff. July 1, 1998; -Am. 2002, Act 644, Imd. Eff. December 23, 2002.*

**MCL 333.5459                      Definitions; M to S.**

**Sec. 5459.** (1) ***Multifamily dwelling*** means a structure that contains more than 1 separate residential dwelling unit and that is used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of 1 or more persons.

(2) ***Paint in poor condition*** means 1 or more of the following:

(a) More than 10 square feet of deteriorated paint on an exterior component with a large surface area.

(b) More than 2 square feet of deteriorated paint on an interior component with large surface areas.

(c) More than 10% of the total surface area of the component is deteriorated on an interior or exterior component with a small surface area.

(3) ***Permanently covered soil*** means soil that has been separated from human contact by the placement of a barrier consisting of solid, relatively impermeable materials including, but not limited to, pavement or concrete, but not including grass, mulch, or other landscaping materials.

(4) ***Person*** means that term as defined in section 1106 but including the state and a political subdivision of the state.

(5) ***Principal instructor*** means the individual who has the primary responsibility for organizing and teaching a particular course in an accredited training program.

(6) ***Recognized laboratory*** means an environmental laboratory recognized by the EPA pursuant to section 405 of title IV of the toxic substances control act, Public Law 94-469, 15 U.S.C. 2685, as being capable of performing an analysis for lead compounds in paint, soil, and dust.

(7) ***Reduction*** means a measure designed to reduce or eliminate human exposure to a lead-based paint hazard through methods including, but not limited to, interim controls and abatement.

(8) ***Residential dwelling*** means either of the following:

(a) A detached single family dwelling unit, including, but not limited to, attached structures such as porches and stoops and accessory structures such as garages, fences, and nonagricultural or noncommercial outbuildings.

(b) A building structure that contains more than 1 separate residential dwelling unit that is used or occupied, in whole or in part, as the home or residence of 1 or more persons.

**MCL 333.5459** (con't)

(9) **Risk assessment** means both of the following:

(a) An on-site investigation in target housing or a child occupied facility to determine the existence, nature, severity, and location of a lead-based paint hazard.

(b) The provision of a report by the person conducting the risk assessment explaining the results of the investigation and options for reducing the lead-based paint hazard.

(10) **Soil lead hazard** means bare soil on a residential dwelling or on the property of a child occupied facility that contains lead at or in excess of levels identified by the EPA pursuant to section 403 of title IV of the toxic substances control act, Public Law 94-469, 15 U.S.C. 2683, or as otherwise defined by rule.

*History: Add. 1998, Act 219, Imd. Eff. July 1, 1998; -Am. 2002, Act 644, Imd. Eff. December 23, 2002.*

**MCL 333.5460**                      **Definitions; T to V.**

**Sec. 5460.** (1) **Target housing** means housing constructed before 1978, except any of the following:

(a) Housing for the elderly or persons with disabilities, unless any 1 or more children age 6 years or less resides or is expected to reside in that housing.

(b) A 0-bedroom dwelling.

(c) An unoccupied dwelling unit pending demolition, provided the dwelling unit remains unoccupied until demolition.

(2) **Third party examination** means the examination for certification under this part in the disciplines of clearance technician, inspector, risk assessor, worker, and supervisor offered and administered by a party other than an accredited training program.

(3) **Training curriculum** means an established set of course topics for instruction in an accredited training program for a particular discipline designed to provide specialized knowledge and skills.

(4) **Training hour** means not less than 50 minutes of actual learning, including, but not limited to, time devoted to lecture, learning activities, small group activities, demonstrations, evaluations, or hands-on experience or a combination of those activities.

(5) **Training manager** means the individual responsible for administering an accredited training program and monitoring the performance of principal instructors and guest instructors.

(6) **Visual inspection for clearance testing** means the visual examination of a residential dwelling or a child occupied facility following an abatement designed to determine whether the abatement has been successfully completed.

(7) **Visual inspection for risk assessment** means the visual examination of a residential dwelling or a child occupied facility to determine the existence of deteriorated paint or other potential sources of lead-based paint hazards.

*History: Add. 1998, Act 219, Imd. Eff. July 1, 1998; -Am. 2002, Act 644, Imd. Eff. December 23, 2002.*

**MCL 333.5460a**                      **Lead-based paint activities; procedures and requirements.**

**Sec. 5460a.** (1) This part contains procedures and requirements for the accreditation of lead-based paint activities training programs, procedures and requirements for the certification of individuals and other persons engaged in lead-based paint activities, and work practice standards for performing lead-based paint activities as that term is defined in section 5458. This part requires that all lead-based paint activities be performed by certified individuals and persons, except for those circumstances and persons described in section 5453 (2).

**MCL 333.5460a** (con't)

(2) This part does not apply to individuals and persons engaged in lead-based paint activities conducted within or on certain owner-occupied residential and multifamily dwellings as further described in section 5453 (2) except in certain dwellings in which a residing child is identified as having an elevated blood lead level.

(3) This part does not require the owner or occupant to undertake any lead-based paint activities.

*History: Add. 1998, Act 219, Imd. Eff. July 1, 1998.*

**MCL 333.5461**            **Persons engaged in lead-based paint activity; certification required.**

**Sec. 5461** (1) A person shall not engage or offer to engage in a lead-based paint activity unless certified in the appropriate discipline under this part. A person conducting a lead-based paint activity shall comply with the standards for performing lead-based paint activities contained in this part and the rules promulgated under this part.

(2) The department shall certify a person applying for certification under this part if that person demonstrates to the department that he or she is licensed, certified, or registered in another state and the standards for obtaining that license, certification, or registration are substantially similar to those imposed under this part.

*History: Add. 1998, Act 219, Imd. Eff. July 1, 1998.*

**MCL 333.5461a.**            **Lead-based paint activities; training program; accreditation required.**

**Sec. 5461a.** (1) A person shall not provide or offer to provide a training program for lead-based paint activities unless the training program is accredited under the appropriate discipline under this part. A person providing an accredited training program shall comply with the standards for accreditation and training certification prescribed in this part and the rules promulgated under this part.

(2) The department shall accredit a training program if the training program is registered by the department under the department's voluntary registration program by August 30, 1998 if the training program submits an application under section 5462.

*History: Add. 1998, Act 220, Imd. Eff. July 1, 1998.*

**MCL 333.5462**            **Lead-based paint activities; training program; accreditation generally.**

**Sec. 5462.** (1) A person may seek accreditation for a training program to offer courses in lead-based activities in 1 or more of the following disciplines:

- (a) Inspector
- (b) Risk Assessor.
- (c) Supervisor.
- (d) Project Designer.
- (e) Abatement Worker/Laborer.
- (f) Clearance Technician.

(2) A person may also seek accreditation for a training program to offer refresher courses for each of the disciplines described in subsection (1).

(3) A person shall not provide, offer, or claim to provide EPA-accredited courses in lead-based paint activities without applying for and receiving accreditation from the department under this part.

**MCL 333.5462 (con't)**

(4) A person seeking accreditation for a training program shall submit a written application to the department containing all of the following:

(a) If the applicant is a sole proprietorship or corporation, its "doing business as" or corporate identification number.

(b) The fee required by section 5471.

(c) The name of each principal position, partner, shareholder, member, or owner.

(d) The training program's proposed name, address, and telephone number.

(e) A list of courses and disciplines for which it is seeking accreditation.

(f) A statement signed by the training program manager certifying that the training program meets the requirements established by this part and the rules promulgated under this part.

(g) A copy of the student and instructor manuals or other materials to be used for each course.

(h) A copy of the course agenda for each course.

(i) A description of the facilities and equipment to be used for lecture and hands-on training.

(j) A copy of the course test blueprint for each course.

(k) A description of the activities and procedures that will be used for conducting the hands-on skills assessment for each course.

(l) A copy of the quality control plan as defined in rules promulgated by the department.

(5) The department shall approve an application for accreditation of a training program within 180 days after receiving a complete application from the training program if the department determines that the applicant meets the requirements of this part and the rules promulgated under this part. In the case of approval, the department shall send a certificate of accreditation to the applicant. Before disapproving an application, the department may advise the applicant as to specific inadequacies in the application for accreditation or requirements of this part or the rules promulgated under this part, or both. The department may request additional information or materials from the training program under this section. If the department disapproves a training program's application for accreditation, the applicant may reapply for accreditation at any time.

(6) A training program shall meet all of the following requirements in order to become accredited to offer courses in lead-based paint activities:

(a) Employ a training manager who has training, education, and experience as described in rules promulgated by the department.

(b) Provide that the training manager described in subdivision (a) designate a qualified principal instructor for each course who has training, education, and experience as described in rules promulgated by the department.

(c) Provide that the principal instructor described in subdivision (b) be responsible for the organization of the course and oversight of the teaching of all course material. A training manager may designate guest instructors as needed to provide instruction specific to the lecture, hands-on activities, or work practice components of a course.

(7) The following documents are recognized by the department as evidence that a training manager or a principal instructor has the education, work experience, training requirements, or demonstrated experience specifically listed in rules promulgated by the department, which documentation is not required to be submitted with the accreditation application but, if not submitted, must be retained by the training program as required by the record-keeping requirements contained in this part:

(a) An official academic transcript or diploma as evidence of meeting the education requirements.

(b) A resume, letter of reference, or documentation of work experience, as evidence of meeting the work requirements.

(c) A certificate from a train-the-trainer course or a lead-specific training course, or both, as evidence of meeting training requirements.

(8) A training program accredited under this part shall ensure the availability of, and provide adequate facilities for, the delivery of the lecture, course test, hands-on training and assessment activities including, but not limited to, providing training equipment that reflects current work practices and maintaining or updating the equipment and facilities of the training program, as needed.

**MCL 333.5463**

**Training program; training hour requirements for accreditation in certain disciplines; rules; course test; hands-on skills assessment; course completion certificates; quality control plan; teaching work practice standards; duties of training manager.**

**Sec. 5463.** (1) A training program accredited under section 5462 shall provide training courses that meet the following training hour requirements in order to become accredited in the following disciplines:

(a) An inspector course shall last a minimum of 24 training hours, with a minimum of 8 hours devoted to hands-on training activities. The department shall promulgate rules to determine the minimum curriculum requirements for the inspector course.

(b) A risk assessor course shall last a minimum of 16 training hours, with a minimum of 4 hours devoted to hands-on training activities. The department shall promulgate rules to determine the minimum curriculum requirements for the risk assessor course.

(c) A supervisor course shall last a minimum of 32 training hours, with a minimum of 8 hours devoted to hands-on activities. The department shall promulgate rules to determine the minimum curriculum requirements for the supervisor course.

(d) A project designer course shall last a minimum of 8 training hours. The department shall promulgate rules to determine the minimum curriculum requirements for the project designer course.

(e) An abatement worker course shall last as minimum of 16 training hours, with a minimum of 8 hours devoted to hands-on training activities. The department shall promulgate rules to determine the minimum curriculum requirements for the abatement worker course.

(f) A clearance technician course shall last a minimum of 8 training hours, with a minimum of 2 hours devoted to hands-on training activities. The department shall promulgate rules to determine the minimum curriculum requirements for the clearance technician course. Until rules are promulgated, a clearance technician course shall use the curriculum for the lead sampling technician course approved by the EPA under subpart Q of part 745 of title 40 of the code of federal regulations.

(2) The department may promulgate rules to modify 1 or more of the requirements imposed under subsection (1) if changes are needed to comply with federal mandates or for another reason considered appropriate by the department.

(3) For each course offered, the training program shall conduct a course test at the completion of the course and, if applicable, a hands-on skills assessment. Each individual enrolled in the training program must successfully complete the hands-on skills assessment, if conducted for that course, and receive a passing score on the course test in order to pass a course.

(4) The training manager shall maintain the validity and integrity of a hands-on skills assessment to ensure that it accurately evaluates the trainees' performance of the work practices and procedures associated with the course topics contained in rules promulgated under this section and the course test to ensure that it accurately evaluates the trainees, knowledge and retention of the course topics.

(5) A training program's course test shall be developed in accordance with the test blueprint submitted with the training program accreditation application.

(6) A training program shall issue course completion certificates to each individual who passes the training course. The course completion certificate shall include:

- (a) The name and address of the individual, along with a unique identification number.
- (b) The name of the particular course that the individual passed.
- (c) Dates of course completion and test passage.
- (d) Expiration date of course certificate.
- (e) The name, address, and telephone number of the training program.

(7) The training manager shall develop and implement a quality control plan designed to maintain and improve the quality of the training program. The quality control plan shall contain at least both of the following elements:

**MCL 333.5463 (con't)**

(a) Procedures for periodic revision of training materials and the course test to reflect innovations in the field.

(b) Procedures for the training manager's annual review of each principal instructor's competence.

(8) The training program shall offer courses that teach the work practice standards for conducting lead-based paint activities and other standards developed by the EPA pursuant to title IV of the toxic substances control act and considered appropriate or necessary by the department. The work practice standards shall be taught in the appropriate courses to provide trainees with the knowledge needed to perform the lead-based paint activities.

(9) The training manager shall ensure that the training program complies at all times with all of the requirements of this section and the rules promulgated under this section.

(10) The training manager shall allow the department to audit the training program to verify the contents of the application for accreditation.

*History: Add. 1998, Act 220, Imd. Eff. July 1, 1998; -Am. 2002, Act 644, Imd. Eff. December 23, 2002.*

**MCL 333.5464                      Accreditation of refresher course.**

**Sec. 5464.** (1) A training program may seek accreditation to offer refresher training courses in 1 or more of the disciplines described in section 5462 (1). A training program shall meet those minimum requirements contained in rules promulgated by the department in order to obtain department accreditation.

(2) A training program may apply for accreditation of a refresher course concurrently with its application for accreditation of the corresponding training course pursuant to rules promulgated by the department.

(3) The department shall approve an application for accreditation of a refresher course within 180 days after receiving a complete application. Upon approval, the department shall send a certificate of accreditation to the applicant. Before disapproval, the department may advise the applicant as to specific inadequacies in the application for accreditation or specific instances where the continuing education course does not meet the requirements of this part and the rules promulgated under this part, or both. The department may also request additional information or materials retained by the training program. If the department denies a training program's application for accreditation of a refresher course, the applicant may reapply for accreditation at any time.

*History: Add. 1998, Act 220, Imd. Eff. July 1, 1998.*

**MCL 333.5465                      Reaccreditation of training program.**

**Sec. 5465.** (1) Unless reaccredited, a training program's accreditation under section 5462, including refresher course training accredited under section 5464, expires 1 year after the date of issuance.

(2) A training program seeking reaccreditation shall submit an application to the department no later than 45 days before its accreditation expires.

(3) A training program's application for accreditation shall include any fees and information required pursuant to rules promulgated by the department.

(4) Upon request, a training program shall allow the department to audit the training program to verify the contents of the application for reaccreditation.

*History: Add. 1998, Act 220, Imd. Eff. July 1, 1998.*

**MCL 333.5466****Suspension, revocation, or modification of accreditation.**

**Sec. 5466** (1) The department may, after notice and an opportunity for hearing pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, suspend, revoke, or modify a training program accreditation or a refresher course training program accredited if the department determines that a training program, training manager, or other person with supervisory authority over the training program has done 1 or more of the following:

(a) Misrepresented the contents of a training course to the department or the trainees enrolled in the training program, or both.

(b) Failed to submit required information or notifications in a timely manner.

(c) Failed to maintain required records.

(d) Falsified accreditation records, student certificates, instructor qualifications, or other accreditation-related information or documentation.

(e) Failed to comply with the training standards and requirements of this part and the rules promulgated under this part.

(f) Failed to comply with a federal, state, or local statute, rule, or regulation involving lead-based paint activities.

(g) Made false or misleading statements to the department in its application for accreditation or reaccreditation that the department relied upon in approving the application.

(2) In addition to an administrative or judicial finding of a violation, the execution of a consent agreement in settlement of an enforcement action is considered, for purposes of this section, evidence of a failure to comply with the standards and requirement of this part and the rules promulgated under this part or other relevant statutes or regulations involving lead-based paint activities.

*History: Add. 1998, Act 220, Imd. Eff. July 1, 1998.*

**MCL 333.5467****Accreditation training program; availability and retention of records; notice of change of address.**

**Sec. 5467.** (1) An accredited training program shall maintain, and make available to the department, upon request, all of the following records:

(a) Each document that demonstrates the qualification of a training manager or a principal instructor.

(b) Current curriculum and course materials and documents reflecting changes made to these materials.

(c) The course test blueprint.

(d) Information regarding how the hands-on skills assessment is conducted including, but not limited to, all of the following:

(i) The person conducting the hands-on skills assessment.

(ii) The method of grading the hands-on skills.

(iii) A description of the facilities used.

(iv) The pass/fail rate.

(e) The quality control plan.

(f) The results of the student's hands-on skills assessments and course tests and a record of each student's participation, including name, social security number, and score, within 10 calendar days of the last day of the course taken.

(g) Any other material that was submitted to the department as part of the program's application for accreditation.

(2) A training program shall retain the records described in subsection (1) for at least 3½ years at the address specified on the training program accreditation application.

(3) The training program shall notify the department in writing within 30 days of changing the address specified on its training program accreditation application or transferring the records from that address or transferring records from that address.

*History: Add. 1998, Act 220, Imd. Eff. July 1, 1998; -Am. 2002, Act 644, Imd. Eff. December 23, 2002.*

**Certification to engage in lead-based paint activities; fee; application; requirements for certification in specific discipline.**

**Sec. 5468.** (1) An individual seeking certification by the department to engage in lead-based paint activities shall pay the appropriate fees required under section 5471 and submit an application to the department demonstrating either of the following:

(a) Compliance with the requirements of this part and the rules promulgated under this part for the particular discipline for which certification is sought.

(b) A copy of a valid lead-based paint activities certification or its equivalent, as determined by the department, from a training program that has been authorized by the EPA pursuant to 40 C.F.R. part 745 along with proof of the applicant's third part examination results.

(2) Following the submission of an application demonstrating that the requirements of this part and the rules promulgated under this part have been met, the department shall certify an applicant in 1 or more of the following disciplines:

(a) Inspector.

(b) Risk Assessor.

(c) Supervisor.

(d) Project Designer.

(e) Abatement Worker.

(f) Clearance Technician.

(3) Upon receiving the department certification in 1 or more of the disciplines described in subsection (2), an individual conducting lead-based paint activities shall comply with the work practice standards for performing that discipline as established under this part and the rules promulgated under this part.

(4) An individual shall not conduct a lead-based paint activity unless that individual is certified by the department under this section in the appropriate discipline.

(5) An individual shall do all of the following in order to become certified by the department as an inspector, risk assessor, abatement worker, or supervisor:

(a) Successfully complete a course in the appropriate discipline and receive a course completion certificate from an accredited training program.

(b) Pass the third party exam in the appropriate discipline.

(c) Meet the experience or education requirements, or both, as described in rules promulgated by the department.

(6) After an individual passes the appropriate certification exam and submits an application demonstrating that he or she meets the appropriate training, education, and experience requirements, and passes the appropriate certification exam, the department shall issue a certificate to the individual in the specific discipline for which certification is sought. To maintain certification, an individual must be recertified pursuant to this part.

(7) An individual shall pass the third party exam within 6 months after receiving a course completion certificate in order to be eligible for certification. An individual is not eligible to take the third party exam more than 3 times within the 6 months after receiving a course completion certificate. An individual who does not pass the third party exam after 3 attempts shall repeat the appropriate course from an accredited training program in order to be eligible to retake the exam.

(8) An individual shall do both of the following in order to become certified by the department as a project designer:

(a) Successfully complete a course in the appropriate discipline and receive a course completion certificate from an accredited training program.

(b) Meet the experience or education requirements, or both, as described in rules promulgated by the department.

**MCL 333.5468 (con't)**

(9) After an individual has successfully completed the appropriate training courses, applied to the department, and met the requirements of this part and the rules promulgated under this part, the department shall issue a certificate to the individual in the discipline of project designer. To maintain certification, the individual must be periodically recertified pursuant to this part.

(10) An individual who received training in a lead-based paint activity between October 1, 1990 and March 1, 1999 and an individual who has received lead-based paint activities training at an EPA-authorized accredited training program are eligible for certification by the department under rules promulgated by the department.

(11) In order to maintain certification in a particular discipline, a certified individual shall apply to be recertified in that discipline by the department every 3 years.

(12) An individual shall do both of the following in order to become a certified clearance technician:  
(a) Successfully complete an approved course for the discipline of clearance technician and receive a course completion certificate.  
(b) Pass the third party exam for the discipline of clearance technician.

*History: Add. 1998, Act 219, Imd. Eff. July 1, 1998; -Am. 2002, Act 644, Imd. Eff. December 23, 2002.*

**MCL 333.5469                      Certification to engage in lead-based paint activities; employment of certified employees; requirements.**

**Sec. 5469.** (1) Beginning August 30, 1999, a person shall not perform or offer to perform lead-based paint activities without obtaining certification by the department under this part.

(2) A person seeking certification under subsection (1) shall submit to the department a letter attesting that the person shall only employ appropriately certified employees to conduct lead-based paint activities and that the person and its employees shall follow the work practice standards for conducting lead-based paint activities as established in rules promulgated by the department.

(3) A person seeking certification under subsection (1) shall do all of the following:  
(a) Complete the application and pay the appropriate fee accompanied by a corporate identification number, certificate of sole proprietorship, or other business entity documentation acceptable to the department.  
(b) Indicate whether the applicant has liability insurance.  
(c) Submit proof of Michigan workers' liability insurance.  
(d) Submit proof that each employee or agent involved in lead-based paint activities has received training and certification as required by this part.  
(e) If applicable, submit the name of each principal partner, shareholder, member, or owner.

(4) Not more than 90 days from the date of receipt of the person's completed application, the department shall approve or disapprove the person's request for certification. Within that time period, the department shall respond with either a certificate of approval or a letter describing the reasons for a disapproval.

(5) A person certified by the department under this section shall maintain all records pursuant to the requirements imposed in rules promulgated by the department.

*History: Add. 1998, Act 219, Imd. Eff. July 1, 1998.*

**MCL 333.5470                      Certification in appropriate discipline required.**

**Sec. 5470.** Beginning on March 1, 1999, all lead-based paint activities shall be performed by an individual certified in the appropriate discipline under this part and pursuant to the work practice standards prescribed in rules promulgated by the department.

*History: Add. 1998, Act 219, Imd. Eff. July 1, 1998.*

Training program or refresher courses; fees.

Sec. 5471. (1) Subject to subsection (7), fees for a person accredited or seeking accreditation for a training program offering courses or refresher courses in lead-based paint abatement are as follows:

- (a) Initial application processing fee ..... \$100.00
- (b) Initial accreditation fee ..... \$475.00  
per discipline
- (c) Reaccreditation fee, annual ..... \$265.00  
per discipline

(2) Fees for an individual certified or seeking certification to engage in lead-based paint abatement are as follows:

- (a) Initial application processing fee ..... \$25.00
- (b) Certification fee, per year:
  - (i) Inspector ..... \$150.00
  - (ii) Risk Assessor ..... \$150.00
  - (iii) Supervisor ..... \$50.00
  - (iv) Project Designer..... \$150.00
  - (v) Abatement Worker/Laborer..... \$25.00
  - (vi) Clearance Technician ..... \$50.00

(3) Fees for a person certified or seeking certification to engage in lead-based paint abatement are as follows:

- (a) Initial application processing fee ..... \$100.00
- (b) Certification fee, per year..... \$220.00

(4) If the department increases fees under subsection (5), the increase shall be effective for that fiscal year. The increased fees shall be used by the department as the basis for calculating fee increases in subsequent fiscal years.

(5) By August 1 of each year, the department shall provide to the director of the department of management and budget and to the chairpersons of the appropriations committees of the senate and house of representatives a complete schedule of fees to be collected under this section.

(6) The fees imposed under this part shall not exceed the actual cost of administering this part.

(7) The department may waive the fees for an accredited training program for a person who has demonstrated that no part of its net earnings benefit any private shareholder or individual.

History: Add. 1998, Act 220, Imd. Eff. July 1, 1998; -Am. 2002, Act 644, Imd. Eff. December 23, 2002.

**MCL 333.5472                    Notice of lead-based paint activity.**

**Sec. 5472.** Before beginning a lead-based paint abatement, a person conducting lead-based paint abatement shall notify the department, on forms provided by the department or through electronic means approved by the department, regarding information the department considers necessary in order to conduct an unannounced site inspection. The person shall send notification not less than 3 business days before commencing the lead-based paint abatement.

*History: Add. 1998, Act 219, Imd. Eff. July 1, 1998; -Am. 2002, Act 644, Imd. Eff. December 23, 2002.*

**MCL 333.5473                    Administration and enforcement of part.**

**Sec. 5473.** The legislature shall annually appropriate to the department an amount sufficient to administer and enforce this part. These funds shall be offset by funds received from federal agencies in the form of grants or other funding provisions. All funds generated by this part shall be deposited into the general fund to be used exclusively by the department to carry out the duties and responsibilities of this part. With fees collected pursuant to this part and funds appropriated by the legislature, the department shall conduct compliance activities that assure the quality of training and protection of worker's and public health and safety. Such activities include, but are not limited to, unannounced inspections of lead abatement project sites.

*History: Add. 1998, Act 220, Imd. Eff. July 1, 1998.*

**MCL 333.5473a                Administration and enforcement of part by department; rules; establishment of programs; recommendations; information exempted from disclosure as public record.**

**Sec. 5473a.** (1) The department shall administer this part and promulgate rules as may be necessary for the administration and enforcement of this part pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(2) The department shall authorize, coordinate, and conduct programs to educate persons including, but not limited to, homeowners and remodelers, of lead hazards associated with remodeling target housing and methods of lead-hazard reduction activities.

(3) The department shall establish a program that provides an opportunity for property owners, managers, and maintenance staff to learn about lead-safe practices and the avoidance of creating lead-based paint hazards during minor painting, repair, or renovation.

(4) Not later than January 1, 2000, the department shall recommend appropriate maintenance practices for owners of residential property, day care facilities, and secured lenders that are designed to prevent lead poisoning among children 6 years of age or less and pregnant women. In making its recommendations, the department shall consult with affected stakeholders and shall consider the effects of those maintenance practices on the availability and affordability of housing and credit.

(5) The following information required to be submitted to the department by certified individuals and persons under this part and rules promulgated under this part is exempt from disclosure as a public record under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246:

(a) The name, street address, and telephone number of the owner, agent, or tenant of a residential dwelling where lead-based paint investigations have been conducted.

(b) Information that could be used to identify 1 or more children with elevated blood lead levels that have been reported to the department.

(c) Information contained in an EBL investigation report that could be used to identify 1 or more children with elevated blood lead levels.

*History: Add. 1998, Act 219, Imd. Eff. July, 1998; -Am. 2002, Act 644, Imd. Eff. December 23, 2002.*

**Sec. 5474.** (1) The department shall establish a lead poisoning prevention program that has the following components:

(a) A coordinated and comprehensive plan to prevent childhood lead poisoning and to minimize exposure of the general public to lead-based paint hazards.

(b) A comprehensive educational and community outreach program regarding lead poisoning prevention that shall, at a minimum, include the development of appropriate educational materials targeted to health care providers, child care providers, public schools, owners and tenants of residential dwellings, and parents of young children. These educational materials shall be made available, upon request, to local and state community groups, legal services organizations, and tenants' groups.

(c) A technical assistance system for health care providers to assist those providers in managing cases of childhood lead poisoning. As part of this system, the department shall require that results of all blood lead level tests conducted in Michigan be reported to the department as provided for in rule and that when the department receives notice of blood lead levels above 10 micrograms per deciliter, it shall initiate contact with the local public health department or the physician, or both, of the child whose blood lead level exceeds 10 micrograms per deciliter.

(2) The department shall report to the legislature by January 1, 1999, and annually thereafter, the number of children through age 6 who were screened for lead poisoning during the preceding fiscal year and who were confirmed to have had blood lead levels above 10 micrograms per deciliter. The report shall compare these rates with those of previous fiscal years and the department shall recommend methods for improving compliance with guidelines issued by the federal centers for disease control and prevention, including any necessary legislation or appropriations.

(3) Not more than 1 year after the effective date of this part, and annually thereafter, the department shall prepare a written report regarding the expenditures under the lead poisoning prevention program including the amounts and sources of money from the previous year and a complete accounting of its use. The report shall be given to the appropriate committees of the legislature and be made available to the general public upon request.

*History: Add. 1998, Act 219, Imd. Eff. July 1, 1998.*

**Sec. 5474a.** (1) Within 30 days after the effective date of this section, the governor shall establish a childhood lead poisoning prevention and control commission within the department of community health. The commission shall consist of the following 9 voting members appointed by the governor with the advice and consent of the senate:

(a) One member representing the department of community health. The member appointed under this subdivision shall serve as chairperson.

(b) One member representing the family independence agency.

(c) One member representing the department of environmental quality.

(d) One member representing the Michigan state housing development authority.

(e) One member representing "Get the Lead Out!". The member appointed under this subdivision shall be from a county with a population of more than 500,000 but not more than 700,000.

(f) One member representing a local health department located in a county with a population of more than 170,000 but not more than 200,000.

(g) One member representing certified lead-abatement contractors.

(h) Two members representing the general public. One of the members appointed under this subdivision shall be from a city with a population of 750,000 or more and be a parent of a child who has experienced lead poisoning or a child advocate who has experience with lead poisoning in children. The second member appointed under this subdivision shall represent property owners and developers in this state.

(2) Members of the commission shall serve without compensation but, subject to appropriations, may receive reimbursement for their actual and necessary expenses while attending meetings or performing other authorized official business of the commission. If a vacancy occurs on the commission, that vacancy shall be filled in the same manner as the original appointment.

**MCL 333.5474a (con't)**

(3) The childhood lead poisoning prevention and control commission shall conduct at least 2 public hearings to seek input from the general public and all of the following groups or individuals that have an interest in childhood lead poisoning prevention and control:

- (a) The Michigan association of osteopathic family practitioners or its successor organization.
- (b) The Michigan nurses association or its successor organization.
- (c) The Michigan association of nurse practitioners or its successor organization.
- (d) The Michigan association of health plans or its successor organization.
- (e) The Michigan association of local public health or its successor organization.
- (f) Blue cross blue shield of Michigan or its successor organization.
- (g) The Michigan health and hospital association or its successor organization.
- (h) The Michigan head start association or its successor organization.
- (i) The Michigan council for maternal and child health or its successor organization.
- (j) Michigan's children or its successor organization.
- (k) Michigan league for human services or its successor organization.
- (l) Detroit public schools or its successor organization.
- (m) The rental property owners association or its successor organization.
- (n) The Michigan association of general contractors or its successor organization.
- (o) The Michigan association of realtors or its successor organization.
- (p) The Michigan environmental council or its successor organization.
- (q) The Michigan adult blood lead epidemiology and surveillance program or its successor organization.
- (r) The Michigan state university extension program or its successor organization.
- (s) The Detroit lead partnership or its successor organization.
- (t) The Michigan lead safe partnership or its successor organization.
- (u) The Detroit mayor's lead task force or its successor organization.
- (v) United parents against lead or its successor organization.
- (w) The department of education or its successor organization.
- (x) The Michigan department of community health medical services administration or its successor organization.
- (y) The Michigan occupational safety and health administration or its successor organization.
- (z) The Michigan department of community health bureau of laboratories or its successor organization.
- (aa) An occupational and environmental medicine specialist.
- (bb) Parents or patient advocates of children who have experienced lead poisoning.
- (cc) A local housing authority.
- (dd) A community reinvestment officer.
- (ee) The Michigan state medical society or its successor organization.
- (ff) The Michigan academy of family practice or its successor organization.
- (gg) Saint Mary's field neurosciences institute or its successor organization.
- (hh) The American academy of pediatrics or its successor organization.
- (ii) The arc Michigan organization or its successor organization.
- (jj) Any other interested organization or association concerned with the prevention, treatment, and control of lead poisoning that the department determines necessary.

(4) The first public hearing shall be held within 60 days after the commission has been appointed under subsection (1). The commission may hold additional public hearings as it determines necessary or appropriate to carry out its duties under this part.

(5) The commission shall conduct its business at a public meeting held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. The commission shall give public notice of the time, date, and place of the meeting in the manner required by the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.

(6) The commission shall make available a writing prepared, owned, used, in the possession of, or retained by the childhood lead poisoning prevention and control commission to the public in compliance with the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

**MCL 333.5474a** (con't)

(7) As used in this section, "commission" means the commission created and appointed by the governor under subsection (1).

(8) This section is repealed effective July 1, 2007.

*History: Add. 2004, Act 431, Imd. Eff. Dec. 21, 2004*

**MCL 333.5474b            Lead safe housing registry.**

**Sec. 5474b.** (1) The department in cooperation with the family independence agency and the Michigan state housing development authority shall establish and maintain a registry, to be known as the "lead safe housing registry", to provide the public with a listing of residential and multifamily dwellings and child occupied facilities that have been abated or have had interim controls performed to control lead-based paint hazards as determined through a lead-based paint investigation performed by a certified risk assessor certified under this part.

(2) The owner of target housing that is offered for rent or lease as a residence or the owner of a child occupied facility shall register that property with the department if that property has been abated or has had interim controls performed to control lead-based paint hazards as determined through a lead-based paint investigation performed by a certified risk assessor certified under this part in a form as prescribed by the department free of charge. The form shall include, at a minimum, the following:

- (a) Name of the owner of the building.
- (b) Address of the building.
- (c) Date of construction.
- (d) Date and description of any lead-based paint activity including the name of the certified abatement worker or the certified risk assessor certified under this part who performed the abatement or conducted the inspection, lead-hazard screen, assessment, or clearance testing of the building and the results of the lead-based paint activity.

(3) An owner required to register his or her property under subsection (2) shall provide the department with a copy of each report, document, or other information that is required to be filed with the federal government under federal law and regulations related to lead-based paint.

(4) The owner of any other residential or multifamily dwelling that is offered for rent or lease as a residence or the owner of a child occupied facility may register that property with the department and the department shall include that property on the lead safe housing registry. A person who wishes to register under this subsection shall execute and return the registration form to the department with payment of the registration fee in an amount as prescribed by the department.

(5) The department shall publish the lead safe housing registry on its website and provide a copy of the registry to a person upon request. The department may charge a reasonable, cost-based fee for providing copies of the lead safe housing registry under this subsection.

*History: Add. 2004, Act 432, Imd. Eff. Dec. 21, 2004*

**MCL 333.5474c            Environmental threats of lead poisoning to children; study; report findings; repeal.**

**Sec. 5474c.** (1) The commission shall study the environmental threats of lead poisoning to children's health, review this state's lead poisoning prevention program, evaluate the effectiveness of that program, including, but not limited to, the ability of the program to satisfy federal law requirements that 100% of all young children enrolled in medicaid shall be screened with a blood lead test, and make recommendations for improvements to that program.

(2) The commission shall consider all information received from its public hearings, review information from other sources, and study the experiences of other states. The commission shall develop short- and long-range strategic recommendations for childhood lead poisoning prevention and control in this state. The recommendations shall include, but are not limited to, strategies to:

**MCL 333.5474c** (con't)

- (a) Enhance public and professional awareness of lead poisoning as a child health emergency.
- (b) Significantly increase blood lead testing rates for young children.
- (c) Eliminate or manage the sources of lead poisoning, especially focusing on lead-based paint in aged housing.
- (d) Assure state interagency as well as public and private cooperation and communication regarding resolution of this complex environmental and public health problem.

(3) The childhood lead poisoning prevention and control commission shall submit a written report of its findings, including the recommendations under subsection (2), to the governor and the legislature by March 31, 2005 and annually thereafter by March 31 of each year. A representative of the department of community health shall provide testimony summarizing the findings and recommendations of the commission to the standing committees of the senate and house of representatives with jurisdiction over issues pertaining to public health and children.

(4) As used in this section, "commission" means the commission created and appointed by the governor under section 5474a.

(5) This section is repealed effective July 1, 2007.

*History: Add. 2004, Act 400, Eff. Dec. 21, 2004*

**MCL 333.5474c[1]      Lead Poisoning Prevention Week.**

**Sec. 5474c.** (1) The legislature recognizes the imminent threats posed to children's health and cognitive development from ingestion of lead paint dust in residential neighborhoods, the broad dispersal of lead-laden soils from historical airborne deposition of leaded fuel emissions, and identified specific facilities that present known or potential lead hazards. The legislature further recognizes the need to educate the citizens of this state regarding those threats.

(2) The legislature declares that October 23 through October 29, 2005 shall be known as the "Lead Poisoning Prevention Week" and for each year thereafter the period beginning on the fourth Sunday of October through the following Saturday shall be known as the "Lead Poisoning Prevention Week".

*History: Add. 2004, Act 433, Imd. Eff. Dec. 21, 2004*

*Compiler's Notes: This added section is compiled as § 333.5474c[1] to distinguish it from another Sec. 5474c deriving from Act 400 of 2004.*

**MCL 333.5475      Alleged violations or complaints; actions by department.**

**Sec. 5475.** (1) The department shall receive or initiate complaints of alleged violations of this part or rules promulgated under this part and take action with respect to alleged violations or complaints as prescribed by this part.

(2) The department, in its own discretion, or upon the written complaint of an aggrieved party or of a state agency or political subdivision of this state, may investigate the acts of an accredited training program, an individual or other person certified under this part, or a person allegedly engaged in a lead-based paint activity. The department may deny, suspend, or revoke certification or accreditation issued under this part if a certified person, accredited training program, certified individual, or person allegedly engaged in lead-based paint activity is found to be not in compliance with this part or the rules promulgated under this part. In addition, the department may deny, suspend, or revoke a certification or accreditation issued under this part for 1 or more of the following:

**MCL 333.5475 (con't)**

- (a) Willful or negligent acts that cause a person to be exposed to a lead-containing substance in violation of this part, the rules promulgated under this part, or other state or federal law pertaining to the public health and safety aspects of lead abatement.
- (b) Falsification of records required under this part.
- (c) Continued failure to obtain or renew certification or accreditation under this part.
- (d) Deliberate misrepresentation of facts or information in applying for certification or accreditation under this part.
- (e) Permitting a person who has not received the proper training and certification under this part or other applicable state or federal law to come in contact with lead or be responsible for a lead abatement project.

*History: Add. 1998, Act 219, Imd. Eff. July 1, 1998; -Am. 2002, Act 644, Imd. Eff. December 23, 2002.*

**MCL 333.5475a Rental unit containing lead-based hazard; presumption of actual knowledge; violation; penalties; defense; burden of proof; definitions.**

**Sec. 5475a.** (1) A property manager, housing commission, or owner of a rental unit who rents or continues to rent a residential housing unit to a family with a minor child who is found to have 10 micrograms or more of lead per deciliter of venous blood is subject to the penalties provided under subsection (3) if all of the following apply:

- (a) The property manager, housing commission, or owner of the rental unit has prior actual knowledge that the rental unit contains a lead-based paint hazard.
- (b) At least ninety days have passed since the property manager, housing commission, or owner of the rental unit had actual knowledge of the lead paint hazard.
- (c) The property manager, housing commission, or owner of the rental unit has not acted in good faith to reduce the lead paint hazards through interim controls or abatement or a combination of interim controls and abatement.

(2) A property manager, housing commission, or owner of the rental unit is presumed to have prior actual knowledge that a unit contains a lead-based paint hazard only if 1 of the following applies:

- (a) The property manager, housing commission, or owner of the rental unit signed an acknowledgment of the hazard as a result of a risk assessment under this chapter at the time the risk assessment was made.
- (b) The property manager, housing commission, or owner of the rental unit was served as a result of a risk assessment under this chapter with notice of the hazard by first-class mail and a return receipt of that service was obtained.

(3) A property manager, housing commission, or owner of the rental unit convicted of violating this section is guilty of a crime as follows:

- (a) Except as provided in subdivision (b), the property manager, housing commission, or owner of the rental unit is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$5,000.00, or both.
- (b) If the property manager, housing commission, or owner of the rental unit was previously convicted of violating this section or a local ordinance substantially corresponding to this section, the property manager, housing commission, or owner of the rental unit is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$10,000.00, or both.

(4) The property manager, housing commission, or owner of the rental unit may assert 1 or more of the following as an affirmative defense in a prosecution of violating this section, and has the burden of proof on that defense by a preponderance of the evidence:

- (a) That the property manager, housing commission, or owner of the rental unit requested or contracted with a person having responsibility for maintaining the rental unit to reduce the hazard through interim controls or abatement and reasonably expected that the hazard would be reduced.
- (b) That the tenant would not allow entry into or upon premises where the hazard is located or otherwise interfered with correcting the hazard.

**MCL 333.5475a (con't)**

(5) As used in this section:

(a) "Property manager" means a person who engages in property management as defined in section 2501 of the occupational code, 1980 PA 299, MCL 339.2501.

(b) "Lead-based paint hazard" means that term as defined in section 5458 of the public health code, 1978 PA 368, MCL 333.5458.

*History: Add. 2004, Act 434, Eff. Jan. 2, 2005*

**MCL 333.5476                      Violation of part; fine; citation; administrative hearing.**

**Sec. 5476.** (1) A person who violates this part or a rule promulgated under this part is subject to an administrative fine up to the following amounts for each violation or each day that a violation continues:

- (a) For a first violation..... \$2,000.00
- (b) For a second violation..... \$5,000.00
- (c) For a third or subsequent violation..... \$10,000.00

(2) If the department has reasonable cause to believe that a person has violated this part or a rule promulgated under this part, the department may issue a citation at that time or not later than 180 days after discovery of the alleged violation. The citation shall be written and shall state with particularity the nature of the violation as provided for by the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. An alleged violator may request an administrative hearing pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

*History: Add. 1998, Act 220, Imd. Eff. July 1, 1998; -Am. 2002, Act 644, Imd. Eff. December 23, 2002.*

**MCL 333.5477                      Violation; failure to correct violation after notice as misdemeanor; sanctions, penalties, or other provisions.**

**Sec. 5477.** (1) A person who engages in a lead-based paint activity as provided for by this part and who willfully or repeatedly violates this part or any rules promulgated under this part, or a person who fails to correct the violation after notice from the department under this part is guilty of a misdemeanor, punishable by a fine of not more than \$5,000.00, and upon conviction for a second or subsequent offense, not more than \$10,000.00, or imprisonment for not more than 6 months, or both. A violation of this subsection may be prosecuted by either the attorney general or the prosecuting attorney of the judicial district in which the violation was committed.

(2) The application of sanctions under this part is cumulative and does not preclude the application of other sanctions or penalties contained in provisions of any other federal, state, or political subdivision statute, rule, regulation, or ordinance.

(3) This part does not diminish the responsibilities of an owner or occupant, or the authority of enforcing agents under state, county, city, municipal, or other local building, housing, or health and safety codes.

(4) The requirements of this part are in addition to other pertinent provisions of a code listed in subsection (3).

*History: Add. 1998, act 219, Imd. Eff. July 1, 1998; -Am. 2002, Act 644, Imd. Eff. December 23, 2002.*

**HOUSING LAW OF MICHIGAN (EXCERPT)**  
**Act 167 of 1917**

**125.485 Health order; infected and uninhabitable dwellings to be vacated.**

Sec. 85. Infected and uninhabitable dwellings to be vacated. Whenever it shall be certified by an inspector or officer of the health department that a dwelling is infected with contagious disease or that it is unfit for human habitation, or dangerous to life or health by reason of want of repair, or of defects in the drainage, plumbing, lighting, ventilation, or the construction of the same, or by reason of the existence on the premises of a nuisance likely to cause sickness among the occupants of said dwelling, or for any cause, the health officer or such other appropriate public official as the mayor may designate, may issue an order requiring all persons therein to vacate such house within not less than 24 hours nor more than 10 days for the reasons to be mentioned in said order. In case such order is not complied with within the time specified, the health officer or such other appropriate public official as the mayor may designate may cause said dwelling to be vacated. The health officer or such other appropriate public official as the mayor may designate whenever he is satisfied that the danger from said dwelling has ceased to exist, or that it is fit for human habitation may revoke said order or may extend the time within which to comply with the same.

**History:** 1917, Act 167, Eff. Aug. 10, 1917;—CL 1929, 2573;—CL 1948, 125.485.

Act No. 434  
Public Acts of 2004  
Approved by the Governor  
December 21, 2004  
Filed with the Secretary of State  
December 21, 2004  
EFFECTIVE DATE: January 2, 2005

**STATE OF MICHIGAN  
92ND LEGISLATURE  
REGULAR SESSION OF 2004**

Introduced by Senators Clarke, Cherry, Jacobs, Clark-Coleman and Goschka

# **ENROLLED SENATE BILL No. 757**

AN ACT to amend 1978 PA 368, entitled "An act to protect and promote the public health; to codify, revise, consolidate, classify, and add to the laws relating to public health; to provide for the prevention and control of diseases and disabilities; to provide for the classification, administration, regulation, financing, and maintenance of personal, environmental, and other health services and activities; to create or continue, and prescribe the powers and duties of, departments, boards, commissions, councils, committees, task forces, and other agencies; to prescribe the powers and duties of governmental entities and officials; to regulate occupations, facilities, and agencies affecting the public health; to regulate health maintenance organizations and certain third party administrators and insurers; to provide for the imposition of a regulatory fee; to provide for the levy of taxes against certain health facilities or agencies; to promote the efficient and economical delivery of health care services, to provide for the appropriate utilization of health care facilities and services, and to provide for the closure of hospitals or consolidation of hospitals or services; to provide for the collection and use of data and information; to provide for the transfer of property; to provide certain immunity from liability; to regulate and prohibit the sale and offering for sale of drug paraphernalia under certain circumstances; to provide for the implementation of federal law; to provide for penalties and remedies; to provide for sanctions for violations of this act and local ordinances; to provide for an appropriation and supplements; to repeal certain acts and parts of acts; to repeal certain parts of this act; and to repeal certain parts of this act on specific dates," (MCL 333.1101 to 333.25211) by adding section 5475a.

*The People of the State of Michigan enact:*

Sec. 5475a. (1) A property manager, housing commission, or owner of a rental unit who rents or continues to rent a residential housing unit to a family with a minor child who is found to have 10 micrograms or more of lead per deciliter of venous blood is subject to the penalties provided under subsection (3) if all of the following apply:

(a) The property manager, housing commission, or owner of the rental unit has prior actual knowledge that the rental unit contains a lead-based paint hazard.

(b) At least ninety days have passed since the property manager, housing commission, or owner of the rental unit had actual knowledge of the lead paint hazard.

(c) The property manager, housing commission, or owner of the rental unit has not acted in good faith to reduce the lead paint hazards through interim controls or abatement or a combination of interim controls and abatement.

(2) A property manager, housing commission, or owner of the rental unit is presumed to have prior actual knowledge that a unit contains a lead-based paint hazard only if 1 of the following applies:

(a) The property manager, housing commission, or owner of the rental unit signed an acknowledgment of the hazard as a result of a risk assessment under this chapter at the time the risk assessment was made.

(b) The property manager, housing commission, or owner of the rental unit was served as a result of a risk assessment under this chapter with notice of the hazard by first-class mail and a return receipt of that service was obtained.

(3) A property manager, housing commission, or owner of the rental unit convicted of violating this section is guilty of a crime as follows:

(a) Except as provided in subdivision (b), the property manager, housing commission, or owner of the rental unit is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$5,000.00, or both.

(b) If the property manager, housing commission, or owner of the rental unit was previously convicted of violating this section or a local ordinance substantially corresponding to this section, the property manager, housing commission, or owner of the rental unit is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$10,000.00, or both.

(4) The property manager, housing commission, or owner of the rental unit may assert 1 or more of the following as an affirmative defense in a prosecution of violating this section, and has the burden of proof on that defense by a preponderance of the evidence:

(a) That the property manager, housing commission, or owner of the rental unit requested or contracted with a person having responsibility for maintaining the rental unit to reduce the hazard through interim controls or abatement and reasonably expected that the hazard would be reduced.

(b) That the tenant would not allow entry into or upon premises where the hazard is located or otherwise interfered with correcting the hazard.

(5) As used in this section:

(a) "Property manager" means a person who engages in property management as defined in section 2501 of the occupational code, 1980 PA 299, MCL 339.2501.

(b) "Lead-based paint hazard" means that term as defined in section 5458 of the public health code, 1978 PA 368, MCL 333.5458.

Enacting section 1. This amendatory act takes effect January 2, 2005.

This act is ordered to take immediate effect.

*Carol Morey Viventi*

Secretary of the Senate

*Jay E. Randall*

Clerk of the House of Representatives

Approved .....

.....  
Governor

## **ALLIANCE TO END CHILDHOOD LEAD POISONING**

### **Preventing Childhood Lead Poisoning Through Code Enforcement: Ten Effective Strategies**

#### **Introduction**

Code enforcers can play a critical role in fighting childhood lead poisoning, due to the strong link between poor housing conditions and the increased risk of lead exposure. By including lead among the hazards they address and focusing on effective enforcement of housing code standards in communities at highest risk, code enforcers can significantly increase the identification and control of lead hazards and prevent the needless poisoning of children.

This report briefly reviews the status of childhood lead poisoning and makes the case for incorporating lead safety explicitly into code enforcement. The report then outlines ten strategies for maximizing lead poisoning prevention through code enforcement (listed below), citing programs where work to incorporate these strategies is underway.

#### **Strategies:**

- 1. Require owners to secure a license for rental property.**
- 2. Conduct routine, periodic inspections.**
- 3. Enforce chipping and peeling paint violations.**
- 4. Include lead-based paint and dust hazards as prosecutable offenses in housing codes.**
- 5. Train and require code enforcers to conduct visual inspections for potential lead hazards in all pre-1978 housing and, where appropriate, sample household dust.**
- 6. Ban unsafe work practices, and require property owners to conduct repair work in a lead-safe manner and to undergo post-work clearance testing to ensure the absence of hazards.**
- 7. Develop self-sustaining, effective enforcement programs.**
- 8. Target intensive enforcement efforts to high-risk units and neighborhoods and to recalcitrant landlords.**
- 9. Use lead hazard data gathered by code enforcers to prevent lead poisoning and neighborhood decay.**
- 10. Collaborate with agencies working on environmental health and housing issues.**

## **Current Status of Childhood Lead Poisoning**

Lead poisoning remains the foremost environmental health threat to children in the United States, with deteriorating lead-based paint and lead-contaminated dust in and around housing responsible for most poisonings. Almost one million American children continue to suffer from elevated blood lead levels, resulting in reduced IQ, learning disabilities and behavioral problems.

Although lead poisoning affects children of all races and socioeconomic levels, the disease is concentrated primarily in economically distressed communities, where privately owned, poorly maintained, older housing poses the greatest risk. Low-income children are eight times more likely to be lead-poisoned than children from well-to-do families and African-American children are at five times higher risk than white children.<sup>1</sup> Families who rent are more likely than homeowners to live in a high-risk housing unit.<sup>2</sup>

An estimated twenty-seven percent of housing units in the U.S. have significant lead-based paint hazards.<sup>3</sup> The vast majority of these were constructed before 1978, when the use of lead in residential paints was banned.<sup>4</sup> Lead-contaminated household dust is the most common source of exposure. Lead dust is generated by deteriorating lead-based paint or created by friction or impact of lead-painted surfaces (e.g., doors and windows). Lead dust hazards also may be created during renovations or repairs if workers fail to employ lead-safe work practices. Children ingest lead dust through normal activities such as crawling on the floor and putting hands, toys or other objects in their mouths.

## **Why Incorporate Lead Hazard Control into Code Enforcement?**

Lead poisoning can be prevented entirely by controlling sources of exposure, the most common of which is deteriorating lead-based paint in poorly maintained housing. The link between the level of housing maintenance and the potential for lead exposure puts code enforcers in a unique position to prevent needless poisonings.

Effective enforcement of housing code standards provides a necessary and important foundation for lead hazard reduction. By compelling compliance with a broad array of health and safety standards, code enforcers already reduce the likelihood of lead hazards. For example, addressing moisture problems and water leaks removes an underlying cause of paint deterioration.

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<sup>1</sup> U.S. Centers for Disease Control and Prevention, "Update: Blood Lead Levels – U.S., 1991-1994," 46 *MMWR Morbidity & Mortality Weekly Report* (1997) at 141-146.

<sup>2</sup> U.S. Department of Housing and Urban Development, National Survey of Lead and Allergens in Housing, Final Report, Volume I: Analysis of Lead Hazards, Revision 6.0 (April 18, 2001), [www.hud.gov/lea/HUD\\_NSLAH\\_Vol1.pdf](http://www.hud.gov/lea/HUD_NSLAH_Vol1.pdf) at Table 3.1.

<sup>3</sup> *Id.* at 3-2. These hazards include deteriorated lead-based paint, contaminated household dust and contaminated bare soil. *Id.* at 3-1 – 3-2.

<sup>4</sup> *Id.* at Table 3.1.

However, by failing to focus directly on lead hazards, code enforcers lose numerous *additional* opportunities to prevent children from being poisoned. For example, deteriorating paint is a code violation in most jurisdictions, but may be viewed as an eyesore rather than a potentially serious health hazard and therefore is inconsistently cited as a violation. During the course of routine enforcement in older properties, code officials should focus on deteriorating paint and potential lead dust hazards, as well as the causes that underlie them.

Local housing and building departments often view lead poisoning as a problem to be dealt with by health officials.<sup>5</sup> However, housing departments actually are in a better position than health departments to *prevent* children from becoming poisoned, because their mandate is to ensure that housing conditions do not deteriorate to a point where lead hazards are likely to exist. Housing and building officials also are optimally positioned to ensure that work that disturbs painted surfaces is performed in a lead-safe manner. Health departments, on the other hand, typically become involved in lead-safe housing issues only after a child has been poisoned, when the opportunity for primary prevention is lost.

The benefits of incorporating lead safety into code enforcement are significant. Advancing primary prevention by identifying, controlling and avoiding the creation of hazards is critically important. Incorporating lead safety into code enforcement also can help to pinpoint individual properties containing lead hazards as well as identify lead “hot-spots” and neighborhoods with older housing in danger of decline. Information gathered during the course of code enforcement should be made publicly available to enable code enforcers and community groups to focus their efforts on high-risk areas. This information also can be used to create a registry of lead-safe housing to enable families with young children to steer clear of lead hazards.

In addition to protecting children from lead hazards, code officials will strengthen their enforcement cases and gain greater leverage in compelling compliance. Code officials also can use the presence of lead hazards to aid in prioritizing enforcement efforts, requiring immediate corrective action in situations imminently threatening a child.

Finally, addressing lead hazards makes good economic sense. In addition to the harm suffered by children, lead poisoning imposes significant burdens upon society, including the costs associated with medical screening and treatment, lead hazard identification and control, special education and juvenile delinquency. Many of the lead hazard control measures available to code enforcers are relatively low-cost, particularly when compared to the potential economic and social benefits of preventing the disease. For example, basic training in lead hazard identification is available at low cost, and inspectors can integrate this training easily into routine inspections.

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<sup>5</sup> Western Center on Law and Poverty, “Preventing Childhood Lead Poisoning: Identifying and Eliminating Local Barriers to Primary Prevention Strategies,” (November 2001) at 8-9.

## **Strategies for Maximizing Lead Poisoning Prevention Through Code Enforcement**

Code enforcers can take advantage of a number of strategies to incorporate lead safety into their enforcement programs. Some approaches described below augment the effectiveness of code enforcement generally, thereby reducing lead hazards by improving housing maintenance (e.g., periodic inspection programs). Other approaches deal with lead hazards more directly and comprehensively (e.g., training inspectors to identify lead hazards). Ideally, code enforcement ensures compliance with basic maintenance standards and also explicitly integrates lead hazard control measures. This section describes strategies for minimizing and eliminating lead hazards through code enforcement and offers examples of programs implementing these approaches.

### **1. Require owners to secure a license for rental property.**

Concealed ownership can hamper enforcement by code officials as well as effective action by tenants. Requiring owners to obtain a license by registering their properties can thwart attempts by owners to shield themselves from responsibility for lead or other health and safety hazards. In New Jersey, for example, owners are required to register buildings containing three or more units. In addition, they must designate a local agent for receiving service of process and pay a ten-dollar registration fee. Owners who fail to comply are subject to fines and are precluded from evicting tenants for any reason, including nonpayment of rent.<sup>6</sup>

The state uses the information it gathers through the registration program to enforce its housing and construction codes. The registration program has worked to identify and locate recalcitrant individuals responsible for significantly deteriorated properties (which often contain lead hazards). While many rental registration programs have not proven effective, New Jersey's program illustrates that when coupled with real enforcement power and meaningful penalties, rental licensing can work to hold property owners accountable for lead and other hazards in housing.<sup>7</sup>

### **2. Conduct routine, periodic inspections.**

Code enforcement systems triggered solely by tenant complaints, although widely used throughout the country, are highly ineffective and costly. Often, this approach contributes to the decline of housing conditions since tenants may not complain until physical conditions are fairly severe. Some tenants (such as recent immigrants) are reluctant to report problems no matter how grave, so many substandard units remain outside the sys-

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<sup>6</sup> New Jersey Hotel and Multiple Dwelling Law, N.J.S.A. 55:13A-12; presentation by William Connolly, Director, New Jersey Division of Codes and Standards at Expert Forum, *Maintaining Healthy Homes: Challenges and Strategies for Distressed and Marginal Communities*, Camden, New Jersey, December 7, 2000 ("Connolly, December 7, 2000"). For more information on New Jersey's program, see Alliance To End Childhood Lead Poisoning, "Holding Property Owners Accountable: New Jersey Multiple Dwelling Registration and Inspection Program," [Innovative Strategies for Addressing Lead Hazards in Distressed and Marginal Housing: A Collection of Best Practices](#) "AECLP Best Practices."

<sup>7</sup> *Id.*

tem entirely. Complaint-based programs also fail to encourage broad scale preventive maintenance since they are reactive, not proactive, and ad hoc, not systematic.

In contrast, systematic, periodic inspection programs ensure that the entire universe of substandard units complies with basic health and safety standards. Periodic inspections can prevent lead hazards by promoting routine preventive maintenance. These programs also can foster a more cooperative relationship between property owners and code enforcers than complaint-based systems, which are inherently adversarial. Of course, periodic inspection programs also must accommodate complaint-based inspections.

Proactive programs are rare, but a couple of examples demonstrate their effectiveness. New Jersey's Hotel and Multiple Dwelling Law requires inspections every five years of all residential buildings containing three or more units. The state conducts initial inspections in approximately 200,000 units per year, and reinspects about 110,000 of those.<sup>8</sup> Ninety-seven percent of the 9000 cases that proceed to enforcement annually end in compliance.<sup>9</sup> Los Angeles adopted a program in 1998 to require inspections to be conducted at least once every three years in buildings with two or more units.<sup>10</sup> Although staffing levels, technical problems and re-inspections have inhibited the city's ability to meet this requirement, additional staff has been approved and the pace of new inspections has increased. It is estimated that all of the approximately 800,000 units subject to the program will be inspected by 2004.<sup>11</sup>

### **3. Enforce chipping and peeling paint violations.**

Deteriorating paint (regardless of its lead content) is a code violation in most jurisdictions, but usually is viewed as an eyesore rather than a potentially serious health hazard. Perhaps the single greatest step code enforcers can take to prevent childhood lead poisoning is to consistently cite chipping and peeling paint violations. Deteriorating lead-based paint and associated lead-contaminated dust must be viewed as potentially serious health hazards and dealt with accordingly. Not only must paint deterioration be corrected in a lead-safe manner, its underlying causes (e.g., excessive moisture) must be identified and addressed to prevent the development of future hazards.

### **4. Include lead-based paint and dust hazards as prosecutable offenses in housing codes.**

In order to provide the clearest legal basis for housing code officials to address lead hazards, housing codes should state explicitly that deteriorating lead-based paint, lead-contaminated dust and lead-laden bare soil are prosecutable offenses. Otherwise, enforcement officials seeking to address lead hazards will need to establish that they constitute a nuisance or other catch-all violation contained in the code. Specifically referencing

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<sup>8</sup> Connolly, December 7, 2000.

<sup>9</sup> *Id.*

<sup>10</sup> Los Angeles Housing Code, § 161.351.

<sup>11</sup> Gary Bess Associates, Systematic Code Enforcement Program Evaluation, November 13, 2001 at 5-14; phone conversation with Tai Glenn, Senior Attorney, Housing Improvement Project, Legal Aid Foundation of Los Angeles, March 25, 2002.

lead hazards in the housing code also may increase the attention enforcement officials devote to them and will put property owners on notice that such hazards are illegal.

Ideally, housing codes would incorporate the Environmental Protection Agency (EPA) standards for lead dust on floors and interior window sills, recently set at 40 µg/square foot and 250 µg/square foot, respectively.<sup>12</sup> Incorporating these standards would provide code enforcers with a bright-line test for code compliance based upon dust testing results and would ensure that lead levels in household dust remain within safe limits. Including numerical standards also would draw attention to lead-contaminated dust as the primary pathway of exposure. Lead dust standards would comprise *additional* code requirements; compliance with them should not constitute a defense to other code violations.

Although the EPA standards currently apply only to properties receiving federal assistance, some jurisdictions are revising their codes to explicitly include lead-based paint hazards as code violations. For example, the recently revised Manchester, Connecticut Property Maintenance Code (PMC), modeled on BOCA's 1996 National PMC, requires that lead-based paint be free from peeling, chipping and flaking, or be removed or covered.<sup>13</sup>

Legislation denoting lead hazards as distinct prosecutable offenses should provide that the remedies associated with those hazards are cumulative. For example, a lead hazard may violate basic provisions prohibiting deteriorating paint, in addition to specific provisions banning lead hazards and establishing dust lead standards. To maximize compliance and enforcement, penalties for each violation should be cumulative.

**5. Train and require code enforcers to conduct visual inspections for potential lead hazards in all pre-1978 housing and, where appropriate, sample household dust.**

Code inspectors should routinely inspect for lead safety by performing a visual check for deteriorating paint in pre-1978 housing. In addition, lead dust testing is critical to verify the effectiveness of lead hazard control measures, to confirm that apparently well-maintained premises do not in fact contain lead hazards and to complement visual inspections.

Some jurisdictions are moving to require lead hazard assessment during the course of routine code enforcement. For example, proposed legislation in New Jersey would require multi-family housing to be visually inspected for lead hazards every five years. If the inspector identifies potential hazards, the owner has the option of performing a more thorough investigation to determine whether lead-based paint is actually present or conducting lead hazard control work, which may consist of abatement or interim controls.<sup>14</sup> This forward-thinking legislation holds great promise for visible lead hazards to be routinely identified.

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<sup>12</sup> 40 CFR § 745.65(b).

<sup>13</sup> Manchester, Connecticut Property Maintenance Code, § 7-305.4.

<sup>14</sup> Assembly Substitute for Assembly No. 2399 [2R], sponsored by Assemblymen Collins and Kelly.

While the New Jersey legislation does not require dust testing, other jurisdictions have taken that step. In Manchester, Connecticut, the Property Maintenance Code requires code officials to collect dust wipe samples when inspecting units with deteriorating paint that house a child under age six. The samples are to be sent to the health department, which orders abatement if appropriate.<sup>15</sup> While these measures have the potential to significantly increase the detection and safe repair of lead hazards, adherence to date unfortunately has been somewhat inconsistent.<sup>16</sup>

The Department of Housing and Urban Development (HUD) currently offers a one-hour, on-line lead-based paint visual assessment training course, available at [www.hud.gov/lea/training/visualassessment/h00100.htm](http://www.hud.gov/lea/training/visualassessment/h00100.htm). This course is designed for experienced housing inspectors and provides basic information on lead poisoning and how to identify and safely repair deteriorated paint.

EPA also has developed a one-day “lead sampling technician” training course to teach participants how to collect samples for lead in dust. A list of trained sampling technician training providers who will provide free training (subsidized by HUD) is available at [www.leadshousing.org/html/sampling\\_technician.htm](http://www.leadshousing.org/html/sampling_technician.htm). Housing code inspectors should take advantage of these readily available, free training opportunities to strengthen their knowledge of lead hazards and their ability to detect them.

Some jurisdictions are undertaking to train code officials independent of the HUD-sponsored training. For example, in Manchester, Connecticut, the city’s Lead Abatement Project provides training for code inspectors in lead poisoning prevention. The training includes basic information on the causes and effects of lead poisoning; background on applicable local, state and federal laws; hazard identification; collection of dust wipe samples; and lead-safe work practices.<sup>17</sup> Statewide, Connecticut has subsidized lead inspection training for approximately 400 health and housing code enforcers. The state also has cut costs and reduced administrative hurdles by lifting certification requirements for trained, state employed code enforcers performing inspections in their official capacity.<sup>18</sup>

**6. Ban unsafe work practices, and require property owners to conduct repair work in a lead-safe manner and to undergo post-work clearance testing to ensure the absence of hazards.**

Once code violations are identified, it is critical that repair work be done in a safe manner to avoid creating additional hazards. Unless testing proves that painted surfaces are not lead-based, lead-safe work practices should be required as a matter of course in pre-1978 housing. Property owners should be required to have their units independently tested fol-

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<sup>15</sup> Town of Manchester Property Maintenance Code, § 7-305.4.2.

<sup>16</sup> Heller, August 2, 2001.

<sup>17</sup> Phone conversation with Sue Heller, Manchester Lead Abatement Project Administrator, August 2, 2001; *Basic Lead Hazard Evaluation & Control Training for Code Officials*, manual produced by Safe Homes Inc. for Manchester Lead Abatement Project.

<sup>18</sup> Phone conversation with Al Bizetti, Connecticut Department of Public Health; Conn. Gen. Stat. § 20-479.

lowing repair work ordered by a health or code enforcement agency to ensure that repairs do not leave lead dust hazards behind.<sup>19</sup> These measures become increasingly important as the age of the housing increases, because the paint in older housing is likely to contain higher concentrations of lead and the odds of the unit containing lead-based paint increase with age.<sup>20</sup>

The City of New Orleans' recently enacted Lead Paint Poisoning Prevention and Control Act follows this model. The act bans unsafe paint removal practices during work on the interior or exterior of pre-1978 buildings or on steel structures. Paint on those structures is presumed to contain lead unless tests establish otherwise. The act mandates the use of containment barriers for exterior work and requires property owners or their contractors to notify tenants, neighbors and the city before work begins. The Department of Health is authorized (but not required) to conduct dust sampling, and can issue notices of violation and stop work orders, or in lieu of penalties, can require first-time violators to complete training in lead-safe work practices.<sup>21</sup>

HUD's lead-safe housing regulation also prohibits unsafe methods of paint removal in federally-assisted housing, including dry sanding or scraping, open flame burning, operating a heat gun above 1100 degrees, machine sanding without a HEPA attachment, and stripping in poorly ventilated areas using hazardous volatile strippers.<sup>22</sup> The HUD regulation requires persons undertaking maintenance and lead hazard control measures to follow lead-safe work practices, and mandates clearance testing (visual assessment followed by dust testing) after virtually all work that repairs or disturbs painted surfaces in pre-1978 federally assisted housing.<sup>23</sup>

EPA has been contemplating regulations that would cover renovation and remodeling for many years. To this end, the agency has developed a model training course that focuses on containing, minimizing and cleaning up lead hazards during renovation and remodeling. The training course is available at <http://www.epa.gov/lead/rrmodel.htm>. HUD has adapted EPA's model renovation and remodeling course to facilitate compliance with its lead-safe housing regulation. The student manual for the HUD-adapted course is available at [www.hud.gov/offices/lead](http://www.hud.gov/offices/lead).

New Bern, North Carolina recently enacted an ordinance that imposes permitting requirements to ensure adherence to lead-safe work practices during repairs that will disturb painted surfaces. The city's permitting authority refers applicants to the health department, which oversees the lead safety requirements and recommends to the city

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<sup>19</sup> The federal Occupational Safety and Health Administration (OSHA) and state worker safety agencies administer standards to protect employees from lead exposure. However, local housing and health officials rarely make use of these requirements.

<sup>20</sup> U.S. Department of Housing and Urban Development, National Survey of Lead and Allergens in Housing, Final Report, Volume I: Analysis of Lead Hazards, Revision 6.0 (April 18, 2001), [www.hud.gov/lea/HUD\\_NSLAH\\_Vol1.pdf](http://www.hud.gov/lea/HUD_NSLAH_Vol1.pdf) at Table 4.1, 4.6.

<sup>21</sup> Code of the City of New Orleans, §§ 82-311 *et seq.* San Francisco also requires lead-safe work practices during exterior work on pre-1979 buildings.

<sup>22</sup> 24 CFR § 35.140.

<sup>23</sup> 24 CFR §§ 35.1330, 35.1335, 35.1340.

whether a permit should be granted. Workers must be trained in lead-safe work practices and the unit must pass a clearance test that includes a visual assessment as well as dust sampling. The health department's environmental health section has trained numerous contractors in lead-safe work practices, and provides clearance testing.<sup>24</sup>

In Massachusetts, property owners must hire licensed contractors to perform mandated lead hazard control work, unless they choose to undertake the work themselves. Property owners are authorized to perform low- and moderate-risk lead hazard control activities, which include encapsulation as well as removal and replacement of windows and woodwork, but only after completing a training course in lead-safe work practices and passing an exam.<sup>25</sup> During the first year this option was made available, about 2000 owners completed the training.<sup>26</sup> Work performed by owners must be checked by a licensed inspector to ensure that no hazards have been left behind.<sup>27</sup>

In Battle Creek, Michigan, a proposed code provision requires lead clearance exams after painted surfaces are disturbed during the course of paid renovations in pre-1978 housing.<sup>28</sup>

Manchester, Connecticut's Property Maintenance Code requires inspectors to attach lead hazard warnings to repair orders.<sup>29</sup> This low-cost, easy-to-implement measure has the potential to prevent needless poisonings brought about by unsafe work practices.

Enforcement officials also could provide information to help property owners locate workers trained in lead safety. A HUD-sponsored listing of lead-trained renovators, as well as certified abatement contractors is available at [www.leadlisting.org](http://www.leadlisting.org). In addition, building departments should make lead safety information available to property owners and contractors seeking remodeling permits. In Sacramento County, California, for example, HUD pamphlets are on display in the building permit department alerting remodelers to employ lead-safe work practices.<sup>30</sup>

## **7. Develop self-sustaining, effective enforcement programs.**

Poorly designed enforcement systems can waste agency resources and limit the impact of enforcement initiatives. For example, an audit of New York City's code enforcement system found that inspectors repeatedly documented violations, but failed to improve housing conditions because they lacked adequate means to pressure landlords to undertake repairs.<sup>31</sup>

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<sup>24</sup> Phone conversation with Deborah Yarbrough, Craven County Health Department, August 8, 2001.

<sup>25</sup> Massachusetts Department of Health web page, [www.state.ma.us/dph/clppp](http://www.state.ma.us/dph/clppp).

<sup>26</sup> Phone conversation with Paul Hunter, Director, Massachusetts Childhood Lead Poisoning Prevention Program, July 18, 2001.

<sup>27</sup> Mass. Gen. L. ch. 111, § 197(d).

<sup>28</sup> Battle Creek proposed Building and Housing Code, § 1460.235

<sup>29</sup> Manchester Property Maintenance Code, § 7-305.4.

<sup>30</sup> Phone conversation with Carol Good, Sacramento County Department of Environmental Management, August 22, 2001.

<sup>31</sup> *City Limits*, "Burned Out," December 2000 at 14.

In contrast, in New Jersey, the state succeeds in securing compliance with housing code requirements under its Hotel and Multiple Dwelling Law in 8800 out of 9000 annual enforcement cases.<sup>32</sup> Much of the success in New Jersey is attributable to the law's efficient enforcement provisions under which the state rarely needs to appear in court. Owners who fail to appeal violation notices are presumed by law to be in violation. The state reinspects noncomplying units 60 days after the initial inspection, and again 30 days later if warranted. After the second reinspection, the state can and has imposed penalties up to \$5000 per day. The state can request the Superior Court to enter judgment on outstanding penalties and execute on the judgment, usually by imposing a lien on the rental receipts. If necessary, the state can work to identify assets and pierce the corporate veil, if one exists, using information obtained through the licensing and registration process (see strategy number 1, above) and court-sanctioned discovery.<sup>33</sup> Streamlined enforcement provisions coupled with significant penalties have enabled the state to attain compliance from all but a small fraction of property owners.

In many cases, lack of sufficient funding lies at the heart of ineffective code enforcement programs. Programs that generate revenues sufficient to cover their costs can avoid the vagaries of legislative appropriations and minimize cuts in staff or resources that impede enforcement efforts. New Jersey imposes a thirty-three dollar per unit inspection fee every five years upon owners, and collects \$3 million annually in penalties, enough to sustain its program.<sup>34</sup> In Los Angeles, a recently enacted housing ordinance imposes a \$12 annual fee upon owners of rental properties with two or more units to cover the cost of the city's systematic code inspection program.<sup>35</sup> Low-income tenants strongly supported passage of the ordinance, including the monthly fee, which under the law can be passed on to tenants. The fee is expected to generate \$7-8 million per year.<sup>36</sup>

#### **8. Target intensive enforcement efforts to high-risk units and neighborhoods and to recalcitrant landlords.**

The ubiquitous presence of lead-based paint in the country's housing requires that neighborhoods and properties most likely to poison children receive priority attention. Older, poorly maintained distressed and marginal housing pose the greatest risk for lead hazards. While those units housing a young child present the most immediate threat of lead poisoning, units not currently housing a child cannot be ignored. A property with lead hazards that is not occupied by a family may poison a future occupant's child.

Some jurisdictions have employed targeting to aid in addressing problem housing. In Manchester, Connecticut, code inspectors conduct cyclical inspections in areas of the town determined to be most in need of investment based on factors such as resident income levels, housing condition and housing age. Inspectors initially examine exterior conditions in these target areas and, if problems are detected, they expand their efforts to

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<sup>32</sup> Connolly, December 7, 2000.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* The per-unit inspection fee decreases as the number of units increases.

<sup>35</sup> Los Angeles Housing Code, § 161.352.

<sup>36</sup> Phone conversation with Rod Field, Los Angeles Housing Law Project, December 10, 1998.

building interiors. They also routinely inspect building exteriors in neighborhoods in which they are working in response to a complaint.<sup>37</sup>

Milwaukee, Wisconsin adopted a three-year pilot project that targets 800 units in two economically distressed areas of the City with exceptionally high childhood lead poisoning rates. Three-quarters of the housing units in each area are rental properties (determined to be more susceptible to inadequate maintenance and deteriorating painted surfaces), and more than 99% of the homes were built prior to 1950 and therefore are highly likely to contain lead-based paint.<sup>38</sup> Based on extensive environmental sampling and research, the Milwaukee Health Department conclusively documented lead-based paint on old windows as their most significant hazard.<sup>39</sup>

During the first year of the program, owners of rental properties built before 1950 must obtain a lead-based paint hazard control certificate evidencing their property's compliance with the city's lead-safe housing requirements, which include abatement for lead-painted windows. During the second and third years of the program, owners must employ essential maintenance practices in order to be re-certified as lead-safe. The program makes funding available to owners to help offset the cost of the lead hazard control work.<sup>40</sup>

One very effective targeting strategy is to undertake building-wide code enforcement in multi-family buildings where one unit is found to contain lead hazards or to house a poisoned child. This approach benefits all building occupants as well as visiting children and future occupants of the property.

### **9. Use lead hazard data gathered by code enforcers to prevent lead poisoning and neighborhood decay.**

Information gathered during the course of code enforcement itself can be a valuable tool in improving housing conditions and preventing childhood lead poisoning. For example, multiple code violations may indicate the presence of lead hazards in individual properties, and may point to lead "hot-spots" and neighborhoods in danger of decline if present on a broad scale. Information gathered during code enforcement should be made publicly available to enable code enforcers and community groups to focus their efforts on high-risk areas and to track safe units.

#### *a. Create a registry of lead-safe housing.*

As enforcement officials determine units to be free of lead hazards, the locations of these units should be compiled in a registry of lead-safe housing. A registry can ease the identification of lead-safe housing by the public and gauge progress on the part of govern-

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<sup>37</sup> Heller, August 2, 2001.

<sup>38</sup> The concentrations of lead in paint were highest before 1950, however, lead was not banned from residential paints until 1978.

<sup>39</sup> "Targeting High-Risk Neighborhoods: The Milwaukee, Wisconsin Pilot Project for Lead-Based Paint Hazard Control," AECLP Best Practices.

<sup>40</sup> *Id.*

ments in making housing lead-safe. In creating a lead-safe housing registry, care must be taken to ensure that the information does not become outdated and misleading. If the registry includes units at which interim controls are in place, users should be informed that a visual inspection, dust testing and ongoing maintenance are necessary to ensure those units' continuing safety.

Proposed legislation in New Jersey would require the state's Department of Community Affairs to create a registry of lead-safe housing, which will categorize housing as either lead-free (housing constructed after 1978 or housing containing no lead-based paint); lead-abated; or lead hazard controlled (housing in which preventive maintenance practices and interim controls are in place). If feasible, the information will be made available on the internet.<sup>41</sup>

In Manchester, Connecticut, the Lead Abatement Project (LAP) (housed within the town's Health Department), has created a registry of lead-safe units and their owners. The registry includes LAP-rehabilitated units in which lead hazards have been controlled and conditions brought up to code.<sup>42</sup>

- b. Create constituencies of support for code enforcement programs by making housing information accessible to community groups.*

Community groups working to improve housing conditions can increase their effectiveness significantly if they have ready access to current information on housing characteristics and conditions. In Los Angeles, for example, UCLA's Advanced Policy Institute has created Neighborhood Knowledge Los Angeles, a freely accessible web site dedicated to preventing housing and neighborhood deterioration by tracking multiple data points for properties throughout the city.

The web site compiles a wide breadth of information gathered from a number of city agencies that indicates properties in danger of decline. Code complaints, building permits, contract nuisance abatements (city-sponsored repairs to address public safety hazards), tax delinquencies and utility liens are noted for each property in the database. Housing inspectors in the field enter information into hand-held computers, enabling community groups to track code complaints, inspections and improvements using "real time" information.

The site may be searched by zip code, census tract, council district, address, or by specific criteria (e.g., properties with pending code complaint cases). Any of the site's datasets may be viewed area-wide on easy-to-read maps, allowing users to spot clusters of tax delinquencies, code complaints, or other problems indicating pockets of potential neighborhood decay.

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<sup>41</sup> Assembly Substitute for Assembly No. 2399 [2R], sponsored by Assemblymen Collins and Kelly.

<sup>42</sup> Manchester Connecticut health Department Lead Abatement Project, *Final Report – Round 5, February 1, 1998 – January 31, 2001*, at 24.

A wide range of users find the NKLA web site useful. Community groups use the site to identify property owners in trouble and provide proactive counseling services while their advice still may be effective. Local non-profit developers locate properties headed toward abandonment and acquire them before they deteriorate. Residents can determine whether their landlords are complying with their obligations, and learn about conditions in their neighborhoods. And city employees frequently use the site to easily access data generated by other agencies, which was not previously available to them.<sup>43</sup> Code enforcement personnel could use the information to target problem neighborhoods, problem owners and neighborhoods in decline.

#### **10. Collaborate with agencies working on environmental health and housing issues.**

Environmental, health and housing agencies can significantly advance the fight against childhood lead poisoning by coordinating their efforts with code enforcement programs. In Sacramento, California, the Environmental Management Department (EMD) reached out to building and housing code officials in an effort to encourage them to incorporate lead safety into their programs. EMD conducted workshops for building and housing code officials that provided basic information on childhood lead poisoning and included a brainstorming session to generate ideas for incorporating lead safety into code officials' existing scope of work. As a result of the workshops, field inspectors provide written and verbal information to occupants regarding potential lead hazards, and permitting officials offer information regarding lead-safe renovations. In addition, the Sacramento County Code Enforcement Unit, working with the EMD, has included building and soil-related lead hazards among other violations in recent repair orders issued to owners.<sup>44</sup>

Health and housing agencies also should share information on a continuing, systematic basis. For example, health departments should direct housing code authorities to properties and neighborhoods with high incidences of lead poisoning. Conversely, when housing code inspectors discover potential lead hazards they should notify health authorities to test the blood lead levels of children potentially at risk.

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<sup>43</sup> "Early Warning Systems for Deteriorating Properties: Neighborhood Knowledge Los Angeles," AECLP Best Practices; see also <http://nkla.ucla.edu>.

<sup>44</sup> Good, August 22, 2001 phone conversation and November 26, 2001 email correspondence; Special Lead Project Period 3 Report. Lead hazards are not specifically included as prosecutable offenses in the housing code, so citing lead hazards as nuisance violations represents a significant step forward.

**ALLIANCE FOR HEALTHY HOMES**

*Protecting Children from Lead and Other Environmental Health Hazards*



# Lead-Safe Housing Policy Guidance



## **ACKNOWLEDGEMENTS**

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## INTRODUCTION

As the Federal Strategy for Eliminating Childhood Lead Poisoning emphasizes, ending lead poisoning as a public health problem requires making our housing stock lead-safe. Blood lead screening, case management services for children with elevated blood lead levels (EBLs), and raising public awareness are all important *supporting* strategies, but identifying and treating children after the damage is done is not protective. In the same regard, educating parents is helpful but insufficient as a prevention strategy. Research makes clear that parents lack the power to protect their children if there are serious lead hazards in their home. The only sure way to protect children from lead poisoning is through primary prevention strategies—preventing, identifying, and controlling lead hazards in housing, especially deteriorated lead-based paint and lead dust hazards.

Of the 39 million leaded housing units in the United States, HUD estimates that 25 million pose “significant lead hazards.” Because these units span the full spectrum of risk—from exceedingly low to extremely grave—different measures are needed in different situations to maximize the public health benefits of investments to improve property maintenance and repair. Making our housing stock lead-safe ultimately depends on action by property owners, but government agencies can foster effective action by setting clear standards, offering technical support and assistance, providing subsidies where justified, encouraging improvements in property maintenance and repairs, and enforcing compliance as needed.

The Alliance for Healthy Homes has created this four-part *Lead-Safe Housing Policy Guidance* to assist state and local policy makers and government agency staff in establishing a prevention-based framework to advance lead-safe housing. To develop this resource, the Alliance drew upon enlightened approaches that jurisdictions across the country are already pursuing and finding effective. We hope that this Guidance will be helpful to health and housing practitioners as well as other advocates for children’s health in every city, county, and state—regardless of its current laws or level of political will.

The *Lead-Safe Housing Policy Guidance* consists of four parts:

- I. Basic Lead-Safe Housing Standards:** A three-tiered approach to setting clear, workable, and protective standards that define rental property owners’ duties.
- II. Legal Authorities:** The spectrum of legal authorities and enforcement options needed for state and local agencies to implement and enforce lead-safe housing standards.
- III. Programmatic Opportunities:** Effective strategies for state and local agencies to strengthen code enforcement and build technical capacity to expand the supply of lead-safe housing.
- IV. Reference Materials:** Applicable federal law, regulations, and standards, fundamental tenant safeguards, and a glossary of common terms.



## **PART I**

# **Basic Lead-Safe Housing Standards**



## BASIC LEAD-SAFE HOUSING STANDARDS

No jurisdiction with an older housing stock can effectively protect children from lead poisoning without laws and ordinances that clearly state what rental property owners must do to prevent and control lead-based paint and dust hazards. To be effective, such standards must: 1) clearly define landlords' responsibilities; 2) offer adequate protection for children's health; and 3) be practical, workable, and sensitive to the economic realities of affordable housing.

Many cities and states currently lack such clear, workable, and protective standards for lead-safe housing. Some jurisdictions' laws and regulations establish ambiguous requirements or ignore lead hazards altogether. Other jurisdictions have standards that either are too weak to protect children's health or are impractical for property owners to meet.

Part I of *Lead-Safe Housing Policy Guidance* is intended to assist legislators, state and local health officials, and other advocates for children's health develop laws and ordinances that establish effective and enlightened lead-safe housing standards. Because the extent of risk varies widely from property to property, applying uniform requirements to all pre-1978 housing either imposes unnecessary requirements and costs on lower-risk units or fails to offer sufficient protection to occupants of higher-risk units. To provide maximum public health protection for the resources invested, this framework organizes lead-safe housing standards in three tiers, based on level of lead hazard risk:

- ◆ Tier I includes a set of low-cost, prevention-based standards designed for all properties built before 1978 that contain, or may contain, lead-based paint.
- ◆ Tier II offers alternative approaches, criteria, and action triggers that jurisdictions can use to tailor requirements to ensure lead safety in higher-risk properties.
- ◆ Tier III addresses extremely high risk and dangerous circumstances, such as the identification of a lead-poisoned child or significant non-compliance by landlords.

Enacting specific standards for lead-safe housing benefits private property owners as well as children and communities. Codifying lead safety standards in laws and ordinances reinforces the importance of good property maintenance and clarifies what steps landlords need to take in order to prevent and control hazards. Lead-safe housing laws and ordinances provide objective standards against which landlords can demonstrate compliance. Adherence can qualify owners for property and casualty insurance, reduce legal liability, and maintain property condition and value. Primary prevention of lead poisoning provides community-wide benefits through savings in health care and special education costs, improved school performance, and reductions in anti-social behavior and juvenile delinquency.

A one-page summary of *Basic Lead-Safe Housing Standards* is provided on the next page, followed by detailed descriptions.

## **SUMMARY**

### **TIER I – Baseline Standards for All Pre-1978 Rental Properties**

*This tier consists of low-cost, prevention-based measures that jurisdictions should require of owners of all pre-1978 properties except those found to be lead-free by a lead-based paint inspection.*

- Maintain properties in good physical condition and in compliance with code
- Perform visual inspection for deteriorated paint and water damage upon vacancy and annually thereafter
- Promptly and safely repair deteriorated paint and its causes
- Follow lead-safe work practices (and avoid unsafe work practices) when repairing deteriorated paint or disturbing painted surfaces
- Urge tenants to report peeling paint and clearly explain how to do so

### **TIER II – Safeguards for Owners of High-Risk Rental Properties**

*To supplement the baseline standards for high-risk properties, jurisdictions need to establish criteria for designating properties that are presumptively higher risk, as well as additional safeguards that should be required in some circumstances. Alternatives for consideration are provided below. Multiple criteria and/or hazard control measures can be combined to best meet local needs.*

#### Criteria/circumstances for classifying rental properties as higher risk or requiring additional action:

- A government agency identifies peeling paint or other code violations in the unit
- A government agency identifies lead hazards in any unit in a multi-family property
- The property was built prior to 1940/1950/1960
- The property is located in a high-risk area (as defined by a legislative body or executive agency)
- A family with a child under six resides in the unit
- A triggering event occurs, such as property sale, re-rental, or remodeling

#### Alternatives for additional measures required of owners of higher-risk properties:

- Pass visual inspection and clearance dust tests after any activity that disturbs or repairs more than a *de minimis* area of a painted surface (*more than 2 square feet in any one interior room or space*)
- Pass visual inspection and clearance dust tests at vacancy
- Make all floor surfaces smooth and cleanable
- Ensure that doors and windows do not bind
- Perform lead-safe window treatments, such as vinyl/aluminum cladding of window troughs
- Cover bare soil with mulch, gravel, sod, or dense plantings
- Hire a certified contractor to perform a risk assessment or lead inspection
- Hire a certified abatement contractor to control identified lead hazards
- Develop a lead safety plan for ongoing maintenance
- Notify all residents in a building found to contain lead hazards

### **TIER III – Response to Extreme Situations**

*Jurisdictions should impose special requirements on property owners in situations where housing units pose extremely high risks, such as the identification of an EBL child or the discovery of significant non-compliance with or circumvention of basic lead safety requirements.*

- Respond promptly to all public health agency directives
- Provide public health agency access to other units in a multi-family building for environmental investigation
- Relocate the occupants if identified hazards are not promptly controlled or if a lead hazard control project requires evacuation
- Submit lead hazard control plans to the public health agency for approval
- Safely control identified lead hazards using a qualified contractor and pass visual inspection and clearance

## TIER I

### Baseline Standards for All Pre-1978 Rental Properties

*This tier consists of low-cost, prevention-based measures that jurisdictions should require of owners of all pre-1978 residential rental properties, except those found to be lead-free by a lead-based paint inspection. Many of the elements included in this tier are already incorporated into some jurisdictions' codes.*

- ❑ **Maintain properties in good physical condition and in compliance with code** Well-maintained properties with intact paint rarely poison a child. Water damage from leaks and moisture causes most paint failure. By maintaining property as required by code, such as keeping the roof in good repair and promptly correcting leaks and other moisture problems, property owners can prevent paint deterioration that can create lead hazards.
- ❑ **Perform visual inspection for deteriorated paint and water damage upon vacancy and annually thereafter** Unit turnover presents an excellent opportunity for lead hazards to be assessed and controlled since the safety and convenience of occupants are not of concern in a vacant unit. Property owners should be required to perform a visual inspection for signs of water damage, moisture problems, and deteriorated paint at unit turnover and then annually thereafter. Alternatively, jurisdictions can require owners to have their units inspected by the local housing code enforcement agency prior to renting to new tenants.
- ❑ **Promptly and safely repair deteriorated paint and its causes** Owners should be required to promptly and safely correct the surface problems on painted surfaces and the underlying causes of paint deterioration such as moisture and friction.
- ❑ **Follow lead-safe work practices (and avoid unsafe work practices) when repairing deteriorated paint and disturbing painted surfaces** Research makes clear that traditional paint repair and paint removal work practices can generate significant lead dust hazards. Lead safe work practices (LSWP) include appropriate worksite preparation, occupant protection, safe paint removal methods, and specialized cleaning. Unsafe practices include dry sanding or scraping, open flame burning, operating a heat gun above 1100° F, uncontrolled power washing, and machine sanding without a HEPA filter. To protect occupants and others from exposure to lead hazards, jurisdictions should prohibit the use of unsafe practices for any lead hazard control work, remodeling, renovation, rehabilitation and paint repair. Jurisdictions should require property owners, their employees, and contractors to use LSWP for any work that repairs or disturbs a painted surface.
- ❑ **Urge tenants to report peeling paint and explain how to do so** Property owners cannot address hazards unless they know they exist. Federal law requires property owners to provide tenants with information on lead hazards; jurisdictions should require property owners to also encourage tenants to report deteriorated paint (and other problems), and provide them with information on how to do so. Notices with these instructions can be included in the lease, or delivered, mailed, or posted in the building.

## TIER II

### Additional Safeguards for Owners of Higher-Risk Rental Properties

*To supplement the baseline standards for pre-1978 properties, jurisdictions need to establish criteria for designating properties that are presumptively higher risk, as well as additional safeguards that should be required in some circumstances. Alternatives for consideration are provided below. Multiple criteria and/or hazard control measures can be combined to best meet local needs.*

#### Criteria/circumstances for classifying properties as higher risk or requiring additional action

- A government agency identifies peeling paint or other code violations in the unit**  
Failure to meet basic property maintenance requirements should be seen as a warning that normal upkeep practices are inadequate and more deterioration may be present. By the time an agency documents poor conditions, the problems are likely serious enough to warrant more protective action. A property with even one documented lead hazard is likely to contain others.
- A government agency identifies lead hazards in any unit in a multi-family property**  
There is a significant likelihood that similar hazards are present in other units in the building, due to the common construction, painting, and maintenance history.
- The property was built prior to 1940/1950/1960** Because older properties' painted surfaces typically contain more lead, housing age can be used as a factor for setting priorities.
- The property is located in a high-risk area** Local governments can define a geographical area as high risk based on housing age and condition, household income level, code violations, or elevated blood lead cases.
- A family with a child under six resides in the unit** Children are at higher risk for lead exposure and more vulnerable to its effects. This approach requires vigilance regarding landlord discrimination against families with children.
- A triggering event occurs, such as property sale, re-rental, or remodeling** Jurisdictions can use these housing "events" to trigger a requirement for property owners to perform visual inspections, clearance dust tests, and other safeguards.

#### Alternatives for additional measures required of owners of higher-risk properties

- Pass visual inspection and independent clearance dust tests after any activity that disturbs or repairs more than a *de minimis* area of a painted surface** (*more than 2 square feet in any one interior room or space*) The small specks of lead in household dust are imperceptible to the eye; a clearance lead dust test is the only way to be certain that lead-contaminated dust does not remain behind to poison a child. An independent clearance dust test ensures the veracity of the result.
- Pass visual inspection and independent clearance dust tests at vacancy** Vacancy gives property owners the opportunity to identify any hazards created during the last occupancy and correct them while the unit is unoccupied. To ensure no lead dust hazards remain, property owners can be required to pass independent clearance dust tests at vacancy.

- ❑ **Make all floor surfaces smooth and cleanable** In order to prevent the accumulation of lead dust, property owners can be required to refinish or cover rough, pitted, or porous uncarpeted floors and stairs with smooth products such as vinyl or linoleum.
- ❑ **Ensure that doors and windows do not bind** Property owners can be required to maintain friction and impact surfaces in good operating condition and good repair. Examples of friction surfaces include those parts of a window or door that rub when it is opened and closed. Similarly, property owners should be required to cover impact surfaces with impact-resistant materials or safely replace them. The most common impact surfaces are doors and doorjamb, door trim, doorstops, baseboards, and stair treads, risers, and railings.
- ❑ **Perform lead-safe window treatments** Property owners can be required to repair all deteriorated painted surfaces of windows, including the exterior casing and sills, wells (troughs), sashes, and sash tracks. Common window treatments include covering windowsills and troughs with metal coil stock or vinyl flashing and installing jamb liners. Window replacement offers an alternative to extensive window treatments and also provides potential energy savings.
- ❑ **Cover bare soil with mulch, gravel, sod, or dense plantings** Flaking exterior lead-based paint, previous deposits of leaded gasoline, and exterior paint removal can contaminate soil near the home. Children can be exposed to harmful levels of lead when they get their hands or toys dirty and place them in their mouths during normal play activity. Lead-contaminated soil and dust can also be tracked into homes on shoes or by pets. To protect against this, property owners can be required to cover bare soil with grass, sod, other live ground covers, wood chips, gravel, stones, artificial turf, or similar covering. Property owners can also be required to provide each unit with a doormat to reduce tracking lead-laden soil inside.
- ❑ **Hire a certified contractor to perform a risk assessment or lead inspection and perform hazard control as prescribed by the evaluation report** Owners can be required to hire a certified contractor to ascertain the property's potential lead hazards and control them accordingly.
- ❑ **Hire a certified lead abatement contractor** If lead hazards are extensive, property owners can be required to hire a certified lead abatement contractor to control the hazards.
- ❑ **Develop a lead safety plan for ongoing maintenance** Owners of higher-risk properties can be required to develop a lead safety plan and schedule that documents annual inspections, results, repairs, clearance test results, and notices to tenants.
- ❑ **Notify all residents in a building found to contain lead hazards** The presence of lead hazards in one unit of a multi-family building is a strong indication that its other units also contain hazards. By notifying all tenants when hazards are identified, residents can take steps to protect their children from lead poisoning, and can have their children screened for high lead levels. State and local disclosure laws can require property owners to notify all building residents when lead hazards are identified in any unit, providing an additional safeguard beyond federal law.

## TIER III

### Response to Extreme Situations

*Jurisdictions should impose special requirements on property owners in situations where housing units pose extremely high risks, such as the identification of an EBL child, or the discovery of significant non-compliance with or circumvention of basic lead safety requirements. Such orders must have near-term deadlines for action and close oversight to ensure that hazards are controlled promptly. Jurisdictions should subsequently subject these properties to applicable higher-risk safeguards.*

- ❑ **Respond promptly to all public health agency directives** In order to quickly determine the source of lead poisoning, health investigators must have the full cooperation of the property owner to investigate the places where a poisoned child spends time. Property owners should be required to cooperate fully with the public health agency in planning and achieving corrective action.
- ❑ **Provide public health agency access to other units in a multi-family building for environmental investigation** If lead hazards are identified in one unit in a multi-family building, there is a significant likelihood that similar hazards are present in other units in the building, due to the common painting and maintenance history. Property owners should be required to cooperate with the public health agency in inspecting/evaluating all other units in the building by providing access to the units and effective notification of their occupants.
- ❑ **Relocate the occupants if identified hazards are not promptly controlled or if a lead hazard control project requires evacuation** Where hazards remain, resident children ingest more lead. Lead hazard control work can also put occupants at risk. When the work is extensive, lead-safe work practices may not be enough to keep them safe. In those instances, property owners should be required to relocate the family until the work is completed.
- ❑ **Submit lead hazard control plans to the public health agency for approval** To prevent foreseeable problems and in order to ensure thorough control of all identified and presumed lead hazards, property owners can be required to submit a lead hazard control plan for review and approval by the public health agency. If the work does not achieve the complete removal of lead-based paint, the property owner can be required to submit an ongoing maintenance plan for review and approval by the public health agency.
- ❑ **Safely control identified lead hazards using a qualified contractor and pass visual inspection and independent clearance dust tests** For high-risk situations, especially those involving a child with an elevated blood lead level, it is vital that all identified lead hazards be safely controlled. Following lead-safe work practices is imperative; using a certified abatement contractor offers the greatest assurance. In either case, clearance testing is critical to ensure the effective control of an identified lead hazard.

## **PART II**

# **Legal Authorities**



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## LEGAL AUTHORITIES

Most state and local jurisdictions have legal authority to screen children in order to identify those with elevated blood lead levels (EBLs). Yet many of these same jurisdictions lack the statutory authority to require property owners to prevent and control lead hazards in housing and/or the enforcement powers needed to ensure compliance. Remarkably, at least 15 states that receive CDC lead poisoning prevention grants report that they lack specific power to order property owners to control identified lead hazards, even in the extreme case of an EBL child.

Childhood lead poisoning prevention programs (CLPPPs) cannot effectively protect children if their jurisdiction lacks basic legal authorities and enforcement powers. In some cases, lack of adequate legal authority may be a major limiting factor to continued progress in protecting children from lead hazards in their homes. A critical examination of existing legal authorities and enforcement powers would likely benefit most CLPPPs.

Part II of *Lead-Safe Housing Policy Guidance* provides a checklist of legal authorities related to preventing and controlling lead hazards in housing. In developing this checklist, the Alliance drew upon state laws and regulations, local ordinances, and the International Code Council's Property Maintenance Code. It is important to note that no jurisdiction currently has all these legal authorities and enforcement powers in place. Indeed, many effective CLPPPs operate in jurisdictions that have only a subset of these authorities.

The checklist is divided into five categories:

- ◆ Property Maintenance and Accountability Standards
- ◆ Right of Entry
- ◆ Authority to Compel Compliance with Requirements
- ◆ Work Practice Standards
- ◆ Administrative Mechanisms to Support Enforcement

In order to ensure the authority exists to enforce property owners requirements, there is understandably some overlap with *Basic Lead-Safe Housing Standards*.

Some jurisdictions may find that they have broad legal authorities to protect public health and safety that are currently going unused. In addition to laws specific to lead poisoning, jurisdictions should examine state and local health and housing laws, agency regulations and rules, housing and health codes and ordinances, property maintenance codes, nuisance law, and warranty of habitability law. These existing laws and codes may already grant many of the authorities identified in this checklist. While a jurisdiction may already have broad authority to protect health and safety, it is generally advantageous to specifically enumerate powers related to lead safety.

We hope that CLPPP staff, policy makers, legislators, and public health advocates will use this checklist as a tool to assess existing authorities, identify gaps in existing powers, and then determine which additional legal authorities and enforcement powers would be most helpful to improve program effectiveness and expand the supply of lead-safe housing in their jurisdiction.

A one-page summary of *Legal Authorities* is provided on the next page, followed by detailed descriptions.

## SUMMARY

### Legal Authorities

#### Property Maintenance and Accountability Standards

- Establish baseline property maintenance standards that address lead safety
- Classify deteriorated paint in pre-1960 properties as a serious code violation
- Establish lead dust hazards as a serious code violation
- Require rental property owners to provide documentation of lead-safe status in certain situations

#### Right of Entry

- Conduct an environmental investigation in response to a child with an elevated blood lead level
- Inspect other units in a multi-family building where one unit is occupied by an EBL child
- Inspect units proactively, such as on a routine periodic basis
- Collect environmental samples to determine the presence of lead dust hazards
- Conduct follow-up inspection to ensure lead hazard repair is performed properly

#### Authority to Compel Compliance with Requirements

- Set a specific deadline for completion of repair work
- Establish meaningful and appropriate penalties for unresolved code violations
- Ensure occupant protection, including relocation to lead-safe housing when necessary
- Issue stop-work order to halt unsafe work practices
- Order property owner to hire a certified lead professional (e.g. lead inspector, risk assessor, certified lead abatement contractor) in high-risk situations
- Require cleanup of visible dust and debris and clearance dust testing whenever an agency orders repair in pre-1960 properties
- Authorize agency crews to repair hazards and recover costs by placing a lien on the property
- Declare deteriorated properties unfit for human occupancy or uninhabitable, and order them vacated and sealed until repaired or demolished.
- Place properties with numerous, repeated, or long-standing violations in receivership

#### Work Practice Standards

- Require lead-safe work practices
- Ban unsafe paint removal methods during painting, remodeling, and maintenance activities
- Require property owners, maintenance supervisors, painting/remodeling contractors, and city contractors to complete basic training in LSWP before disturbing or repairing paint in older properties

#### Administrative Mechanisms to Support Enforcement

- Require a renewable rental permit or certificate of occupancy for all rental properties
- Register the identity of the rental property owner and/or agent for delivery of legal notices
- Attach outstanding lead hazard control orders to the property deed
- Publish information on properties with outstanding code violations and recalcitrant owners
- Create a special court to accelerate successful case closure
- Create a special Treasury fund to finance programmatic/enforcement/abatement activities

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## LEGAL AUTHORITIES

*State and local agencies need statutory authority to require rental property owners to provide lead-safe housing as well as practical enforcement powers to ensure compliance. This checklist compiles existing authorities from around the country. It is intended to help jurisdictions identify gaps and set priorities for securing additional legal authority needed to accelerate progress in protecting children from lead poisoning.*

## **PROPERTY MAINTENANCE AND ACCOUNTABILITY STANDARDS**

*The most common source of exposure to lead is deteriorating lead-based paint in poorly maintained housing. The link between the adequacy of housing maintenance and the potential for lead exposure puts code enforcement agencies in a unique position to prevent poisonings.*

- Establish baseline property maintenance standards that address lead safety** Good property maintenance can prevent most conditions that cause paint to deteriorate, such as water and plumbing leaks. At a minimum, jurisdictions should require that interior and exterior painted surfaces be maintained in intact condition; that roofs, gutters, leaders, and downspouts be maintained in working and leak-proof condition; and that plumbing fixtures and all water and waste pipes be properly connected, installed, and maintained in sanitary, working, and leak-proof condition.
- Classify deteriorated paint in pre-1960 properties as a serious code violation** Deteriorated paint (regardless of its lead content) is a code violation in most jurisdictions, but is often viewed as an eyesore rather than a potentially serious health hazard. Pre-1960 properties are likely to contain paint with the highest concentration of lead. State and local governments can create a rebuttable presumption that all paint in pre-1960 housing is lead-based paint.
- Establish lead dust hazards as a serious code violation** Although lead dust is widely regarded as the primary pathway of exposure, most housing codes ignore it altogether. In order to provide the clearest legal basis for controlling lead hazards, housing codes should state explicitly that deteriorated lead-based paint, lead contaminated dust, and lead-laden bare soil are citable offenses. Jurisdictions can incorporate by reference EPA standards (see *Reference Materials*: Appendix B) for dangerous levels of lead in paint, dust, and bare soil to enable automatic updates based on research that prompts changes in federal standards.
- Require rental property owners to provide documentation of lead-safe status in certain situations** Authority to require a rental property owner to present documentation of a property's lead-safe or lead-free condition, conducted by a qualified and independent third party (i.e. a certified risk assessor), appropriately places the responsibility for safe housing on the landlord.

## **RIGHT OF ENTRY**

*Jurisdictions need authority for code inspectors and other agency staff to enter a dwelling with reasonable notice to check for lead hazards. If the property owner refuses entry, the agency should have authority to pursue a warrant.*

- ❑ **Conduct an environmental investigation in response to a child with an elevated blood lead level (EBL)** In a property where an EBL child lives, the source of the exposure must be determined and any identified lead hazards effectively controlled to prevent further exposure. Consistent with CDC guidance, an environmental investigation should include sampling for lead dust as well as a visual check for deteriorated paint.
- ❑ **Inspect other units in a multi-family building where one unit is occupied by an EBL child** If lead hazards are identified in one unit in a multi-family building, it is highly likely that other units in the same building contain hazards. Undertaking hazard assessment throughout such buildings is a useful strategy for targeting high-risk units. In addition, other tenants should be encouraged to have their children screened.
- ❑ **Inspect units proactively, such as on a routine periodic basis** Rather than rely solely on tenant complaints, some jurisdictions inspect all rental properties every three or five years, and/or at tenant turnover. Proactive inspection schedules could focus first on high-risk neighborhoods, high-risk properties, or problem landlords. Systematic, periodic inspection programs can reinforce regular maintenance and ensure that properties meet basic health and safety standards. Tenant turnover also presents an excellent opportunity for lead hazards to be assessed and controlled in a vacant unit where the safety and convenience of occupants is not an issue; property owners could be required to hire a certified person to inspect. By identifying underlying problems early, problems can be addressed before lead hazards develop and poison a child.
- ❑ **Collect environmental samples to determine the presence of lead dust hazards** Code inspectors should be authorized to collect environmental samples for analysis in older units with deteriorated paint, where work has been done that disturbed old paint, and in other high-risk circumstances.
- ❑ **Conduct follow-up inspection to ensure lead hazard repair is performed properly** Health and housing agencies must have the authority to re-inspect units cited for violations and perform clearance testing after repairs have been completed. Alternatively, property owners could be required to obtain clearance by a qualified independent third-party.

## **AUTHORITY TO COMPEL COMPLIANCE WITH REQUIREMENTS**

*Jurisdictions must ensure that property owners promptly and safely correct cited code violations.*

- ❑ **Set specific deadline for completion of repair work** Orders to repair lead hazards and other code violations should include a suitable and specific deadline for compliance. Deadlines should be based on a standardized schedule that can be amended reasonably, such as extending the timeframe for exterior repairs to take weather into account.

- Establish meaningful and appropriate penalties for unresolved code violations**  
Jurisdictions should have authority to assess penalties for code violations, including a range of monetary fines, and for egregious situations, criminal penalties. Furthermore, each day that elapses after a missed deadline should be considered a separate violation, which can increase financial pressure on the owner to take timely corrective action.
- Ensure occupant protection, including relocation to lead-safe housing when necessary**  
Property owners' responsibility for providing safe housing includes the obligation to protect occupants from contamination from lead hazards during activities that disturb paint. When it is unsafe for tenants to occupy the premises, jurisdictions should have the authority to require the landlord to pay appropriate relocation costs.
- Issue stop-work orders to halt unsafe work practices** Agencies need authority to stop owners from generating and dispersing lead hazards through unsafe work practices.
- Order property owner to hire a certified lead professional in high-risk situations** Older properties may require a risk assessment or lead-based paint inspection as well as abatement by a certified abatement contractor if lead hazards are extensive.
- Require cleanup of visible dust and debris and clearance dust testing whenever an agency orders repair in pre-1960 properties** Traditional paint repair practices can leave behind dangerous levels of invisible lead dust. Clearance dust testing conducted by agency staff or a third party is the only way to be sure that lead dust hazards are not left behind after repair, remodeling, and lead hazard control projects.
- Authorize agency crews to repair hazards and recover costs by placing a lien on the property** Codes provide for emergency measure to ensure the immediate repair of imminently dangerous conditions. If property owners fail to address lead hazards, enforcement agencies should be authorized to dispatch trained crews to make repairs and institute action to recover the cost if the property owner refuses to pay.
- Declare deteriorated properties unfit for human occupancy or uninhabitable, and order them vacated and sealed until repaired or demolished** The ability to condemn and vacate housing can be a powerful enforcement tool. It protects occupants from hazards and prevents property owners from collecting rent on substandard properties. Officials must take into account the availability of affordable housing in the jurisdiction in ordering properties vacated.
- Place properties with numerous, repeated, or long-standing violations in receivership** In situations where a rental property has multiple, repeated, or long-standing violations, and the property owner consistently fails to comply with hazard reduction orders, agencies need authority to seek a court-appointed independent receiver for the property. The court can authorize the receiver to obtain needed financing, collect and expend rental income to correct lead hazards, and control the property long enough to assure that remediation is complete. By making it easy to turn at-risk, deteriorating property over to receivers, jurisdictions can accelerate repairs, avoid abandonment, and maintain affordable rental housing.

## **WORK PRACTICE STANDARDS**

*Traditional paint repair practices can create serious lead dust hazards. It is critical that painting, remodeling, repair, and maintenance work be done in a safe manner to avoid creating additional hazards.*

- ❑ **Require lead-safe work practices (LSWP)** Lead-safe work practices (LSWP) are a collection of best practices that minimize the amount of dust and debris created during remodeling, renovation, rehabilitation, or repair of pre-1978 housing. LSWP include appropriate worksite preparation and containment, occupant protection, safe paint removal methods, and specialized cleaning to control, contain, and clean up lead-contaminated dust.
- ❑ **Ban unsafe paint removal methods during painting, remodeling, and maintenance activities** Research makes clear that traditional paint repair and removal practices can generate significant lead dust hazards. Unless testing proves that painted surfaces are lead-free, unsafe work practices should not be used during repainting, renovation, and remodeling work in pre-1978 housing. Unsafe methods of paint removal include open flame burning, machine sanding without a HEPA attachment, operating a heat gun above 1100°F, extensive dry scraping or sanding, and stripping in poorly ventilated areas using volatile substances.
- ❑ **Require property owners, maintenance supervisors, painting/remodeling contractors, and city contractors to complete basic training in lead-safe work practices before disturbing or repairing paint in older properties** One way to help ensure adoption of LSWP is to require contractors to attend a one-day basic training course, such as the HUD/EPA LSWP training. These courses cover the dangers posed by unsafe work practices and reinforce the need to control, contain, and clean up lead dust.

## **ADMINISTRATIVE MECHANISMS TO SUPPORT ENFORCEMENT**

*To increase compliance with the law, state and local jurisdictions can implement various administrative means to support enforcement.*

- ❑ **Require a renewable rental permit or certificate of occupancy for all rental properties** Prohibiting owners from renting dwellings that have been cited for lead hazards provides a strong incentive for owners to take corrective action. To ensure that hazardous units are not rented, rental licenses can be revoked and public notices about property conditions can be posted on cited buildings. Similarly, requiring certificates of occupancy for property owners to enter new lease agreements can prompt inspections of vacant units, motivating owners to keep properties in good condition. Such approaches should be coupled with measures to protect tenants from eviction and preserve affordable housing from gentrification.
- ❑ **Register the identity of the rental property owner and/or agent for delivery of legal notices** Requiring owners to register their properties with a state or local agency will assure that the identity of rental property owners can be determined. As part of the registration/licensing obligation, jurisdictions can require owners to provide contact information for themselves and any agents managing the property, and to designate an agent in the property's locality to receive official

notification from public agencies. To be effective, this strategy must be accompanied by meaningful enforcement and penalties. Property owners who do not comply should be subject to fines and precluded from evicting tenants for any reason, including nonpayment of rent.

- ❑ **Attach outstanding lead hazard control orders to the property deed** To protect unsuspecting buyers, jurisdictions can attach copies of lead hazard violation citations and/or repair orders to the property deed, so that a title search or other public records search will reveal untreated hazards or code violations.
- ❑ **Publish information on properties with outstanding code violations and recalcitrant owners** Drawing attention to repeat violators through newspaper and television coverage may help pressure recalcitrant landlords to take corrective action. Such publicity holds property owners accountable, can help build political will for code enforcement, and may deter similar violations by other owners.
- ❑ **Create a special court to accelerate successful case closure** In some jurisdictions, effective code enforcement is hampered by backlogs in the courts. Establishing a special lead or code enforcement court can reduce or eliminate the backlog, build subject matter expertise among prosecutors and judges, and expedite compliance.
- ❑ **Create a special Treasury fund to finance programmatic/enforcement/abatement activities** A special fund in the Treasury can earmark penalties, fines, rental registration fees, and inspection fees to support the code enforcement program, local lead hazard control programs, and childhood lead poisoning prevention programs. Absent such a dedicated fund, these monies typically revert to the general fund.



## **PART III**

# **Programmatic Opportunities**



## PROGRAMMATIC OPPORTUNITIES

Having clear lead-safety standards for rental properties and legal authority to enforce compliance is necessary but not sufficient to protect children from poisoning. Agencies need to use their legal authorities to actually achieve compliance. This requires effective programs and strategies by health departments, code enforcement, and other agencies, and the political will to enforce codes and provide needed resources.

Part III of *Lead-Safe Housing Guidance* compiles a variety of programmatic and enforcement policies and procedures state and local agencies can institute to strengthen primary prevention activities. It should be noted that no single jurisdiction employs all these approaches. Agencies should consider which of these strategies offer the best opportunities to advance primary prevention and pursue those judged most promising.

Promising strategies fall into two broad categories: strengthening code enforcement and building technical capacity to expand the supply of lead safe housing.

This part's first component, *Fortify Code Enforcement*, contains policies and procedures agencies can use to make code enforcement more effective. There are many opportunities to strengthen code enforcement to ensure compliance with property maintenance requirements. In addition, there are multiple opportunities for code enforcement to contribute much more meaningfully to preventing and controlling lead hazards in housing. In some cases, modest investments of time and resources can pay high dividends for lead-safe housing.

This section's second component, *Build Technical Capacity*, offers ways agencies can incorporate lead safety tools and training into program activities to maximize effectiveness and outreach. Making housing lead-safe depends on expanding the technical capacity of contractors and trades to safely repair deteriorated paint and guard against the creation of lead dust hazards. In addition to certified lead abatement contractors, many other tradespeople need to understand and follow basic safeguards to control, contain, and clean up lead dust, including painters, remodeling contractors, maintenance staff, and do-it-yourselfers.

We hope that health and housing agency staff, as well as policy makers and advocates for children's health, will consider these strategies to help identify the opportunities to advance primary prevention in their jurisdiction.

A one-page summary of *Programmatic Opportunities* is provided on the next page, followed by detailed descriptions of these strategies.

## **SUMMARY**

### **Programmatic Opportunities**

#### **Fortify Code Enforcement**

- Provide a central telephone number to make it easier for tenants to report peeling paint
- Consolidate childhood lead poisoning prevention and code enforcement programs
- Impose fees for code enforcement and dedicate them to support code enforcement and lead hazard control activities
- Develop an early warning system to identify deteriorating properties (e.g., using tax delinquencies and other data as indicators)
- Analyze blood lead and other risk data to identify lead poisoning “hot spots” and proactively screen properties in those areas for lead hazards
- Target enforcement to high-risk properties and/or problem landlords
- Train code inspectors in lead-safe work practices and as lead sampling technicians, risk assessors, and lead inspectors
- Train code inspectors to conduct a visual survey for deteriorated paint and water damage whenever they inspect a pre-1978 property
- Train code inspectors to take dust samples when peeling paint is cited in pre-1960 units
- Refer owners of properties with lead hazards to lead hazard control grant programs
- Report violations of the federal lead hazard disclosure law to HUD and EPA
- Work with HUD and EPA to create effective local CHIP and SEP projects through enforcement of the federal disclosure law
- Send landlords notice of previously identified lead hazards and remind them of their duty to disclose
- Ensure property owners’ full compliance with federal requirements for lead-safety in federally assisted housing
- Educate judges and other court personnel about lead safety
- Influence priorities for CDBG and HOME funds through the Consolidated Plan process

#### **Build Technical Capacity**

- Offer low- or no-cost LSWP training to painters, remodelers, building maintenance staff, rental property owners, do-it-yourselfers, and day laborers
- Market LSWP trainings being offered by others in order to reach priority audiences
- Train staff and volunteers of community-based organizations as Lead Sampling Technicians
- Train other service providers to perform visual surveys and collect dust samples during home visits
- Offer free lead dust sampling kits and home hazard assessments upon request
- Inform property owners and contractors who apply for building permits about lead safety
- Establish a free lending “library” for lead-safety equipment, such as HEPA vacuums

## PROGRAMMATIC OPPORTUNITIES

*State and local agencies can institute a variety of programmatic and enforcement policies and procedures to strengthen primary prevention. The following lists highlight ways that agencies can help prevent and control lead hazards.*

### **FORTIFY CODE ENFORCEMENT**

*In addition to authorizing code inspections and incorporating lead hazards in the code, state and local governments can provide other support to ensure effective code enforcement.*

- ❑ Provide a central telephone number to make it easier for tenants to report peeling paint**  
 Tenants are more likely to report peeling paint problems if there is a simple and convenient way to do so. Local agencies can staff a centralized hotline, such as a “311” number, to accept reports and offer automated menu options for non-business hours that include languages appropriate to the population.
- ❑ Consolidate childhood lead poisoning prevention and code enforcement programs** Co-locating the CLPPP and the agency responsible for housing and code enforcement and cross-checking for EBL and code violation data can facilitate collaboration between the traditionally separate activities.
- ❑ Impose fees for code enforcement and dedicate them to support code enforcement and lead hazard control activities** In many cases, lack of sufficient funding lies at the heart of ineffective code enforcement programs. Typically, fines and penalties that government agencies collect revert to the treasury’s general fund. Code enforcement activities that generate revenues sufficient to cover their costs provide a stable, independent source of funding.
- ❑ Develop an early warning system to identify deteriorating properties** Jurisdictions can organize and disseminate readily available information in order to identify at-risk properties. Existing information available for early warning tracking includes: code complaints, tax delinquencies, utility liens, emergency repairs performed by the jurisdiction to address public safety hazards, and property ownership records. The information can be used to monitor whether property owners are complying with obligations and identify early signs of deterioration. A web-based system allows residents, housing consumers, and community groups to access this information.
- ❑ Analyze blood lead and other risk data to identify lead poisoning “hot spots” and proactively screen properties in those areas for lead hazards** State and local agencies should examine multiple lead risk factors geographically. Geographic Information Systems (GIS) software permits powerful consolidation and analysis of multiple risk factors from various data sources, including U.S. Census data, local tax assessor and other housing data, local data on blood lead elevations, and other relevant local factors. Agencies can use analysis of combined housing and health data to identify high-risk neighborhoods in order to direct prevention resources strategically.

- ❑ **Target enforcement to high-risk properties and/or problem landlords** Jurisdictions that implement proactive inspection and enforcement should give first priority to higher-risk neighborhoods and properties meeting known risk criteria and/or landlords with a history of serious code violations.
- ❑ **Train code inspectors in lead-safe work practices and as lead sampling technicians, risk assessors, and lead inspectors** Housing code enforcement officials are in an ideal position to prevent children from becoming poisoned, because their job is to ensure housing meets minimum standards. Jurisdictions can train code inspectors so they fully appreciate the dangers of peeling paint and lead dust and watch out for these hazards. One-day training courses are available from HUD and EPA in lead-safe work practices and lead dust sampling. Alternatively, code inspectors can be trained and certified as lead inspectors or risk assessors.
- ❑ **Train code inspectors to conduct a visual survey for deteriorated paint and water damage whenever they inspect a pre-1978 property** The strong links between water leaks, paint failure, and risk of lead exposure make a visual inspection for deteriorated paint and water damage a valuable tool.
- ❑ **Train code inspectors to take dust samples when peeling paint is cited in pre-1960 units** Dust sampling is a valuable complement to visual inspections and the only way to confirm that lead dust hazards are not present.
- ❑ **Refer owners of properties with lead hazards to lead hazard control grant programs** Although code enforcement and lead hazard control grant programs usually operate independently, their coordinated use can yield effective and profound results, particularly in working with owners of multiple properties. For example, when code enforcement cites a property for violations and orders lead hazard control, the lead hazard control grantee could offer the owner grant assistance to cover a portion of the cost of hazard control repairs in other units.
- ❑ **Report violations of the federal lead hazard disclosure law to HUD and EPA** Federal law requires owners of most pre-1978 properties to disclose information about lead hazards. This law provides significant penalties for violations and authorizes enforcement by HUD, EPA, and DOJ. Health departments and community-based organizations can facilitate enforcement locally by identifying and reporting to EPA and HUD owners of poorly maintained buildings who fail to comply with disclosure requirements.
- ❑ **Work with HUD and EPA to create effective local CHIP and SEP projects through enforcement of the federal disclosure law** Local agencies can work with the federal agencies to develop Children's Health Improvement Projects (CHIPs) or Supplemental Environmental Projects (SEPs) that maximize the contribution of disclosure enforcement settlements to protect children in high-risk communities.
- ❑ **Send owners notice of previously identified lead hazards and remind them of their duty to disclose** Compliance with disclosure requirements can prompt owners to initiate repairs and cause occupants to complain or move if repairs are not made.

- ❑ **Ensure property owners' full compliance with federal requirements for lead-safety in federally assisted housing** HUD's lead-safe housing rule (24 CFR Part 35) establishes detailed requirements to ensure that all pre-1978 properties receiving federal assistance are lead-safe. These requirements apply independently of state and local laws. State and local agencies should report violations in federally assisted housing, including public housing and Section 8 (both vouchers and project-based units) to HUD for federal enforcement.
  
- ❑ **Educate judges and other court personnel about lead safety** Judges and court personnel who understand the dangers of peeling paint, the nature of lead dust hazards, and the importance of lead-safe work practices will be more vigilant and effective in requiring landlords to promptly and safely correct hazards.
  
- ❑ **Influence priorities for CDBG and HOME funds through the Consolidated Plan process** Jurisdictions that receive a formula allocation of Community Development Block Grant (CDBG) and HOME Investment Partnership funds have broad discretion in using these block grants. The funds can be used for a wide range of purposes, including housing rehab and lead hazard control, according to priorities set through a participatory planning process that is guided by a Consolidated Plan, which is updated every three to five years. State and local health agencies should ensure that available data on lead poisoning is taken into account in the Consolidated Plan and priority setting process.

## **BUILD TECHNICAL CAPACITY**

*Opportunities abound to integrate lead safety tools, safeguards, and principles into other delivery systems and building trades to increase their effectiveness and reach.*

- ❑ **Offer low- or no-cost LSWP trainings to painters, remodelers, building maintenance staff, rental property owners, do-it-yourselfers, and day laborers** Health departments, code enforcement agencies, and building departments that sponsor regularly scheduled, low- or no-cost LSWP trainings can help reduce the inadvertent creation of lead dust hazards in the course of routine repair, repainting, and remodeling projects and help make LSWP the prevailing norm. Those who rehabilitate older housing especially need to know how to safely and effectively repair lead-based paint hazards. Another priority audience is day laborers, who often are hired for a low hourly rate and assigned potentially hazardous tasks, such as demolishing and removing dilapidated building components. LSWP can prevent them from creating lead hazards in houses where they work and from tracking lead dust home at the end of the day.
  
- ❑ **Market LSWP trainings being offered by others in order to reach priority audiences** Pursuant to the agreement with the Attorneys General, the National Paint and Coatings Association is required to deliver 600 free training in lead-safe work practices by 2007, based on the one-day HUD/EPA training course. Local agencies can help organize and promote trainings in their area to ensure that this free resource reaches those who need it most.

## Programmatic Opportunities

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- ❑ **Train staff and volunteers of community-based organizations as Lead Sampling Technicians (LSTs)** Environmental health services can be provided to communities through programs that train and employ low-income community residents, including parents of lead-poisoned children and children at high risk. The six-hour LST course teaches how to collect lead dust samples, which can be used for screening high-risk properties for hazards, as well as clearance testing.
- ❑ **Train other service providers to perform visual surveys and collect dust samples during home visits** Agency staff who perform in-home services, such as visiting nurses, provide a unique opportunity to efficiently reach pregnant women and new mothers in high-risk communities. Traditional home nursing visits can be enhanced to perform a visual survey for paint deterioration hazards, collect dust samples, demonstrate lead dust reduction measures, discuss lead poisoning risks, and provide referrals to available lead hazard control resources.
- ❑ **Offer free lead dust sampling kits and home hazard assessments upon request** These services can increase the number of properties screened for lead hazards as well as alert residents to dangers.
- ❑ **Inform property owners and contractors who apply for building permits about lead safety** To reach people before they disturb paint, agencies that issue building permits can provide information on lead hazards, lead-safe work practices, the availability of training, and disclosure requirements to applicants for remodeling or renovation permits.
- ❑ **Establish free lending “library” for lead-safety equipment** Local health departments can support lead-safe work practices by establishing a program to loan lead-safety equipment to help property owners minimize lead dust generation during remodeling and repair projects. Equipment may include HEPA vacuums and shrouded planers, scrapers, and sanders.

## **PART IV**

# **Reference Materials**



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## APPENDIX A

### Federal Law

*Lead-Safe Housing Policy Guidance* is intended to help jurisdictions build on the foundation of existing federal, state, and local requirements. Federal requirements of particular importance include:

- ❑ **The Fair Housing Act of 1968** (42 U.S.C. § 3601 et. seq.) The Fair Housing Act prohibits discrimination in housing because of (among other things) familial status, which includes families with children under the age of 18, pregnant women, and people securing custody of children under 18. The Act covers most housing. In some circumstances, the Act exempts owner-occupied buildings with no more than four units, single-family housing sold or rented without the use of a broker, and housing operated by organizations and private clubs that limit occupancy to members. Discriminatory actions include taking the following actions based on an individual's familial status: refusing to rent or negotiate for housing; or setting different terms, conditions or privileges for the rental of a dwelling. It is also illegal for anyone to advertise or make any statement that indicates a limitation or preference based on familial status. This prohibition against discriminatory advertising applies to single-family and owner-occupied housing that is otherwise exempt from the Fair Housing Act.
- ❑ **Requirements for Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards in Housing** (24 C.F.R. Part 35, Subpart H and 40 C.F.R. Part 745, Subpart F) These joint HUD and EPA regulations require lessors of virtually all pre-1978 dwellings to disclose known information about lead hazards and provide an approved educational pamphlet to prospective tenants.
- ❑ **Residential Property Renovation** (40 C.F.R. Part 745, Subpart E) These EPA regulations require landlords (who make repairs themselves) and contractors to distribute an educational pamphlet to owners and occupants before beginning renovation work in most pre-1978 housing.
- ❑ **Requirements for Notification, Evaluation, Reduction of Lead-Based Paint Hazards in Federally Owned Residential Property and Housing Receiving Federal Assistance** (24 C.F.R. Part 35) The "Lead Safe Housing Rule" was designed to protect children from lead-based paint hazards in housing that is either receiving assistance from the federal government or is being sold by the government. The regulation establishes procedures for evaluating whether a hazard may be present, controlling or eliminating the hazard, and notifying occupants of what was found and what was done in such housing.
- ❑ **Lead-Based Paint Poisoning Prevention in Certain Residential Structures** (40 C.F.R. Part 745) These EPA regulations identify lead-based paint hazards, standards for lead-based paint hazards in target housing and child-occupied facilities, procedures and requirements for the accreditation of lead-based paint activities training programs, procedures and requirements for the certification of individuals and firms engaged in lead-based paint activities, and work practice standards for performing such activities.

## APPENDIX B

### Federal Standards for Hazardous Lead Dust

EPA's national standards establishing dangerous levels of lead in dust, paint, and soil took effect in March 2001. This EPA rulemaking filled a gaping void by establishing the first national standards for lead in the residential environment, specifically lead hazards in deteriorated paint, settled dust on floors and window sills, and soil. These standards govern all properties receiving federal assistance as well as activities by certified lead services providers. While these EPA standards do not mandate action to either identify or control lead hazards in private housing, they provide a clear yardstick to guide responsible action by state and local health departments, property owners, remodeling and painting contractors, lenders, insurers, and others.

The final national standards reflect the results of research and real-world experience over recent years and promise to prove both workable and protective. Among other things, the standards set the stage for expanded environmental sampling of hazardous properties in distressed communities to target attention and resources to protecting children at highest risk. State and local jurisdictions can incorporate by reference these standards to enable automatic updates based on research that prompts changes in federal standards.

Key elements of these standards are highlighted below:

- ❑ **Dust-lead hazard** – 40 µg/square foot on floors and 250 µg/square foot on window sills. The floor standard applies to carpeted surfaces as well as bare floors. After work has been performed on windows, a window trough clearance standard of 400 µg/square foot applies. While some scientists strongly believe that a lower floor dust standard is needed, the floor dust-lead hazard standard established is substantially more protective than EPA's previous guideline (100 µg/square foot). 40 C.F.R. § 745.65(b).
- ❑ **Soil-lead hazard** – 400 parts per million (ppm) for bare soil in play areas and 1,200 ppm average in the rest of the yard. 40 C.F.R. § 745.65(c).
- ❑ **Paint-lead hazard** – Any of the following conditions constitutes a paint lead hazard: 1) lead-based paint on friction surfaces that are subject to abrasion where dust lead hazards are present; 2) lead-based paint on impact surfaces that are damaged or deteriorated; 3) any chewable lead-based painted surface on which there is evidence of teeth marks; and 4) any other deteriorated lead-based paint. Work practice standards do not apply when treating lead paint hazards that are less than two square feet per room, 20 square feet on the exterior building, and 10 percent of a component's total surface area. 40 C.F.R. § 745.65(a).
- ❑ **Work practice standards** – This EPA rulemaking also made a number of conforming changes in work practice standards for conducting lead-based paint activities in target housing. 40 C.F.R. § 745.227.

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## APPENDIX C

### Fundamental Tenant Safeguards

Tenants who have limited housing choices may be reluctant to report poor property conditions for fear of eviction or other landlord retaliation. State and local governments can help lessen these fears by enacting appropriate legislation, offering temporary housing, and providing additional resources for tenants.

- ❑ **Prohibit landlords from retaliating against tenants who report code violations** State and local governments should specifically prohibit property retaliation against tenants who report code violations. Alternately, enacting a “just cause” eviction law can accomplish this same goal.
- ❑ **Allow tenants to escrow rent when their landlord has outstanding code violations** Property owners should not be allowed to generate income from substandard properties. To establish a strong incentive for property owners to correct code violations, state and local governments can allow tenants to escrow rent payments until the property is in compliance. Courts can determine how much of the escrowed payments is due to the landlord when the repairs are completed.
- ❑ **Enact a state or local lead hazard disclosure law to bolster federal requirements and local enforcement authority** Although the federal lead hazard disclosure law requires disclosure of known lead hazards prior to the sale or lease of pre-1978 properties, state and local governments have no enforcement authority. Jurisdictions can adopt state or local disclosure laws to complement federal law, and provide supplemental funding for state and local programs through penalties. State or local disclosure laws also can expand the protection afforded by the federal law.
- ❑ **Enable tenants to bring enforcement actions for retaliation and provide for recovery of damages and attorney fees** In many cases, local agencies lack adequate resources for enforcement of code violations. To ensure that egregious violators are held accountable, jurisdictions can give tenants or non-profit advocacy groups the power to pursue enforcement in court themselves.
- ❑ **Maintain and publicize registry of properties with lead hazards (or lead-free/lead-safe units)** Housing registries can contain information on properties with outstanding code violations, including lead hazards. Others can list properties deemed “lead-safe” based upon existing standards, including those that comply with federal and state lead laws and regulations.

## **APPENDIX D**

### **Acronym Index**

**CBO**—Community-based organization

**CDBG**—Community Development Block Grant program

**CDC**—U.S. Centers for Disease Control and Prevention

**CEHRC**—Community Environmental Health Resource Center

**CLPPP**—Childhood Lead Poisoning Prevention Program

**EBL**—Elevated blood lead level

**EPA**—U.S. Environmental Protection Agency

**GIS**—Geographic Information Systems

**HIPAA**—Health Insurance Portability and Accountability Act of 1996

**HOME**—Home Investment Partnership Grant program

**HUD**—U.S. Department of Housing and Urban Development

**LST**—Lead sampling technician

**LSWP**—Lead-safe work practices

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## APPENDIX E

### Glossary Of Terms

**Abatement**—Any set of measures designed to permanently eliminate lead-based paint or lead-based paint hazards. Abatement includes: (1) The removal of lead-based paint and dust-lead hazards, the permanent enclosure or encapsulation of lead-based paint, the replacement of components or fixtures painted with lead-based paint, and the removal or permanent covering of soil-lead hazards; and (2) All preparation, cleanup, disposal, and post-abatement clearance testing activities associated with such measures.

**Clearance examination**—An activity conducted following lead-based paint hazard reduction activities to determine that the hazard reduction activities are complete and that no soil-lead hazards or settled dust-lead hazards exist in the dwelling unit or worksite. The clearance process includes a visual assessment and collection and analysis of environmental samples.

**Containment**—The physical measures taken to ensure that dust and debris created or released during lead-based paint hazard reduction are not spread, blown, or tracked from inside to outside of the worksite.

**Deteriorated paint**—Any interior or exterior paint or other coating that is peeling, chipping, chalking or cracking, or any paint or coating located on an interior or exterior surface or fixture that is otherwise damaged or separated from the surface to which it was applied.

**Dry sanding**—Sanding without moisture; includes both hand and machine sanding.

**Elevated blood lead level**—The level at which the CDC considers a child to be lead poisoned. Currently, this threshold is set at 10 micrograms/deciliter.

**Encapsulation**—The application of a covering or coating that acts as a barrier between lead-based paint and the environment and that relies for its durability on adhesion between the encapsulant and the painted surface, and on the integrity of the existing bonds between paint layers and between the paint and the surface to which it was applied.

**Federal Lead Hazard Disclosure law**—A federal statute, administered by HUD and EPA, that requires owners of pre-1978 housing to disclose lead hazards to prospective tenants or buyers.

**Friction surface**—An interior or exterior surface that is subject to abrasion or friction, including, but not limited to, certain window, floor, and stair surfaces.

**Hazard reduction**—Measures designed to reduce or eliminate human exposure to lead-based paint hazards through methods including interim controls, abatement, or a combination of the two.

**HEPA vacuum**—A vacuum cleaner with an included high efficiency particulate air (HEPA) filter through which contaminated air flows. A HEPA filter is one that captures at least 99.97 percent of airborne particles of at least 0.3 micrometers in diameter.

**Impact surface**—An interior or exterior surface that is subject to damage by repeated sudden force, such as certain parts of doorframes.

## Reference Materials

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**Interim controls**—A set of measures designed to temporarily reduce human exposure or likely exposure to lead-based paint hazards. Interim controls include, but are not limited to, repairs, painting, temporary containment, specialized cleaning, clearance, ongoing lead-based paint maintenance activities, and the establishment and operation of management and resident education programs.

**Lead-based paint**—Paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter or 0.5 percent by weight.

**Lead-based paint hazard**—Any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, or lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects as established by the CDC or another appropriate federal agency.

**Lead-based paint inspection**—A surface-by-surface investigation to determine the presence of lead-based paint and the provision of a report explaining the results of the investigation.

**Lead-free housing**—Target housing that has been found to be free of paint or other surface coatings that contain lead-based paint.

**Lead-safe work practices (LSWP)**—Lead safe work practices (LSWP) are a collection of “best practices” techniques, methods, and processes that minimize the amount of dust and debris created during remodeling, renovation, rehabilitations, or repair of pre-1978 housing. LSWP include appropriate worksite preparation and containment, occupant protection, safe paint removal methods, and specialized cleaning. Worksite preparation and containment means setting up the area where work that could disturb lead-based paint is to be performed, so that all debris from the work is contained within the worksite. Occupant protection means taking appropriate precautions to protect occupants and their belongings during ongoing work that may disturb lead-based paint. Specialized cleaning means cleaning the worksite carefully, using techniques that are effective in removing lead-contaminated dust. Cleanup activities should be ongoing during the workday, in addition to a final cleanup at the end of the job.

**Lead Hazard Control Grant program**—A HUD-administered program that awards grants to cities and states to facilitate the control of lead hazards, mainly in targeted low-income housing.

**Lead hazard evaluation**—A risk assessment, a lead hazard screen, a lead-based paint inspection, paint testing, or a combination of these to determine the presence of lead-based paint hazards or lead-based paint in a residential building.

**Lead inspector**—An individual trained under a state- or EPA-approved course to conduct official lead inspections. A lead inspector can also conduct clearance tests after abatement and non-abatement work as well as other lead sampling, but a lead inspector *cannot* perform a risk assessment. A lead inspector must attend three days of training to be certified.

**Lead sampling technician**—An individual trained under an EPA-approved course to conduct clearance testing after non-abatement work and to conduct other dust wipe sampling. A lead sampling technician *cannot* conduct a lead inspection or a risk assessment. A lead sampling technician must attend five hours of training to be certified.

**Paint removal**—A method of abatement that permanently eliminates lead-based paint from surfaces.

**Paint stabilization**—Repairing any physical defect in the substrate of a painted surface that is causing paint deterioration, removing loose paint and other material from the surface to be treated, and applying a new protective coating or paint.

**Paint testing**—The process of determining, by a certified lead inspector or risk assessor, the presence or the absence of lead-based paint on deteriorated paint surfaces or painted surfaces to be disturbed or replaced.

**Painted surface to be disturbed**—A paint surface that is to be scraped, sanded, cut, penetrated, or otherwise affected by rehabilitation work in a manner that could potentially create a lead-based paint hazard by generating dust, fumes, or paint chips.

**Public health department**—A state, tribal, county or municipal public health department, or the Indian Health Service.

**Rehabilitation**—The improvement of an existing structure through alterations, incidental additions, or enhancements. Rehabilitation includes repairs necessary to correct the results of deferred maintenance, the replacement of principal fixtures and components, improvements to increase the efficient use of energy, and installation of security devices.

**Risk assessment**—An on-site investigation to determine and report the existence, nature, severity, and location of lead-based paint hazards in residential dwellings, including: (1) information-gathering regarding the age and history of the housing and occupancy by children under age 6; (2) visual inspection; (3) dust wipe sampling or other environmental sampling techniques; (4) other activity as may be appropriate; and (5) provision of a report explaining the results of the investigation.

**Risk assessor**—An individual trained under a state- or EPA-approved course to conduct risk assessments. A risk assessor may also conduct paint inspections, clearance testing after abatement and non-abatement work, and other lead sampling. A risk assessor must attend five days of training to be certified.

**Section 8**—A HUD-administered assistance program that helps low-income families secure housing they may otherwise be unable to afford.

**Target housing**—Any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing), or any 0-bedroom dwelling.

## Reference Materials

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**Visual assessment**—Looking for, as applicable: (1) deteriorated paint; (2) visible surface dust, debris, and residue as part of a risk assessment or clearance examination; or (3) the completion or failure of a hazard reduction measure.

**Wet sanding or wet scraping**—A process of removing loose paint in which the painted surface to be sanded or scraped is kept wet to minimize the dispersal of paint chips and airborne dust.



**ALLIANCE FOR HEALTHY HOMES**  
*Protecting Children from Lead and Other Environmental Health Hazards*

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**HOUSING REGULATIONS  
FOR  
KENT COUNTY, MICHIGAN**



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**HOUSING REGULATIONS  
FOR  
KENT COUNTY, MICHIGAN**

**ARTICLE I – TITLE, PURPOSE & SCOPE**

101. **Title**. These regulations shall be known as “The Housing Regulations of Kent County.
102. **Purpose**. These regulations are adopted to protect the health and safety of the occupants of dwellings and dwelling units, and of the general public; to provide minimum standards for the condition and maintenance of dwellings and dwelling units; to establish minimum requirements for the provision of utilities, facilities and conditions essential to make dwellings safe, sanitary and fit for human habitation; to fix the responsibilities of owners and occupants; to authorize the inspection of dwellings; to require the correction of violations; to prevent the occupancy of dwellings unfit for human habitation; to fix penalties for violations; and to provide for administration of the regulations.
103. **Scope**. These regulations shall apply to any person, firm, partnership, association or corporation owning, having control or management of, or occupying any dwelling or dwelling unit. Except as otherwise expressly provided, all dwellings and dwelling units, and all owners or occupants of dwellings or dwelling units, shall comply with the standards and requirements provided by these regulations.
104. **Exclusions**. These regulations shall not apply to hotels, motels and similar transient living establishments not designed and offered for use as seasonal or permanent domiciles; provided however, that if hotels, motels, or similar transient living establishments are, in fact, being occupied and utilized as seasonal or permanent domiciles, they shall be subject to the provisions of these regulations. In addition, dwellings or dwelling units providing temporary housing for farm workers, which are subject to minimum standards for occupation under state or federal laws, are hereby exempted from provisions of these regulations, provided that no nuisance or health hazard is allowed to exist.

**ARTICLE II – DEFINITIONS**

201. For purposes of these regulations, the definitions provided by this Article shall apply.
202. “Approved” means acceptable for an intended use as determined by the Health Officer under applicable public health laws, rules and regulations.
203. “Board of Health” means the Kent County Board of Health, as designated by the Board of Commissioners of Kent County, Michigan.
204. “Dwelling” means any house, building, structure, tent, shelter, trailer, vehicle, residence, or living or sleeping place of one or more human beings, either permanently or transiently.

205. “Dwelling” Unit” means a room or group of adjoining rooms occupied or intended for occupancy as living quarters by one family, physically separated from other rooms or dwelling units which may be in the same structure, and provided with independent living, sleeping and sanitary facilities.
206. “Emergency” means a condition or situation which could reasonably be expected to cause death, disease, or serious physical harm immediately or before the imminence of the danger can be eliminated through enforcement procedures provided by these regulations.
207. “Family” means a person, living alone in a single dwelling unit, or two or more persons whose domestic relationship is of a continuing, non-transient character and who reside together as a single housekeeping unit in a single dwelling unit.
208. “Habitable” means potentially or actually utilized for purposes normally associated with a domicile, including cooking, eating, sleeping, bathing, entertaining, relaxing, and other typical living activities.
209. “Health Officer” means the legally designated Health Officer of Kent County, or that official’s authorized representative.
210. “Lead Poisoning hazard” means lead present in any form within, upon, or about a dwelling which, because of its location, condition, or concentration, may be injurious to the health and safety of occupants of the dwelling.
211. “Nuisance” means and includes, without limitation, a public nuisance as known at common law or in equity jurisprudence; whatever conditions are dangerous or detrimental to human life or health; a dwelling or dwelling unit which is overcrowded with occupants, which is not provided with adequate ingress and egress, or which is not sufficiently supported, ventilated, sewerred, drained, cleaned or lighted, with regard to its actual or intended use; or whatever conditions render the air or human food or drink unwholesome.
212. “Person” means any individual, firm, corporation, association or partnership.

**ARTICLE III – MINIMUM STANDARDS FOR BASIC EQUIPMENT AND FACILITIES FOR DWELLINGS AND DWELLING UNITS**

301. Each dwelling unit shall contain a kitchen sink in good working condition with hot and cold water. The sink shall be properly connected to a water supply and sewer system approved by the Health Officer, and shall comply with all applicable local or state plumbing codes.
302. Each dwelling or dwelling unit shall contain a flush water closet in good working condition, located in an enclosed room which affords privacy. The water closet shall be

properly connected to a water supply and sewer system, approved by the Health Officer, and shall comply with all applicable local or state plumbing codes.

303. Each dwelling or dwelling unit shall contain a lavatory basin and bathing facility (which affords privacy) in good working condition. The lavatory basin and bathing facility shall be properly connected with hot and cold water to a water and sewer system approved by the Health Officer and shall comply with all applicable local or state plumbing codes.
304. Each habitable room to which electric service is available shall contain at least two separate wall-type electric outlets, or one wall-type electric outlet and one ceiling-type electric light fixture. The outlets and fixtures, as applicable, shall be properly installed and maintained in a safe and good working condition.
305. Each dwelling or dwelling unit occupied between November 1 and the following April 1 shall have heating facilities which are properly installed and maintained in a safe and good working condition and capable of heating all habitable rooms within the dwelling under ordinary winter conditions to at least 70° Fahrenheit.
306. Each habitable room of a dwelling or dwelling unit shall have one or more windows with a minimum transparent or translucent area equal to at least 10% of the floor area of the room, with 45% of that minimum transparent or translucent area capable of being opened. The windows shall face directly to the outdoors.
307. Each dwelling or dwelling unit shall have two safe, unobstructed means of egress leading to a safe and open space at ground level.

**ARTICLE IV – MINIMUM STANDARDS OF MAINTENANCE;  
OCCUPIED DWELLINGS OR DWELLING UNITS**

401. All foundations, floors, walls, windows, ceilings, and roofs shall be reasonably watertight, weather tight, and vermin proof; shall be capable of affording privacy; and shall be kept in good and safe repair. Screens shall be provided and kept in good repair from April 1 to the following November 1 on all openable doors and windows.
402. All water supply utilities, wastewater disposal utilities, fuel supply utilities, and electric power utilities, and all fixtures and equipment connected to such utilities, shall be located, connected, installed and maintained in a safe and properly functioning condition.
403. No person shall occupy, or offer for occupancy to any other person, any dwelling or dwelling unit which is unsanitary or vermin infested, or which presents unreasonable hazards to the health or safety of its inhabitants.

**ARTICLE V – MINIMUM STANDARDS REGARDING DIMENSIONS, USE, AND  
LOCATION OF DWELLINGS AND DWELLING UNITS**

501. No dwelling or dwelling unit shall be used or permitted to be used for residential purposes unless the dwelling or dwelling unit contains 100 square feet of habitable floor area for each occupant.
502. At least one-half of every habitable room shall have a ceiling height of at least seven feet. Floor space in a habitable room that does not have at least five feet of clear floor-to-ceiling height shall not be considered in determining compliance with the minimum habitable floor area requirements of these regulations.
503. No cellar or basement space located partially or wholly underground and having half or more than half of its clear floor-to-ceiling height below the average grade of adjoining ground shall be used as a dwelling or dwelling unit unless:
  - A. The floors and walls located partially or wholly underground are impervious to leakage of underground and surface runoff water and are insulated against dampness.
  - B. The total window area in each partially or wholly underground room is equal to 10% of the habitable floor area of the room, with 45% of that minimum glass area capable of being opened. The total window area required by this section shall be located entirely above the grade of the adjoining ground outside the room.

#### **ARTICLE VI – RESPONSIBILITIES OF OWNERS AND OCCUPANTS**

601. If dwelling or dwelling unit becomes infested with rodents or insects due to the failure of the owner to maintain the dwelling or dwelling unit in a reasonably rodent-proof or insect-proof condition, extermination shall be the responsibility of the owner. In all other cases, extermination shall be the responsibility of the occupant of the dwelling or dwelling unit.
602. The occupants of a dwelling or dwelling unit shall keep the areas they occupy and control in a clean condition and shall cause no condition of filth, infestation by vermin, or condition hazardous to life or health. The owner of a dwelling or dwelling unit shall be responsible for maintenance and cleanliness of portions of the dwelling or dwelling unit not subject to the use and control of an occupant.
603. The occupants of a dwelling or dwelling unit shall keep all plumbing fixtures therein in a clean and sanitary condition and shall be responsible for the exercise of reasonable care in the proper use and operations of the plumbing fixtures. The owner shall be responsible for major repair of the plumbing and sewage facilities when the malfunction is not due to the neglect of the occupant.
604. The occupants of a dwelling or dwelling unit shall be responsible for providing adequate and safe means of storage and disposal of garbage and solid wastes in a manner that will not create a nuisance.

- 605. Major structural or equipment repairs necessary to maintain or restore any dwelling or dwelling unit in compliance with these regulations shall be the responsibility of the property owner.
- 606. It shall be the responsibility of the owner of any dwelling or dwelling unit to correct or eliminate existing or potential lead poisoning hazards as directed by the Health Officer.

**ARTICLE VII – INSPECTION AND INVESTIGATIONS**

- 701. The Health Officer is authorized to make any investigations and inspections as needed to determine the condition of dwellings, dwelling units, and premises covered by these regulations, or as otherwise required to protect the health, safety, and welfare of the occupants of the dwellings or and the general public, and to assure compliance with these regulations.

**ARTICLE VIII – DESIGNATION OF DWELLING OR DWELLING UNITS UNFIT FOR HUMAN HABITATION**

- 801. The Health Officer may condemn and declare unfit for human habitation any dwelling or dwelling unit which exhibits any of the following defects, conditions, or characteristics as determined by the Health Officer.
  - A. Dwellings or dwelling units which have been damaged by fire, wind, water, or other causes, or which are otherwise dilapidated, deteriorated, decayed, structurally unsound, likely to collapse, or have their interiors exposed to the elements, so as to be dangerous or detrimental to the life, safety or general health and welfare of the occupants or the general public.
  - B. Dwellings or dwelling units which fail to provide the basic amenities essential to healthful living, are unsanitary, are in a condition likely to cause sickness or disease among the occupants or other persons, or are otherwise manifestly unsafe for use for dwelling purposes.
- 802. If a dwelling or dwelling unit is declared by the Health Officer to be unfit for human habitation, the Health Officer shall post on the dwelling or dwelling unit, in a conspicuous place, a placard bearing the following words: “CONDEMNED AS UNFIT FOR HUMAN HABITATION.”
- 803. Any dwelling or dwelling unit condemned and placarded as provided by this Article shall be vacated by all persons within a reasonable time, as ordered by the Health Officer.
- 804. No person shall deface, cover or remove the placard, except the Health Officer who shall remove it after the defect or defects in the dwelling or dwelling unit have been corrected and the Health Officer has determined that the dwelling or dwelling unit is fit for human habitation.

805. No person shall occupy, or offer for occupancy to any other person, any dwelling or dwelling unit that has been condemned until written approval to do so has been obtained from the Health Officer, based on the Health Officer's determination that the dwelling or dwelling unit is again fit for human habitation, and the placard has been removed from the dwelling or dwelling unit by the Health Officer.
806. Upon declaring that a dwelling or dwelling unit is unfit for human habitation, the Health Officer may file an affidavit with the Kent County Register of Deeds disclosing the existence of a condemnation order affecting the property. The affidavit shall be recorded with the property title, and shall remain in effect until the condemnation order affecting the property. The affidavit shall be recorded with the property title, and shall remain in effect until the condemnation order is rescinded. Following rescission of the condemnation order, the Health Officer may then remove or amend the affidavit to reflect the rescission. Expenses associated with filing, removing or amending the affidavit shall be the responsibility of the person who requested that the condemnation order be rescinded.

#### ARTICLE IX – VARIANCES

901. The Health Officer may grant variances from the standards and requirements contained within these regulations if all of the following conditions are met, as determined by the Health Officer:
- A. If the requested variance is granted, there will still be substantial compliance with all applicable standards and requirements;
  - B. The grant of the variance will not cause or perpetuate a nuisance or health or safety hazard; and
  - C. Prior to the grant of the variance, the municipal building official has provided written approval of the requested variance to the Health Officer.

#### ARTICLE X – ADMINISTRATION AND ENFORCEMENT

1001. **Discretionary Enforcement Authority of Health Officer.** The Health Officer shall possess the authority to employ professional judgment in the application of these regulations to unusual or equivocal housing situations or conditions.
1002. **Notices of Violation.** If the Health Officer believes that a person has violated a provision of these regulations, or an order issued under these regulations, the Health Officer may issue a Notice of Violation to the alleged violator. The Notice of Violation shall be in writing and shall state with particularity:
- A. The nature of the violation, including reference to the section, standard or requirement under these regulations alleged to have been violated;

- B. The terms of any order of the Health Officer, including any actions required to correct the violation.
- C. The time within which the violation must be corrected as provided by the order.
- D. The consequences for failure to correct the violation or to otherwise comply with the order, including applicable criminal and civil fines and penalties, if any.
- E. The right to appeal the issuance of the Notice or the order.
- F. The date and time the Notice and/or order was issued.

The Notice of Violation and order shall be delivered to the alleged violator (the owner, the owner's agent, the occupant, or other responsible person, as determined appropriate by Health Officer) either personally, or by registered mail, to the alleged violator's last known address.

1003. **Orders – In General.** The Health Officer may issue orders to avoid, correct, or remove, at the owner's expense, a dwelling, dwelling unit or condition involving a dwelling or dwelling unit, which violates these regulations, or which the Health Officer reasonably believes to be a nuisance, unsanitary condition, or cause of illness. All violations of these regulations shall be ordered corrected within the shortest reasonable time appropriate under the circumstances, as determined by the Health Officer. If the owner or occupant does not comply with the order, the Kent County Health Department may cause the violation, nuisance, unsanitary condition, or cause of illness to be removed. The owner of the dwelling or dwelling unit shall pay the expenses incurred. If the owner refuses on demand to pay the expenses incurred, the sums paid shall be assessed against the property and shall be collected and treated in the same manner as taxes assessed under the general laws of this state. An occupant or other person who caused or permitted the violation, nuisance, unsanitary condition, or cause of illness to exist is liable to the owner of the premises for the amount paid by the owner or assessed against the property.
1004. **Emergency Orders.** If the Health Officer determines that an emergency exists at a dwelling or dwelling unit, the Health Officer shall inform the individuals at the dwelling or dwelling unit affected by the emergency. The Health Officer shall also issue an order (without the necessity of prior notice or a hearing) stating the factors which support a finding that an emergency exists and requiring immediate action as necessary to avoid, correct, or remove the emergency. The order may specify action to be taken or prohibit the presence of individuals in locations or under conditions where the emergency exists. The order shall be personally delivered to a person authorized to avoid, correct, or remove the emergency, or shall be posted at or near the premises. Upon the failure of a person to immediately comply with an order issued under this Section (or to otherwise comply within the time specified by the order), the Health Official may petition a court of competent jurisdiction to restrain the cause of the emergency or to require appropriate action to avoid, correct, or remove the emergency.

1005. **Civil Citations; Monetary Civil Penalties.** If the Health Officer believes that a person has violated a provision of these regulations, or an order issued under these regulations, the Health Officer may issue a civil citation to the alleged violator and may assess a monetary civil penalty as provided by Section 1102 of these regulations. The citation shall be written and shall state with particularity the nature of the violation, including reference to the section, standard or requirement under these regulations alleged to have been violated; the civil penalty established for the violation, if any, and the right to appeal the citation. The citation shall be delivered to the alleged violator (the owner, the owner's agent, the occupant, or other responsible person, as determined appropriate by the Health Officer) either personally or by registered mail to the alleged violator's last known address.
1006. **Appearance Tickets.** The Health Officer is authorized to issue and serve appearance tickets for violations of these regulations as provided by Sections 9a to 9g of Chapter 4 of Act No. 175 of the Public Acts of 1927, as amended, being Sections 764.9a to 764.9g of the Michigan Compiled Laws.
1007. **Injunctions.** Notwithstanding the existence and pursuit of any other available remedy, the Health Officer, without posting bond, may maintain injunctive action to restrain, prevent, or correct a violation of these regulations, or of any order issued under these regulations, or to restrain, prevent or correct an activity or condition which the Health Officer believes adversely affects the public health.
1008. **Cumulative Remedies.** The imposition of a single penalty, fine, or order upon any person for a violation of these regulations, or of any order issued under these regulations, shall not preclude the imposition by the Health Officer or a court of competent jurisdiction of a combination of any or all of those penalties and remedies or additional penalties and remedies with respect to the same violation. A criminal citation and prosecution of a criminal action against a person shall not be dependent upon or held in abeyance during any civil, judicial or administrative proceeding or hearing regarding the person.
1009. **Continuing Offense.** Each act of violation, and each day or portion of a day that a violation of these regulations, or of any order issued under these regulations, exists or continues shall constitute a separate punishable offense.
1010. **Additional Rights of Action and Remedies.** The enumeration by these regulations of various rights of action and remedies shall not limit or derogate rights of action or remedies available to the Health Officer or the Board of Health under any other applicable law or regulation, nor shall it preempt, preclude, or interfere with the authority of the County to protect the health, safety and welfare of the public through these regulations or by other means.

## ARTICLE XI – PENALTIES FOR VIOLATIONS

1101. **Criminal Penalties.** Any person who violates a provision or requirement of this regulation, or who fails to comply with an order of the Health Officer issued pursuant to this regulation shall be guilty of a misdemeanor, punishable by imprisonment for not more than 90 days, or a fine of not more than \$200.00, or both.
1102. **Monetary Civil Penalties; Schedule of Amounts.** Monetary Civil Penalties are hereby established for the following violations in the following amounts, to be assessed by the Health Officer pursuant to a civil citation as authorized by these regulations:
- A. Failure by a person to maintain a dwelling or dwelling unit in conformance with the requirements of this regulation:
- |                        |               |
|------------------------|---------------|
| 1. FIRST OFFENSE       | \$ 100.00     |
| 2. SECOND OFFENSE      | 200.00        |
| 3. SUBSEQUENT OFFENSES | 300.00 (each) |
- B. Failure to comply with an order of the Health Officer issued under these regulations:
- |                        |               |
|------------------------|---------------|
| 1. FIRST OFFENSE       | \$ 100.00     |
| 2. SECOND OFFENSE      | 200.00        |
| 3. SUBSEQUENT OFFENSES | 300.00 (each) |
- C. Unauthorized removal or defacement of a condemnation placard:
- \$100.00 (each offense)

## **ARTICLE XII – APPEALS**

1201. Any person wishing to appeal a Notice of Violation, order, citation, or decision issued or made by the Health Officer under these regulations, must petition the Health Department for a hearing within 20 days of receipt of the Notice, order, or citation, or within 20 days of the date of the decision. The petition shall be in writing and shall be filed with the Health Department.
1202. The hearing shall be held before the Health Officer within 30 days after receipt of the petition by the Health Department. After the hearing, the Health Officer may affirm, dismiss, modify, or reverse the Notice, order, citation or decision.
1203. The decision of the Health Officer shall be final, unless, within 60 days of the decision, a written petition for a hearing by the Board of Health is received by the Kent County Health Director. The Board of Health shall hear the appeal, and make further investigation, if necessary. After its review, the Board of Health may affirm, dismiss, modify, or reverse the decision of the Health Officer.

1204. A person aggrieved by a final decision of the Health Officer or the Board of Health under this article may petition the Circuit Court of Kent County for relief.
1205. Nothing in this article shall be construed to prohibit the Health Officer from taking appropriate action when an emergency exists, as provided by these regulations.

#### **ARTICLE XIII – SEVERABILITY CLAUSE**

1301. The sections, clauses and provisions of these regulations shall be deemed severable. If any section, clause or provision is declared invalid by a court of competent jurisdiction, that shall not affect the validity of these regulations in whole or in part other than the part declared to be invalid.

#### **ARTICLE XIV – AUTHORITY AND EFFECTIVE DATE**

1401. These Regulations are adopted pursuant to the authority of Section 2441(1) of the Michigan Public Health Code, Act 368, P.A. 1978, as amended.
1402. These regulations were approved by the Kent County Board of Commissioners on February 9, 1995, and shall be effective on March 27, 1995.

# KENT COUNTY HEALTH DEPARTMENT

COMMUNITY NURSING DIVISION



Childhood Lead Poisoning Prevention Program  
700 FULLER NE  
GRAND RAPIDS MICHIGAN 49503  
616/632-7027 FAX 616/632-7016

Cathy Raevsky  
Administrative Health Officer

## VIOLATION NOTICE / CORRECTION ORDER

LOCATION OF VIOLATION:

VIOLATION DATE:                      TIME:                      AM

TO:

You are hereby notified that on the above date and at the location referenced, the following action or condition was observed by the undersigned public health official:

**Interior remediation was not completed as ordered on**

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This action or condition is declared to be in violation of:

Article VI, Section 606 of the *Housing Regulations for Kent County Michigan.*

You are ordered to take the following action to bring about the correction or elimination of the violation cited above:

**Wet scrape, prime, and paint the items listed in the original *Elevated Blood Lead (EBL) Environmental Risk Assessment Report* taking precautionary measures to minimize dust during reparations and remove paint chips and dust after the remediation work has been completed.**

This corrective action is to be completed and notification of same provided to the Kent County Health Department by no later than \_\_\_\_\_.

**Failure to comply with this corrective order could result in criminal prosecution, fees, fines, and/or legal action including condemnation.**

DATE:            February 19, 2009

City of Grand Rapids

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Julia LaPorte (616) 632-7027  
Lead Inspector / Risk Assessor  
Community Nursing Division

RIGHT TO APPEAL: You must petition the Health Department in writing within 20 days receipt of this violation / correction order.

cc:

Send:  First Class Mail  Certified Mail

**WAYNE COUNTY PROSECUTOR'S OFFICE  
CHILDHOOD LEAD POISONING PREVENTION UNIT**

**LANDLORD PENALTY LAW ENFORCEMENT  
PROCEDURAL MANUAL**

July 15, 2008

KYM L. WORTHY  
Wayne County Prosecutor

MARY DU FOUR MORROW  
Assistant Prosecuting Attorney  
Lead Inspector/Risk Assessor  
Childhood Lead Poisoning Prevention Unit  
Wayne County Prosecutor's Office  
1441 St. Antoine, 12<sup>th</sup> Floor  
Detroit, MI 48226

# I. OVERVIEW

## A. INTRODUCTION

According to the U.S. Centers for Disease Control and Prevention, lead poisoning is one of the top environmental health threats to children's health. The Michigan Department of Community Health reports that in 2006 over 20,000 Michigan children suffered lead exposures that could cause them to face lives of reduced intelligence and potential. At least half of those children live in Wayne County. Moreover, given that the number of children tested for lead exposure is less than 18% statewide, the number of children adversely affected by lead is probably grossly underestimated.

The mission of the Wayne County Prosecutor's Childhood Lead Poisoning Prevention Unit is to require landlords to remediate rental properties of lead hazards through enforcement of the Landlord Penalty Law, MCL 333.5475a and to help eliminate lead poisoning in the children of Wayne County. The purpose of this manual is to provide prosecutors, health officers and judges at all experience levels with an easily accessible reference guide as they conduct EBL Investigations and prosecute cases under the Landlord Penalty Law (LLPL). It is not intended to function as a legal treatise or to replace the "Environmental Investigations for Children with Elevated Blood Lead Levels Protocol" manual. Instead, it is intended to educate practitioners on the LLPL, which was designed to assure lead-safe housing for children and their families residing in rental properties in Wayne County.

Part I of the manual offers an overview of the problem of lead paint poisoning. A summary of the Landlord Penalty Law is provided in Part II. A description of the protocol by which a housing unit is identified as having lead paint and charged under the Landlord Penalty Law is set out in Part III.

## B. PROBLEM STATEMENT

Lead poisoning is a potentially devastating, but entirely preventable, disease primarily caused by exposure to dust from deteriorated lead paint in old housing.<sup>1</sup> More than 400,000 children nationwide are lead poisoned.<sup>2</sup> Lead poisoning crosses all barriers of race, income, and geography.

The number of lead poisoned children in Michigan is among the highest in the nation. Children in Wayne County account for more than 50% of the children with elevated lead levels in Michigan.<sup>3</sup> Nearly 2,500 children in Detroit alone had lead levels of 10 ug/dL or greater. This is the threshold level of concern for lead in a child's blood as defined by the Centers for Disease Control. In Detroit, one out of every 3 children tested screened positive for lead.<sup>4</sup> It is assumed that the number of children lead poisoned is much higher since less than 50% of children in Detroit who are required to be tested are, in fact, tested.<sup>5</sup>

Lead has no positive value to the human body and has not been shown to be safe at any level.<sup>6</sup> Lead poisoning causes permanent brain damage in children. At high levels, lead poisoning causes damage to the child's central nervous system, kidneys and reproductive system.<sup>7</sup> At low and moderate levels, lead poisoning causes subtle brain damage resulting in reduced intelligence, learning disabilities, speech disorders, hyperactivity, shortened attention span and behavioral disorders.<sup>8</sup> Research also links low-levels of lead exposure to lower IQ scores and to juvenile delinquency.<sup>9</sup> While the Centers for Disease Control

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<sup>1</sup> CENTERS FOR DISEASE CONTROL AND PREVENTION, LEAD POISONING PREVENTION PROGRAM, (2004) at <http://www.cdc.gov/nceh/lead/factsheets/leadfacts.htm>. Hereafter, LEAD POISONING PREVENTION PROGRAM.

<sup>2</sup> CENTERS FOR DISEASE CONTROL AND PREVENTION, *Surveillance for Elevated Blood Lead Levels Among Children – United States 1997-2001*, MORBIDITY AND MORTALITY WEEKLY REPORT, Sept. 12, 2003 at 4.

<sup>3</sup> MICHIGAN DEPARTMENT OF COMMUNITY HEALTH CHILDHOOD LEAD POISONING PREVENTION PROGRAM 2005 DATA REPORT, Bureau of Family, Maternal & Child Health, division of Family & Community Health, April 2006. Hereafter, MDOCH 2005 DATA REPORT.

<sup>4</sup> *Id.* Of the 32,705 Detroit children under age six who were tested in 2005, 11,032 had blood lead levels at or above 5 ug/dL in 2005.

<sup>5</sup> *Id.*

<sup>6</sup> RICHARD M. STAPLETON, LEAD IS A SILENT HAZARD, 2 (1994).

<sup>7</sup> LEAD POISONING PREVENTION PROGRAM, *supra* note 1.

<sup>8</sup> COMMITTEE ON MEASURING LEAD IN CRITICAL POPULATIONS, NATIONAL RESEARCH COUNCIL, MEASURING LEAD EXPOSURE IN INFANTS, CHILDREN, AND OTHER SENSITIVE POPULATIONS, 3, 16, 64 (1993).

<sup>9</sup> Herbert L. Needleman, et. al., *Bone Lead Levels and Delinquent Behavior*, 275 JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION 363, 363-69 (1996). See also Herbert Needleman, et. al. *Bone Lead Levels in Adjudicated Delinquents: A Case Control Study*, 24 NEUROTOXICOLOGY AND TERATOLOGY

has defined an elevated blood lead level as  $\geq 10 \mu\text{g}/\text{dL}$ , recent research suggests that lead is toxic at concentrations in blood even lower than  $10 \mu\text{g}/\text{dL}$  and may affect cognitive abilities, including arithmetic skills, reading, nonverbal reasoning and short term memory.<sup>10</sup>

There was a dramatic decline in blood lead levels of U.S. children aged one through six-years old from the late 1970s through the early 1990s due primarily to the phase-out of leaded gasoline, the resulting decrease in lead emissions, the elimination of lead used in water pipes and the ban on lead paint.

Unfortunately, however, experts are learning that the damage caused by lead exposure occurs at levels far lower than formerly believed harmful. Moreover, since lead is not biodegradable, it continues to be a source of lead poisoning in children unless it is properly removed or contained.

Most children are lead poisoned in their own homes through exposure to lead dust or paint chips from deteriorated lead paint surfaces, or when lead painted surfaces are disturbed during home renovation or repainting. Often of greatest risk is lead-contaminated dust generated from the friction of opening and closing windows and doors. Because older homes are more likely to have lead paint on their windows, doors and walls, and fall into disrepair, the age of housing stock affects the risk of children's exposure to lead hazards. For example, even though lead paint has been banned in the United States since 1978, the Department of Housing and Urban Development estimated in 2001 that it still remains in about 38 million dwelling units.<sup>11</sup> Seven out of ten homes built before 1960 contain lead.<sup>12</sup> More than 40% of the housing units in Detroit were built prior to 1950.<sup>13</sup>

Lead is most hazardous to the nation's 24 million children from birth through six years of age because their brain and central nervous system are still developing. Children ages one to three are at greatest risk of lead poisoning because of normal hand-to-mouth activity and the increase in mobility, which

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711, 715 (2002) and Kim Dietrich, et. al., *Early Exposure to Lead and Juvenile Delinquency*, 25 *NEUROTOXICOLOGY AND TERATOLOGY* 511, 517 (2001).

<sup>10</sup> Richard Canfield, et. al., *Intellectual Impairment in Children with Blood Lead Concentrations below 10 microg per Deciliter*, 348 *NEW ENGLAND JOURNAL OF MEDICINE* 1517 (2003). See also Bruce P. Lanphear, *Cognitive Deficits Associated with Blood Lead Concentrations  $\geq 10 \mu\text{g}/\text{dL}$  in U.S. Children and Adolescents*, 115 *PUBLIC HEALTH REPORTS* 521, 521-529 (2000).

<sup>11</sup> OFFICE OF HEALTHY HOMES AND LEAD HAZARD CONTROL, U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, *The Prevalence of Lead-Based Paint Hazards in U.S. Housing*, Environmental Health Perspectives, October 2002, at A603.

<sup>12</sup> *Id.* at A602. Of the 5,456,000 U.S. homes built before 1960, 3,687,000 contain lead hazards.

<sup>13</sup> MDOCH 2005 DATA REPORT

makes lead hazards more accessible. Children absorb up to 50 percent of the lead they ingest, compared to adults, who retain only 10 percent.<sup>14</sup>

Lead also can be transmitted to a fetus if the mother ingests lead while pregnant or has been exposed to lead in the past.<sup>15</sup> During pregnancy, the lead stored in bones is released into the blood stream, and lead easily crosses the placental barrier throughout the gestation period, including the period during which the central nervous system is formed.<sup>16</sup>

Active enforcement of the Landlord Penalty Law in Wayne County and the City of Detroit has been demonstrated to be an effective tool for persuading recalcitrant landlords to remediate rental properties of lead hazards. The law makes it a criminal misdemeanor offense for landlords to rent properties with known lead hazards to families with children where a child is identified as having an elevated blood lead level. Penalties for first-time offenders include up to 93 days in jail and/or up to a \$5,000.00 fine. Repeat offenders are subject to penalties of up to 93 days in jail and/or up to a \$10,000.00 fine.

As of this writing, 128 rental properties in Wayne County have been remediated of lead hazards as a direct result of enforcement efforts by the Wayne County Prosecutor's Office.

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<sup>14</sup> Bone serves as a repository for a large percentage of the lead absorbed or ingested by children and adults. Lead from the skeleton enters into the blood stream during periods of bone mobilization. The mobilization of bone lead is increased during times of high bone turnover, which occurs during rapid growth in early childhood and during pregnancy. See Steve Oliveira et. al., *Season Modifies the Relationship between Bone Lead Levels: The Normative Aging Study*, 57 ARCHIVES OF ENVIRONMENTAL HEALTH 466, 467 (2002).

<sup>15</sup> Brian Gulson et. al., *Pregnancy Increases Mobilization of Lead from Maternal Skeleton*, 130 JOURNAL OF LABORATORY AND CLINICAL MEDICINE 51, 51 (1997).

<sup>16</sup> *Id.*

## II. THE LANDLORD PENALTY LAW

### A. THE STATUTE:

In January of 2005, Governor Jennifer Granholm signed several new bills dealing with lead hazards into law. Titled the Lead Abatement Act, one of those statutes, known as the Landlord Penalty Law, MCL 333.5475a, makes it a criminal offense for landlords to knowingly rent lead-infested premises to families with young children.

**MCL 333.5475a** provides that:

- (1) A property manager, housing commission, or owner of a rental unit who rents or continues to rent a residential housing unit to a family with a minor child who is found to have 10 micrograms or more of lead per deciliter of venous blood is subject to the penalties provided under subsection (3) if all of the following apply:
  - (a) The property manager, housing commission, or owner of the rental unit has prior actual knowledge that the rental unit contains a lead-based paint hazard.
  - (b) At least ninety days have passed since the property manager, housing commission, or owner of the rental unit has actual knowledge of the lead paint hazard.
  - (c) The property manager, housing commission, or owner of the rental unit has not acted in good faith to reduce the lead paint hazards through interim controls or abatement or a combination of interim controls and abatement.
  
- (2) A property manager, housing commission, or owner of the rental unit is presumed to have prior actual knowledge that a unit contains a lead-based paint hazard only if 1 of the following applies:
  - (a) The property manager, housing commission, or owner of the rental unit signed an acknowledgement of the hazard as a result of a risk assessment under this chapter at the time the risk assessment was made.
  - (b) The property manager, housing commission, or owner of the rental unit was served as a result of a risk assessment under

this chapter with notice of the hazard by first-class mail and a return receipt of this service was obtained.

- (3) A property manager, housing commission, or owner of the rental unit convicted of violating this section is guilty of a crime as follows:
  - (a) Except as provided in subdivision (b), the property manager, housing commission, or owner of the rental unit is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$5,000.00, or both.
  - (b) If the property manager, housing commission, or owner of the rental unit was previously convicted of violating this section or a local ordinance substantially corresponding to this section, the property manager, housing commission, or owner of the rental unit is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$10,000.00 or both.
  
- (4) The property manager, housing commission, or owner of the rental unit may assert one or more of the following as an affirmative defense in a prosecution of violating this section, and has the burden of proof on that defense by a preponderance of the evidence:
  - (i) That the property manager, housing commission, or owner of the rental unit requested or contracted with a person having responsibility for maintaining the rental unit to reduce the hazard through interim controls or abatement and reasonably expected that the hazard would be reduced.
  - (j) That the tenant would not allow entry into or upon the premises where the hazard is located or otherwise interfered with correcting the hazard.
  
- (5) As used in this section:
  - (a) "Property manager" means a person who engages in property management as defined in section 2521 of the occupational code, 1980 PA 299, MCL 339.2501.
  - (b) "Lead-based paint hazard" means that term as defined in section 5458 of public health code, 1978 PA 368, MCL 333.5458.

## **B. PRACTICAL REQUIREMENTS OF THE STATUTE:**

- The landlord must have prior actual knowledge of the lead hazards. As a practical matter, the landlord cannot be presumed to know of the hazards until he or she has received written notice and a copy of the EBL Investigation Report. Personal service is optimal. At a minimum, the report should be mailed to the landlord registered mail, return receipt requested.
- The landlord has a 90-day grace period after receiving the written notice and report to make a “good faith effort” to reduce the lead hazards. Thus, the clock starts for purposes of the ninety days as soon as the landlord receives the notice and report. This would be either the date the landlord was personally served with the report or the date he or she signed the return receipt (if mailed).
- The landlord must fail to make a good faith effort to reduce the hazards within the 90 days in order to warrant criminal charges. Note: The burden is on the prosecutor to prove a negative, that is, that the landlord did *not* make a good faith effort to reduce the hazards. In order to prove this, it is critical that the landlord understand what he or she can and cannot do with respect to lead hazard reduction.
- It is unlawful for anyone who is not certified as a lead abatement contractor to perform lead abatement activities. MCL 333.5461(1). This must be clearly stated in the notice of violation.
- The property owner should not receive portions of the EBL Investigation packet that contain confidential information about the EBL child. Medical and personal information about the EBL child must be removed.
- There is a great deal of confusion on the part of landlords as to what constitutes the appropriate standard of care for clean up. Self-help, if improperly performed, can actually result in additional insult to the already-poisoned child. It is important that the risk assessor/EBL investigator work with the Landlord to ensure he or she understands the importance of lead safe work practices.

- Even if the family with the EBL child voluntarily moves from the property, the landlord must still reduce the lead hazards. The lead-poisoned child is merely the “trigger” that mandates the EBL Investigation and subsequent obligation to clean up the property. Getting rid of the tenant/child does not get rid of the problem!
- Landlords may not evict tenants for reporting lead-based paint hazards. Michigan law does not allow eviction in retaliation for an attempt to enforce tenant rights. There is a presumption that the landlord is retaliating if the tenant made report of a health or safety violation to the local government within 90 days prior to the eviction lawsuit. MCL 600.5720. (See Appendices.) The tenant should continue to pay rent or, at a minimum, place the rent in escrow while the matter is being resolved.
- Sometimes landlords refuse to rent to families with young children if the property contains or is suspected of containing lead-based paint hazards. Such rental practices are considered discriminatory and are illegal under the Federal Fair Housing Act (FHA).
- Under federal law, it is unlawful to refuse to rent a dwelling unit to a family with children or a pregnant woman, even if there are known lead-based paint hazards on the property, and the landlord believes that he or she is doing the right thing by protecting prospective tenants from the hazards. The choice to rent remains with the prospective tenants, not with a landlord. The Federal Disclosure Law, which requires landlords to inform prospective tenants about known hazards, is intended to enable prospective tenants to make well-informed housing choices.

### **C. BURDEN OF PROOF:**

The Prosecutor bears the burden of proving the statute beyond a reasonable doubt. This is the most difficult legal standard to meet. The statute requires the Prosecutor to prove the following:

- That the landlord has prior actual knowledge of the hazard.
- That the landlord was given 90 days to reduce the hazard through interim controls or abatement
- That the landlord did not act in good faith to reduce the hazard through interim controls or abatement.

- That a landlord-tenant relationship exists between the landlord and the parents or guardians of the EBL child.
- NOTE: there is *no* element of causation. The Prosecutor need not show that the lead hazards in the rental property actually poisoned the child (as opposed to another source of exposure such as day care.). The child is merely the trigger that initiates the EBL Investigation. If the rental property is found to contain lead-based paint hazards, the landlord is obligated to make a good faith effort to remediate the hazards or risk being charged under the LLPL.

#### **D. AFFIRMATIVE DEFENSES:**

Defendant may raise the following affirmative defenses under the statute, which the Prosecutor must then disprove by a preponderance of the evidence:

- That the defendant hired a certified lead-abatement contractor who failed to perform. (Note: A contractor may be convicted of a 93-day/\$5,000.00 misdemeanor for failing to comply with appropriate standards of abatement. MCL 333.5477).
- That the tenant interfered with the owner or property manager's ability to abate the lead-paint hazard.

#### **E. PENALTIES:**

The offense is a misdemeanor punishable by up to 93 days in jail and/or up to a \$5,000.00 fine for first-time offenders. For repeat offenders the penalties are up to 93 days in jail and/or up to a \$10,000.00 fine.

#### **E. PRACTICAL APPLICATIONS:**

The statute *only* applies to rental properties where a lead-based paint hazards is found to exist. We cannot prosecute day care centers, schools, churches, or the many other places where children spend their time and may be exposed to lead-based paint. The child's family must be the renters, not the owners, of the property. We must be able to prove a landlord/tenant

relationship between the property owner/manager and the family of the lead-poisoned child. Public health nurses and EBL Investigators should try to obtain the following information:

- (1) Copies of a lease, if there is one.
- (2) Copies of rent receipts or cancelled checks if there is no lease.
- (3) As much information from the family about the property owners as possible. For example, names, addresses, telephone numbers, etc.
- (4) Whether rent is mailed, dropped off, or picked up and, if so, when and by whom.
- (5) Length of time the family has resided at the property and whether their rent payments are current.

The health department should notify the prosecutor's office as soon as the EBL Investigation packet is prepared on a case and the results of the dust wipe samples have been received from the laboratory. The prosecutor should receive copies of the entire EBL Investigation Report, including the forms completed by the public health nurse.

#### **G. EVIDENTIARY ISSUES:**

The high burden of proof in a criminal case mandates that the evidence be properly preserved and that we be able to account for the chain of custody of all dust wipes samples and other physical evidence. Consistent with state protocol, all test tubes should be adequately identified to ensure that samples are not mixed up at the laboratory. Samples should be labeled with:

1. The name of the Health Department and EBL Investigator who collected the sample.
2. The address of the property.
3. The room in which the sample was collected and a description of the exact location in the room where the sample was collected.

Samples should be hand-delivered to the laboratory, rather than sent via Federal Express.

“Chain of custody” simply refers to all of the people who handle the sample from the time it is obtained, until the time it is analyzed by the laboratory. The prosecution must be able to account for the chain of custody in every criminal case. We must be able to demonstrate that samples were not tampered with before analyzed.

## H. ENFORCEMENT:

The goal is to require landlords to remediate all lead hazards in the affected rental property. Notices of violation from the Prosecutor's Office have been effective in getting the attention of the rental property owner. In most of the cases in which notices have been served from our office, the landlords have remediated the hazards with no additional action necessary. Landlords who have ignored the notice of violation beyond the 90-day grace period have generally been eager to cooperate once a warrant and complaint are issued.

Once charged, landlords are offered the opportunity to enter into a Plea Agreement "under advisement" or with a delayed sentence. If defendant complies with the terms of the Plea Agreement, the case will be dismissed.

Most plea agreements contain the following requirements:

1. Defendant must hire a certified lead professional to remediate the hazards in the charged property.
2. Defendant must relocate the family during the remediation if they do not have family or friends the area who are able to house them.
3. Defendant must disclose all other properties he or she owns in the County of Wayne and provide copies of all rental agreements pertaining to those properties.
4. Defendant must identify which of the properties house families with children age six years or younger and/or expectant mothers.
5. Defendant must hire a certified lead risk assessor to perform risk assessments on the properties disclosed in (4) above, and provide copies of the risk assessments to the prosecutor.
6. Defendant must hire a certified contractor to remediate all hazards found in the properties assessed under (5) above.
7. Defendant must relocate the families during remediation of the properties in (5) above.

8. Defendant must hire a certified lead inspector or risk assessor to perform clearance testing on all properties remediated under the agreement, and provide copies of the clearance tests to the prosecutor.
9. Defendant must attend an eight-hour Lead Safe Work Practices training course.

### **III. CASE PROTOCOL**

Successful enforcement of the LLPL is heavily dependent upon good communication and cooperation between the local Health Department and the County Prosecutor's Office. A suggested protocol for how cases may be handled is set forth below:

- All elevated blood lead levels (EBL) (equal to or greater than 10 ug/dl) are required to be reported to the Michigan Department of Community Health (MDCH).
- The MDCH, in turn, notifies the local health department.
- The local health department assigns a public health nurse and EBL Investigator to visit the EBL child's home and determine the source of exposure.
- The EBL Investigator prepares a report titled "EBL Investigation" within 20 days of the investigation of the property.
- The EBL Investigator determines the owner of the rental property and personally serves the landlord and/or property manager with a notice of violation and a copy of the EBL Investigation. If personal service is not possible then the notice of violation and EBL Investigation Report should be sent certified mail and return receipt requested.
- The EBL Investigator must reassess the property after 90 days has elapsed to determine whether or not the landlord has made a good faith effort to reduce the lead hazards. Dust wipe samples should be taken from specific areas of violation. NOTE: Routine protocol for clearance testing mandates random sampling. However, where prosecution under

the LLPL is contemplated, the EBL Investigator must retest the specific areas of violation to demonstrate that no good faith effort has been made to remediate those areas and to enable the prosecutor to sustain his or her burden of proof.

- If the EBL Investigator determines that there has been no good faith effort to remediate, then he or she should prepare an Investigator's Report and request for warrant package to present to the prosecutor. The warrant package should contain the following documents:
  1. A copy of EBL Investigation Report served upon the property owner.
  2. The owner's name and address, if known.
  3. A copy of the proof of service (or return receipt if served by mail) establishing that the property owner received the notice of violation and copy of report.
  4. A copy of lease the agreement or other proof of a landlord – tenant relationship.
  5. Any photos taken of the property.
  6. Copies of follow up dust wipe sample test results.
- The Prosecutor will review the warrant package and, if appropriate, issue a warrant for the landlord's arrest charging him or her under the LLPL.
- The Prosecutor will make arrangements with the Sheriff's Department to arrest the defendant and have him or her arraigned on the warrant.
- A pretrial date will be set. Most cases are resolved with a Plea Under Advisement (Delayed Sentence). If, the defendant agrees to remediate the lead hazards within a set time frame and fulfills other requirements of the agreement, the case against him or her will be dismissed.
- When a child is hospitalized for lead poisoning, the EBL Environmental Investigation should be initiated and processed on an emergency basis. All actions should be expedited for immediate abatement of the lead hazards, so that the child can return to a lead hazard-free environment.
- If the defendant complies with all terms of the Plea Agreement within the prescribed time (usually two months) the Prosecutor's Office will dismiss the case against him or her.

## **IV. APPENDICES**

- 1. Sample Notice of Violation**
- 2. Sample Proof of Service**
- 3. Sample Subpoena**
- 4. Retaliatory Eviction Law**

# DRAFT

Date

Landlord Name  
Address  
City, State, Zip

RE: Address of rental property where hazards were found

Dear [Landlord],

The \_\_\_\_\_ County Health Department received notice that a child residing at the above-captioned address was found to have an elevated blood-lead level. An EBL Investigation by the Health Department on [date] determined the presence of lead-based paint hazards. (See attached EBL Investigation.)

Lead damages children's developing brains and nervous systems. The effects are not reversible. Lead poisoning in children has been shown to cause reduced IQ and learning disabilities as well as behavioral problems including attention deficit, hyperactivity and aggression. There is also growing evidence that links lead poisoning with an increased rate of juvenile delinquency.

It is a criminal offense in Michigan to rent a residential housing unit to a family with a minor child who is found to have an elevated blood lead level where the property owner or manager has knowledge that the rental unit contains a lead-based paint hazard. (MCL 333.5475a.) Penalties include up to 93 days in jail and/or fines up to \$5,000.00.

**Notice is given to you, [Landlord], that the dwelling unit located at [address] contains lead-based paint hazards.**

**You have ninety days from the date you received this notice to remediate the hazard. You are strongly encouraged to hire a certified lead abatement contractor or worker trained in lead safe work practices to remediate the hazards.** Attempting to reduce the hazard yourself without the proper training increases the risk of harm and may result in additional injury to the child.

For a list of contractors certified by the State of Michigan, contact the lead remediation program at (517) 335-9390 or go to [www.michigan.gov/mdch](http://www.michigan.gov/mdch) and enter lead contractors in the search box. The contractor you select must contact [name of health inspector] at the \_\_\_\_\_ County Health Department to discuss the work needed to abate the hazard. They can be reached at [number]

If you have any questions concerning this notice, you or your attorney may contact me at the number listed below.

Sincerely,

Health Inspector Name  
Address  
City, State, Zip code

**STATE OF MICHIGAN  
WAYNE COUNTY PROSECUTOR'S OFFICE**

**RETURN OF SERVICE**

\_\_\_\_\_, Being first duly sworn,  
deposes and says:

**I am an Investigator for the Wayne County Prosecutor's Office. In such capacity, I received for execution, a copy of a Notice of Violation and EBL Investigation regarding property located at: \_\_\_\_\_.**

**Advising \_\_\_\_\_ of a violation of MCL 333.5475a.**

**On: \_\_\_\_\_  
(Date & Time)**

**I personally served \_\_\_\_\_**

**With the letter and EBL Investigation at the following location: \_\_\_\_\_**

**I called as a witness; I am competent to testify as to the facts and circumstances averred herein. Further affiant sayeth not.**

\_\_\_\_\_  
**Signature of Property Owner and Date**

\_\_\_\_\_  
**Signature of Investigator and Date**



## Appendices -

### RETALIATORY EVICTIONS

MCL §600.5720 (1963)

(1) A judgment for possession of the premises for an alleged termination of tenancy shall not be entered against a defendant if 1 or more of the following is established:

- (a) That the alleged termination was intended primarily as a penalty for the defendant's attempt to secure or enforce rights under the lease or agreement or under the laws of the state, of a governmental subdivision of this state, or of the United States.
- (b) That the alleged termination was intended primarily as a penalty for the defendant's complaint to a governmental authority with a report of plaintiff's violation of a health or safety code or ordinance.
- (c) That the alleged termination was intended primarily as retribution for a lawful act arising out of the tenancy, including membership in a tenant organization and a lawful activity of a tenant organization arising out of the tenancy.
- (d) That the alleged termination was of a tenancy in housing operated by a city, village, township, or other unit of local government and was terminated without cause.
- (e) That the plaintiff attempted to increase the defendant's obligations under the lease or contract as a penalty for the lawful acts as are described in subdivisions (a) to (c) and that the defendant's failure to perform the additional obligations was the primary reason for the alleged termination of tenancy.
- (f) That the plaintiff committed a breach of the lease which excuses the payment of rent if possession is claimed for nonpayment of rent.
- (g) That the rent allegedly due, in an action where possession is claimed for nonpayment of rent, was paid into an escrow account under section 130 of Act No. 167 of the Public Acts of 1917, being section 125.530 of the Michigan Compiled Laws; was paid pursuant to a court order under section 134(5) of Act No. 167 of the Public Acts of 1917, as amended, being section 125.534 of the Michigan Compiled Laws; or was paid to a receiver under section 135 of Act No. 167 of the Public Acts of 1917, being section 125.535 of the Michigan Compiled Laws.

(2) If a defendant who alleges a retaliatory termination of the tenancy shows that within 90 days before the commencement of summary proceedings the

defendant attempted to secure or enforce rights against the plaintiff or to complain against the plaintiff, as provided in subsection (1)(a), (b), (c), or (e), by means of official action to or through a court or other governmental agency and the official action has not resulted in dismissal or denial of the attempt or complaint, a presumption in favor of the defense of retaliatory termination arises, unless the plaintiff establishes by a preponderance of the evidence that the termination of tenancy was not in retaliation for the acts. If the defendant's alleged attempt to secure or enforce rights or to complain against the plaintiff occurred more than 90 days before the commencement of proceedings or was terminated adversely to the defendant, a presumption adverse to the defense of retaliatory termination arises and the defendant has the burden to establish the defense by a preponderance of the evidence.

Municipal Code of the City of Rochester

Chapter 90, Property Conservation Code.

Article III. Lead-Based Paint Poisoning Prevention. (As Amended by Ordinances No. 2005-393 and 2006-37, effective July 1, 2006)

§90-50. Policy and intent.

It is the policy of the City of Rochester to help prevent the poisoning of its residents by requiring that the presence of deteriorated lead-based paint on the interior and exterior of pre-1978 residential structures and on the exterior of pre-1978 non-residential structures be identified and be correctly addressed by reducing and controlling lead-based paint hazards which may be present in order to prevent human exposure to such hazards.

§90-51. Legislative findings.

- A. Lead poisoning poses a serious public health threat to children and adults in the City of Rochester.
- B. Younger children are particularly susceptible to the hazards of lead-based paint since their bodies are still developing. Fetuses are also vulnerable to the effects of lead-based paint because pregnant women can transfer lead to their fetuses, which can result in adverse developmental effects.
- C. A small amount of lead can cause elevated blood lead levels resulting in serious and irreversible developmental damage, particularly in children under the age of six years.
- D. Exposure to lead hazards from deteriorated lead-based paint is a primary cause of elevated blood lead levels in humans.
- E. Structures built before 1978 are the most likely to contain lead-based paint hazards.
- F. Residential properties are more likely than are non-residential properties to be a source of exposure to lead-based paint hazards by children.
- G. Children living in older, poorly maintained homes are disproportionately at risk for lead-based paint hazards.
- H. The exposure to lead-based paint hazards in the City of Rochester is most common, and presents the most serious risk, to young children residing in rental housing built before 1978.

- I. It is essential to the overall public health of persons in the City of Rochester, and particularly for children younger than six years of age, that they be protected from exposure to lead-based paint hazards.
- J. According to the environmental impact statement, proposed lead-based paint poisoning prevention legislation could have a cost impact on the rental housing market as high as \$540 million, depending on the alternative chosen.
- K. The application of lead-based paint poisoning prevention legislation to the owner-occupied housing market could cause extensive housing abandonment in at least nine distinct neighborhoods.
- L. Although unquestionably positive, the potential health benefits of lead-based paint poisoning prevention legislation are difficult to quantify since the number of people at-risk is undetermined, the transient nature of tenants makes targeting difficult, the mere presence of lead in a structure does not necessarily lead to human exposure to lead-based paint hazards, and the generally agreed-upon group at greatest risk, children from 0-6 years of age, are significantly transient.

#### §90-52. Definitions.

ABATEMENT means any set of measures designed to permanently eliminate lead-based paint or lead-based paint hazards (see definition of "PERMANENT"). Abatement includes: (1) The removal of lead-based paint and dust-lead hazards, the permanent enclosure or encapsulation of lead-based paint, the replacement of components or fixtures painted with lead-based paint, and the removal or permanent covering of soil-lead hazards; and (2) All preparation, cleanup, disposal, and post abatement clearance testing activities associated with such measures.

CERTIFIED means licensed or certified to perform such activities as risk assessment, lead-based paint inspection, or abatement supervision by the United States Environmental Protection Agency (EPA) in accordance with 40 CFR Part 745, Subpart L.

CERTIFIED LEAD-BASED PAINT INSPECTOR means an individual who has been trained by an accredited training program, as defined by 40 CFR §745.223, and certified by EPA pursuant to 40 CFR §745.226 to conduct lead-based paint inspections. A certified lead-based paint inspector also samples for the presence of lead in dust and soil for the purposes of clearance testing.

CERTIFIED RISK ASSESSOR means an individual who has been trained by an accredited training program, as defined by 40 CFR §745.223, and certified by EPA pursuant to 40 CFR §745.226 to conduct risk assessments. A certified risk assessor also samples for the presence of lead in dust and soil for the purposes of clearance testing.

**CHEWABLE SURFACE** means an interior or exterior surface painted with lead-based paint that a young child can mouth or chew. A chewable surface is the same as an "accessible surface" as defined in 42 U.S.C. 4851b(2). Hard metal substrates and other materials that cannot be dented by the bite of a young child are not considered chewable.

**CLEARANCE EXAMINATION** means an activity conducted following lead-based paint hazard reduction activities to determine that the hazard reduction activities are complete and that no soil-lead hazards or settled dust-lead hazards, as defined in this Article, exist in the dwelling unit or worksite.

**COMMON AREA** means a portion of a residential property that is available for use by occupants of more than one dwelling unit. Such an area may include, but is not limited to, hallways, stairways, laundry and recreational rooms, playgrounds, community centers, on-site day care facilities, porches, basements, attics, garages and boundary fences.

**COMPONENT** means an architectural element of a dwelling unit or common area identified by type and location, such as a bedroom wall, an exterior window sill, a baseboard in a living room, a kitchen floor, an interior window sill in a bathroom, a porch floor, stair treads in a common stairwell, or an exterior wall.

**CONTAINMENT** means the physical measures taken to ensure that dust and debris created or released during lead-based paint hazard reduction are not spread, blown or tracked from inside to outside of the worksite.

**DETERIORATED PAINT** means any interior or exterior paint or other coating that, through a visual assessment, is found to be peeling, chipping, crazing, flaking, abrading, chalking or cracking, or any paint or coating located on an interior or exterior surface or fixture that is otherwise damaged or separated from the substrate, or a chewable surface that contains visual signs of chewing.

**DRIPLINE** means the area within 3 feet surrounding the perimeter of a building.

**DRY SANDING** means sanding without moisture and includes both hand and machine sanding.

**DUST-LEAD HAZARD** means surface dust that contains a dust-lead loading (area concentration of lead) at or exceeding the levels promulgated by the EPA pursuant to section 403 of the Toxic Substances Control Act.

**DWELLING UNIT** means a: (1) Single-family dwelling, including attached structures such as porches and stoops; or (2) Housing unit in a structure that contains more than 1 separate housing unit, and in which each such unit is used or occupied, or intended to be used or occupied, in whole or in part, as the home or separate living quarters of 1 or more persons.

**ENCAPSULATION** means the application of a covering or coating that acts as a barrier between the lead-based paint and the environment and that relies for its durability on adhesion between the encapsulant and the painted surface, and on the integrity of the existing bonds between paint layers and between the paint and the substrate. Encapsulation may be used as a method of abatement if it is designed and performed so as to be permanent (see definition of "PERMANENT").

**ENCLOSURE** means the use of rigid, durable construction materials that are mechanically fastened to the substrate in order to act as a barrier between lead-based paint and the environment. Enclosure may be used as a method of abatement if it is designed to be permanent (see definition of "PERMANENT").

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

**FRICTION SURFACE** means an interior or exterior surface that is subject to abrasion or friction, including, but not limited to, certain window, floor, and stair surfaces.

g means gram, mg means milligram (thousandth of a gram), and ug means microgram (millionth of a gram).

**HAZARD REDUCTION** means measures designed to reduce or eliminate human exposure to lead-based paint hazards through methods including interim controls or abatement or a combination of the two.

**HEPA VACUUM** means a vacuum cleaner device with an included high- efficiency particulate air (HEPA) filter through which the contaminated air flows, operated in accordance with the instructions of its manufacturer. A HEPA filter is one that captures at least 99.97 percent of airborne particles of at least 0.3 micrometers in diameter.

**IMPACT SURFACE** means an interior or exterior surface that is subject to damage by repeated sudden force, such as certain parts of door frames.

**INTERIM CONTROLS** means a set of measures designed to reduce temporarily human exposure or likely exposure to lead-based paint hazards. Interim controls include, but are not limited to, repairs, painting, temporary containment, specialized cleaning, clearance, ongoing lead-based paint maintenance activities, and the establishment and operation of management and resident education programs.

**LEAD-BASED PAINT** means paint or other surface coatings that contain lead equal to or exceeding 1.0 milligram per square centimeter or 0.5 percent by weight or 5,000 parts per million (ppm) by weight.

**LEAD-BASED PAINT HAZARD** means any condition that causes exposure to lead from dust-lead hazards, soil-lead hazards, or lead-based paint that is deteriorated or present

in chewable surfaces, friction surfaces, or impact surfaces, and that would result in adverse human health effects.

**LEAD-BASED PAINT INSPECTION** means a surface-by-surface investigation to determine the presence of lead-based paint and the provision of a report explaining the results of the investigation.

**LEAD HAZARD INFORMATION PAMPHLET** means the most recent publication of the LEAD HAZARD INFORMATION PAMPHLET means the pamphlet developed by the EPA, the United States Department of Housing and Urban Development and the Consumer Product Safety Commission pursuant to Section 403 of the Toxic Substances Control Act (15 U.S.C. 2686), entitled "Protect Your Family From Lead in Your Home."

**OCCUPANT** means a person who inhabits a dwelling unit.

**OWNER** means a person, firm, corporation, nonprofit organization, partnership, government, guardian, conservator, receiver, trustee, executor, or other judicial officer, or other entity which, alone or with others, owns, holds, or controls the freehold or leasehold title or part of the title to property, with or without actually possessing it. The definition includes a vendee who possesses the title, but does not include a mortgagee or an owner of a reversionary interest under a ground rent lease.

**PAINT STABILIZATION** means repairing any physical defect in the substrate of a painted surface that is causing paint deterioration, removing loose paint and other material from the surface to be treated, and applying a new protective coating or paint.

**PAINT TESTING** means the process of determining, by a certified lead-based paint inspector or risk assessor, the presence or the absence of lead-based paint on deteriorated paint surfaces or painted surfaces to be disturbed or replaced.

**PAINT REMOVAL** means a method of abatement that permanently eliminates lead-based paint from surfaces.

**PAINTED SURFACE TO BE DISTURBED** means a paint surface that is to be scraped, sanded, cut, penetrated or otherwise affected by rehabilitation work in a manner that could potentially create a lead-based paint hazard by generating dust, fumes, or paint chips.

**PERMANENT** means an expected design life of at least 20 years.

**PORCH, OPEN** -- A roofed open structure projecting from the exterior wall of a building and having at least 70% of the total area of the vertical planes forming its perimeter unobstructed in any manner except by insect screening between floor and ceiling.

**REDUCTION** means measures designed to reduce or eliminate human exposure to lead-based paint hazards through methods including interim controls and abatement.

**REHABILITATION** means the improvement of an existing structure through alterations, incidental additions or enhancements. Rehabilitation includes repairs necessary to correct the results of deferred maintenance, the replacement of principal fixtures and components, improvements to increase the efficient use of energy, and installation of security devices.

**REPLACEMENT** means a strategy of abatement that entails the removal of building components that have surfaces coated with lead-based paint and the installation of new components free of lead-based paint.

**RESIDENTIAL PROPERTY** means a dwelling unit, common areas, building exterior surfaces, and any surrounding land, including outbuildings, fences and play equipment affixed to the land, belonging to an owner and available for use by residents, but not including land used for agricultural, commercial, industrial or other non-residential purposes, and not including paint on the pavement of parking lots, garages, or roadways.

**RISK ASSESSMENT** means: (1) An on-site investigation to determine the existence, nature, severity, and location of lead-based paint hazards; and (2) The provision of a report by the individual or firm conducting the risk assessment explaining the results of the investigation and options for reducing lead-based paint hazards.

**SOIL-LEAD HAZARD** means bare soil on residential property that contains lead equal to or exceeding levels promulgated by the U.S. Environmental Protection Agency pursuant to section 403 of the Toxic Substances Control Act.

**TENANT** means the individual named as the lessee in a lease, rental agreement or occupancy agreement for a dwelling unit.

**VISUAL ASSESSMENT** means a visual examination for, as applicable: (1) Deteriorated paint; (2) Visible surface dust, debris and residue found as part of an inspection pursuant to Section 90-55, a risk assessment or clearance examination; or (3) The completion or failure of a lead-based paint hazard reduction measure as part of a clearance examination.

**WET SANDING** or **WET SCRAPING** means a process of removing loose paint in which the painted surface to be sanded or scraped is kept wet to minimize the dispersal of paint chips and airborne dust.

**WINDOW TROUGH** means the area between the interior window sill (stool) and the storm window frame. If there is no storm window, the window trough is the area that receives both the upper and lower window sashes when they are both lowered.

WIPE SAMPLE means a sample collected by wiping a representative surface of known area, as determined by ASTM E1728, "Standard Practice for Field Collection of Settled Dust Samples Using Wipe Sampling Methods for Lead Determination by Atomic Spectrometry Techniques," or equivalent method, with an acceptable wipe material as defined in ASTM E 1792, "Standard Specification for Wipe Sampling Materials for Lead in Surface Dust."

WORKSITE means an interior or exterior area where lead-based paint hazard reduction activity takes place. There may be more than one worksite in a dwelling unit or at a residential property.

#### §90-53. Presumptions and obligations.

- A. For purposes of this article, all paint on the interior or exterior of any residential building for which a Certificate of Occupancy is required pursuant to Section 90-16 on which the original construction was completed prior to January 1, 1978 shall be presumed to be lead-based.
- B. For purposes of this article, all paint on the exterior of any non-residential structure on which the original construction was completed prior to January 1, 1978 shall be presumed to be lead-based.
- C. Any person seeking to rebut these presumptions shall establish through the means set forth in Section 90-56 that the paint on the building or structure in question is not lead-based paint.
- D. Residential buildings subject to the Certificate of Occupancy requirements of Section 90-16 shall be maintained free of lead-based paint hazards.

#### §90-54. Violations.

- A. Deteriorated paint violation.

The interior and exterior of any residential building for which a Certificate of Occupancy is required pursuant to Section 90-16, on which the original construction was completed prior to January 1, 1978, and the exterior of any non-residential structure on which the original construction was completed prior to January 1, 1978, shall be maintained in a condition such that the paint thereon does not become deteriorated paint, unless the deteriorated paint surfaces total no more than:

- (1) 20 square feet on exterior surfaces;
- (2) 2 square feet in any one interior room or space; or
- (3) 10 percent of the total surface area on an interior or exterior type of

component with a small surface area. Examples include windowsills, baseboards, and trim.

B. Bare soil violation.

Bare soil shall not be present within the dripline of any residential building for which a Certificate of Occupancy is required pursuant to Section 90-16 on which the original construction was completed prior to January 1, 1978.

C. Dust-lead hazard violation.

A dust-lead hazard shall be identified and cited in accordance with the procedures set forth in Section 90-55, Inspection for violations.

§90-55. Inspection for violations.

All inspections, including, but not limited to, inspections performed as part of an application for a Certificate of Occupancy pursuant to Section 90-16 of the City Code, a renewal of a Certificate of Occupancy, or based upon the filing of a complaint, shall include a visual assessment for deteriorated paint and bare soil violations. With respect to units located in the high risk area identified by the Mayor or the Mayor's designee, when the visual assessment identifies no deteriorated paint violation, wipe samples shall be obtained in accordance with the protocols established in 40 CFR §745.227(e)(8)(v)(B) to determine whether a dust-lead hazard exists. When a dust-lead hazard is identified, a lead-based paint hazard violation shall be cited, and a Certification of Clearance as described in §90-57 shall be required in order to remove such violation. The high risk area to be identified by the Mayor or the Mayor's designee shall, at a minimum, consist of those census block groups which cumulatively encompass an area in which no fewer than 90% of the units identified by the County Health Department for inspections in conjunction with its elevated blood-lead level inspections for the period of the preceding five years are located. Where the filing of a complaint leads to an inspection, the inspection shall include the unit which is the focus of the complaint and all common areas.

§90-56. Remedy for violations.

Following a visual assessment which results in the citation of a deteriorated paint violation, the violation may be removed only by one of the following methods:

- A. Certification by a lead-based paint inspector or risk assessor that the property has been determined through a lead-based paint inspection conducted in accordance with the federal regulations at 40 CFR §745.227(b) not to contain lead-based paint.
- B. Certification by a lead-based paint inspector or risk assessor that all cited violations of Section 90-54, Violations, have been abated, or interim controls

implemented, and clearance has been achieved in accordance with standards found at 40 CFR §745.227(e), regardless of whether abatement has been achieved or interim controls implemented, and provided however that the property has been inspected pursuant to those standards since the deteriorated paint or dust-lead hazard violation was last cited.

- C. Certification by the Rochester Housing Authority or other state or federal supervising agency which regulates an assisted housing program stating that the property is in compliance with the inspection and clearance requirements of the housing program or, with respect to federally assisted housing, the requirements of 24 CFR Part 35, provided, however, that with respect to the Federal Housing Choice Voucher program, the property has been inspected pursuant to those requirements since the deteriorated paint was last detected.
- D. Where only exterior deteriorated paint violations, including deteriorated paint violations on an open porch, and/or bare soil violations are cited, clearance may be established through a visual assessment by a City inspector after reduction measures have been implemented.

§90-57. Standards for clearance examination and report.

The remedy available through Section 90-56B shall require that a clearance examination be completed for a property upon which a deteriorated paint violation has been cited in accordance with the following requirements:

- A. Qualified personnel. Certification of clearance shall be issued by:
  - (1) A certified risk assessor; or
  - (2) A certified lead-based paint inspector.
- B. Required activities.
  - (1) A clearance examination shall include a visual assessment, dust sampling, submission of samples for analysis for lead, interpretation of sampling results, and preparation of a report. Examinations shall be performed in dwelling units, common areas and exterior areas in accordance with this section and the steps set forth at 40 CFR 745.227(e)(8) and (9).
  - (2) A visual assessment shall be performed to determine if deteriorated paint surfaces and/or visible amounts of dust, debris, paint chips or other residue are present. Both exterior and interior painted surfaces shall be examined for the presence of deteriorated paint. If deteriorated paint and visible dust, debris or residue are present in areas subject to dust sampling, they must be eliminated prior to the continuation of the clearance examination. If exterior painted surfaces have been disturbed

by the hazard reduction, maintenance or rehabilitation activity, the visual assessment shall include an inspection of the ground and any outdoor living areas close to the affected exterior painted surfaces. Visible dust or debris in such outdoor living areas shall be cleaned up and visible paint chips on the ground shall be removed.

- (3) Dust samples shall be wipe samples and shall be taken on floors, excluding open porches, and, where practicable, interior windowsills and window troughs. Dust samples shall be collected and analyzed in accordance with 40 CFR 745.227(f) and (g).

C. Report.

The clearance examiner shall ensure that an examination report is prepared that provides documentation of the examination.

- (1) The report shall include the following information:
  - (a) The address of the residential property and, if only part of a multi-family property is affected, the specific dwelling units and common areas affected.
  - (b) The date(s) of the examination;
  - (c) The name, address, and signature of each person performing the examination, including their EPA certification number;
  - (d) The results of the visual assessment for the presence of deteriorated paint and visible dust, debris, residue or paint chips;
  - (e) The results of the analysis of dust samples, in ug/sq.ft., by location of sample; and
  - (f) The name and address of each laboratory that conducted the analysis of the dust samples, including the identification number for each such laboratory recognized by EPA under section 405(b) of the Toxic Substances Control Act (15 U.S.C. 2685(b)).
- (2) When abatement is performed, the report shall be an abatement report in accordance with 40 CFR §745.227(e)(10).

D. Clearance standards.

Where a deteriorated paint or dust-lead hazard violation has been cited, the dust-lead standards in 40 CFR §745.65(b) shall be met before a Certificate of Occupancy may be issued or a violation removed.

- E. Requirement to avoid conflict of interest regarding clearance inspection.

All examinations shall be performed by persons or entities independent of those performing hazard reduction or maintenance activities.

- F. This Section shall not apply to the situations set forth in Section 90-56D.

§90-58. Lead-safe hazard reduction and control.

- A. No person shall disturb or remove lead-based paint, or in any other way generate excessive dust or debris during work on the interior or exterior of any existing building or structure except in accordance with the requirements of this Section and Sections 90-59 and 90-60. If a residential building is not owner occupied and is in the high risk area, then the owner or the owner's agent will be required to complete certified Lead Safe Work Practices training prior to conducting any lead paint reduction activity provided that such training is available to the public for free or at a nominal cost, and except that such training shall not be required with respect to paint hazards below the *de minimis* levels identified in Section 90-60, paragraph E.

- B. Exemptions.

This Section shall not apply to activities that disturb or remove paint where the activities are being performed on buildings on which construction was completed on or after January 1, 1978.

- C. Sign required when exterior lead-based paint (or presumed lead-based paint) is disturbed:

- (1) Not later than the commencement date of any lead-based paint hazard reduction work, the owner, or the contractor when the owner has entered into a contract with a contractor to perform such work on the exterior of a building or structure, shall post signs in a location or locations clearly visible to the adjacent properties stating the following:

LEAD-BASED PAINT HAZARD REDUCTION WORK IN PROGRESS

PUBLIC ACCESS TO  
WORK AREA  
PROHIBITED

POSTED IN ACCORDANCE WITH CHAPTER 90  
OF THE CITY OF ROCHESTER CODE

FOR FURTHER INFORMATION, PHONE -----

- (2) The sign required by this subsection shall be not less than 24 inches square and shall be in large boldface capital letters no less than one-half inch in size, and shall contain the notification in both English and Spanish. The sign required by this subsection shall remain in place until the lead-based paint hazard reduction work has been completed.
- (3) Where it is not possible to post signs in a conspicuous location or locations clearly visible to the adjacent properties, the owner, or where the owner has entered into a contract with a contractor to perform lead-based paint hazard reduction work, the contractor shall provide the notice in written form, such as a letter or memorandum, to the occupants of adjacent properties.

D. Notice to tenants.

Where lead-based paint hazard reduction work is to be performed on the interior or exterior of buildings occupied by one or more tenants, not less than three business days before any lead-based paint hazard reduction work is to commence, the owner shall provide the following information:

(1) Contents of notice.

Provide written notice to tenants of the building on which the work is being performed that lead-based paint hazard reduction work is being performed. This notice, which shall be in both English and Spanish, shall be in compliance with the EPA pre-renovation notification rules set forth in 40 CFR Part 745, Subpart E, shall be in the form of a sign, letter or memorandum, and shall prominently state the following:

Work is scheduled to be performed beginning \_\_\_\_\_ (date) on this property that may disturb or remove lead-based paint. The persons performing this work are required to follow federal and local laws regulating work with lead-based paint. You may obtain information regarding these laws, or report any suspected violations of these laws, by calling the City of Rochester at \_\_\_\_\_ (a number to be designated by the City). The owner of this property is also required to provide tenants with a copy of the lead hazard information pamphlet. Retaliatory action against tenants is prohibited by Section 90-63 of the Municipal Code.

- (2) The owner shall provide all tenants in the building with a copy of the lead hazard information pamphlet.

E. Notice by contractor.

Where lead-based paint hazard reduction work is being performed by a contractor on residential property, the contractor shall at least three business days prior to the commencement of such work, notify the property owner of potential lead hazards during the project by delivering to the owner a copy of the lead hazard information pamphlet.

F. Early commencement of work by owner.

A property owner may commence, or may authorize a contractor to commence, lead-based paint hazard reduction work less than three business days after providing notices required above when such work must be commenced immediately to correct an emergency condition, such as work necessitated by non-routine failures of equipment, that were not planned but result from a sudden, unexpected event that, if not immediately attended to, presents a safety or public health hazard, or threatens equipment and/or property with significant damage.

G. Early commencement of work requested by tenant.

Upon written request of a tenant, an owner may commence or authorize a contractor to commence, lead-based paint hazard reduction work on that tenant's unit less than three business days after providing notices required in subsection E above.

§90-59. Occupant protection and worksite preparation.

A. Occupant protection.

- (1) Occupants shall not be permitted to enter the worksite during hazard reduction activities (unless they are employed in the conduct of these activities at the worksite) until after hazard reduction work has been completed and clearance has been achieved.
- (2) Occupants shall be temporarily relocated during hazard reduction activities and until a clearance examination has been successfully completed on the occupant's unit, and occupants who relocate to a unit not owned by their landlord shall not be liable for rent accruing during that time, except relocation shall not be necessary if:
  - (a) Treatment will not disturb lead-based paint, dust-lead hazards or soil-lead hazards;
  - (b) Only the exterior of the dwelling unit is treated, and windows, doors, ventilation intakes and other openings in or near the worksite are sealed during hazard control work and cleaned afterward, and entry free of dust-lead hazards, soil-lead hazards and debris is provided;

- (c) Treatment of the interior will be completed within one period of 8-daytime hours, the worksite is contained so as to prevent the release of leaded dust and debris into other areas, and treatment does not create other safety, health or environmental hazards (e.g., exposed live electrical wiring, release of toxic fumes, or on-site disposal of hazardous waste); or
  - (d) Treatment of the interior will be completed within 15 calendar days, the worksite is contained so as to prevent the release of leaded dust and debris into other areas, treatment does not create other safety, health or environmental hazards; and, at the end of work on each day, the worksite and the area within at least 10 feet of the containment area is cleaned to remove any visible dust or debris, and occupants have safe daily access to sleeping areas, and bathroom and kitchen facilities.
- (3) The dwelling unit and the worksite shall be secured against unauthorized entry, and occupants' belongings protected from contamination by dust-lead hazards and debris during hazard reduction activities. Occupants' belongings in the containment area shall be relocated to a safe and secure area outside the containment area, or covered with an impermeable covering with all seams and edges taped or otherwise sealed.
  - (4) In addition to protections afforded elsewhere by law, if interior hazard reduction activities will not be or are not completed within sixty calendar days, occupants shall have the right to terminate their lease and shall have no further obligation to pay rent under that rental agreement, provided, however, that this subsection shall not relieve the occupant of the obligation to pay any previously accrued rent for which he or she is otherwise liable.

B. Worksite preparation.

- (1) The worksite shall be prepared, including the placement of containment barriers, to prevent the release of leaded dust, and contain lead-based paint chips and other debris from hazard reduction activities within the worksite until they can be safely removed. Practices that minimize the spread of leaded dust, paint chips, soil and debris shall be used during worksite preparation.
- (2) A warning sign shall be posted at each entry to a room where hazard reduction activities are conducted when occupants are present; or at each main and secondary entryway to a building from which occupants have been relocated. Each warning sign shall be as described in 29 CFR §1926.62(m), except that it shall be posted irrespective of employees' lead

exposure and, to the extent practicable, provided in the occupants' primary language.

§90-60. Safe work practices.

- A. Lead-based paint shall not be applied to any exterior or interior surface.
- B. Prohibited methods.

The following methods of paint removal shall not be used:

- (1) Open flame burning or torching.
- (2) Machine sanding or grinding without a high-efficiency particulate air (HEPA) local exhaust control.
- (3) Abrasive blasting or sandblasting without HEPA local exhaust control.
- (4) Heat guns operating above 1100 degrees Fahrenheit or charring the paint.
- (5) Dry sanding or dry scraping, except dry scraping in conjunction with heat guns or within 1.0 foot of electrical outlets, or when treating defective paint spots totaling no more than 2 square feet in any one interior room or space, or totaling no more than 20 square feet on exterior surfaces.
- (6) Paint stripping in a poorly ventilated space using a volatile stripper that is a hazardous substance in accordance with regulations of the Consumer Product Safety Commission at 16 CFR §1500.3, and/or a hazardous chemical in accordance with the Occupational Safety and Health Administration regulations at 29 CFR §§1910.1200 or 1926.59, as applicable to the work.

- C. Worksite preparation.

The worksite shall be prepared in accordance with Section 90-59B.

- D. Specialized cleaning.

After hazard reduction activities have been completed, the worksite shall be cleaned using cleaning methods, products and devices that are successful in cleaning up dust-lead hazards, such as a HEPA vacuum or other method of equivalent efficacy, and lead-specific detergents or equivalent.

- E. *De minimis* levels.

Safe work practices are not required when maintenance or hazard reduction

activities do not disturb painted surfaces that total more than:

- (1) 20 square feet on exterior surfaces;
- (2) 2 square feet in any one interior room or space; or
- (3) 10 percent of the total surface area on an interior or exterior type of component with a small surface area. Examples include windowsills, baseboards, and trim.

§90-61. Emergency actions, weather conditions.

- A. For emergency actions necessary to safeguard against imminent or immediate danger to human life, health or safety, or to protect property from further structural damage, including demolitions ordered pursuant to Sections 47A-16B & C of the Municipal Code, occupants shall be protected from exposure to lead in dust and debris generated by such emergency actions to the extent practicable. This exemption does not apply to any work undertaken subsequent to, or above and beyond such emergency actions, other than the demolitions noted above.
- B. Performance of lead-based paint hazard reduction or lead-based paint abatement on an exterior painted surface as required under this Article may be delayed for a reasonable time during a period when weather conditions render impossible the completion of conventional construction activities, provided however, that this limitation shall continue only for the period in which work cannot be performed in the work safe manner as provided for herein.

§90-62. Exemptions.

- A. This Article shall not apply to properties taken by a governmental entity in a foreclosure proceeding which are vacant and secured and: (1) scheduled for demolition, or (2) scheduled for sale within twelve months.
- B. The requirements of this Article which are applicable to residential buildings for which a Certificate of Occupancy is required pursuant to Section 90-16 shall not include single-family owner-occupied dwellings for which a Certificate of Occupancy may be required.

§90-63. Prohibition of retaliatory action.

- A. It is unlawful for an owner, or any person acting on his or her behalf, to take any retaliatory action toward a tenant who reports a suspected lead-based paint hazard to the owner or to the City. Retaliatory actions include but are not limited to any actions that materially alter the terms of the tenancy (including rent

increases and non-renewals) or interfere with the occupants' use of the property.

- B. There shall be a rebuttable presumption that any attempt by the owner to raise rents, curtail services, refuse to renew or attempt to evict a tenant within six months after any report to the City or the owner or any enforcement action in connection with a suspected lead hazard is a retaliatory action in violation of this section, except that in instances of nonpayment of rent or commission of waste upon the premises by the tenant no such presumption shall apply. After six months from the date of the reporting of a suspected lead hazard, or the most recent activity related to any enforcement action, the defense of retaliatory eviction shall remain available to the tenant, but without the benefit of the presumption created by this section.
- C. The provisions of this section shall not be given effect in any case in which it is established that the condition from which the complaint or action arose was caused by the tenant, a member of the tenant's household, or a guest of the tenant. Nor shall it apply in a case where a tenancy was terminated pursuant to the terms of a lease as a result of a bona fide transfer of ownership.

#### §90-64. Notification to County of violations.

The City shall continue to send notices to the County of Monroe listing any health and safety violations found in properties inspected by the City. Any violation of Section 90-54 shall be included on that list.

#### §90-65. Database for properties.

- A. The City shall maintain a database, accessible to the public, of all residential properties where lead hazards have been identified, reduced and controlled with funds received by the City from the United States Department of Housing and Urban Development which require that such a database be maintained. The City shall further maintain a database of all residential properties granted a Certificate of Occupancy after the effective date of this ordinance.
- B. The databases created pursuant to this section shall be kept available for "walk-in" inspection by the public. No person requesting access shall be required to complete a Freedom of Information request in order to view this database.

**AN EVALUATION OF THE  
CITY OF ROCHESTER'S  
LEAD LAW  
YEAR ONE REPORT**

**DECEMBER 2007**

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# AN EVALUATION OF THE CITY OF ROCHESTER'S LEAD LAW YEAR ONE REPORT

December 2007

## SUMMARY

Children with lead poisoning face decreased IQ levels and a higher likelihood of learning disabilities, behavioral problems, juvenile delinquency and high school dropout rate. More than 400 tested children (5.6% of those tested) under age 6 in the City of Rochester between July 2006 and June 2007 had elevated blood lead levels (EBL), as compared with a national rate of 1.6% (CDC, 2005). The City of Rochester adopted a local “Lead Based Paint Poisoning Prevention” law, which took effect July 1, 2006, and requires inspections for lead paint hazards as part of the City’s existing housing inspection process.

The main objectives of this evaluation of the new ordinance are to ensure that (1) City Council is well informed of the law’s impact; (2) the number of children with lead poisoning is monitored in anticipation that it will continue to drop, and to look for any unintended consequences; and (3) any consequences for the city housing stock and property owners, including barriers to compliance among the property owners directly affected by the ordinance, are identified. The study included four primary components: analysis of the City’s inspection data, analysis of the County’s blood lead test data and environmental inspections of properties associated with children with elevated blood lead levels, analysis of selected housing data, and a survey of landlords who experienced an inspection during the first year of the ordinance.

## Findings

Some highlights of the study’s year one findings include the following:

- ❖ The City's year one report indicates that 10,548 properties were inspected, including a total of 16,449 total units (some properties contain multiple units).
- ❖ Ninety-four percent of inspected units passed the interior visual inspection, meaning they did not have any visible deteriorated paint on the interior surfaces.
- ❖ Nearly one-quarter of all inspected units (3,850) that passed the visual inspection were located in a high risk area (City NET area B or F) and therefore were referred for a dust wipe test under the ordinance.
- ❖ Eighty-five percent of units undergoing a wipe test passed, higher than expected compared to national data.
- ❖ Were it not for the dust wipe provisions of the ordinance, 430 units that failed the dust wipe test would not have been identified to have lead hazards in year one.
- ❖ The interiors of 506 homes in the City of Rochester were made lead safe as a direct result of the inspection and testing process under the ordinance in year one.
- ❖ Summing the homes made safe already, as well as those cited for interior lead hazards that will presumably be made safe soon, a total of 1,388 housing units, 8.4% of those inspected in year one, will be made lead-safe as a result of the ordinance.
- ❖ The number of children with elevated blood lead levels has dropped from 604 (8.3% of tested children) in the 2004-2005 year to 403 (5.6%) during year one of the ordinance, part of an ongoing trend downward in children with elevated blood levels countywide.
- ❖ Children with EBLs were more likely to live in a rental property than in an owner-occupied property, including 82% of children with EBLs in 2006-2007 compared to 60% of children without EBLs in that year.
- ❖ Of the county's positive environmental investigation properties (properties potentially associated with a child's EBL) from the year 2004-2005, 13 (11%) were found by the City to have lead violations during the first year of the ordinance—two years later, underscoring the importance of periodic inspection for lead hazards, and ongoing maintenance.

***Blood Lead Test  
Results***

***Positive  
Environmental  
Investigation  
Properties***

- ❖ The proportion of positive environmental investigation properties that were rentals ranged from 71% to 84% between July 2004 and June 2007—indicating that positive properties are more likely to be rentals than owner-occupied.

### *Housing Issues*

- ❖ Only two families and four individuals required emergency DHS housing placement due to lead paint hazards in the year prior to the ordinance, and no families and three individuals required this service due to lead paint hazards in the first year of the ordinance. Further, length of stay in emergency housing did not increase.
- ❖ The total number of vacant homes in the city dropped by 2% between July 2006 and July 2007. The number of privately owned vacant homes, however, increased by 7%, or by 147. It will be important to continue to follow this trend.

### *Landlord Survey*

- ❖ Twelve percent of respondents said they were cited for lead hazards, while a review of the City's inspection database shows that actually 29% were cited—indicating confusion over what constitutes a violation.
- ❖ One-third of all respondents said they did not spend any money on repairs in preparing for or responding to an inspection, while about one-third (37%) spent between \$1 and \$1,000, and the remaining 30% spent more than \$1,000.
- ❖ Forty-four percent of respondents spending money on repairs replaced windows, with nearly half (48%) of those respondents replacing 10 or more windows. Seventy-seven percent of respondents spending money on repairs said they repaired or painted windows.
- ❖ Seventy-two percent of respondents spending money on repairs said they painted or repaired trim, 41% repaired or replaced porches, and 19% replaced exterior siding.
- ❖ Fifty-eight percent of respondents conducting repairs stated they did the lead hazard control work themselves.
- ❖ Seventy-two percent of respondents with repairs indicated that the person who completed the work had received lead safe work practices training (required by law if repairs conducted after the inspection, but not required if repairs conducted before).

- ❖ Eight percent of those with repairs used a grant to help finance the costs. One in three respondents stated they will cover increased costs by not making other improvements, 23% say they will sell the property, and 17% say they will increase the rent.
- ❖ Nearly one-third of respondents stated that they hope to sell the property in the next two years. Among them, the most prevalent reason given was the ‘ordinance’ or ‘city policy.’ Many said they will sell because of ‘bad tenants.’
- ❖ Survey respondents were asked about their position on the law when enacted, and at the time of the survey. The proportion who were favorable increased from 41% to 46%.

## Recommendations

The research team has a number of recommendations in response to analysis of evaluation data from the city inspections, county blood lead tests and positive investigations, housing data, and the landlord survey.

### *Landlord Issues*

- ❖ With such a high proportion of property owners doing their own lead repair work, the city and county should ensure that sufficient training is available for them to learn to do the repairs safely.
- ❖ More than one quarter of those doing the work may not have received training—this is another reason to be sure training is available and that landlords are made aware of it.
- ❖ Since cost data from the landlord survey suggests a wide range of lead safety measures being used, and because interim controls are not long-term fixes, training and education regarding ongoing maintenance is critical.
- ❖ Increase education programs regarding the availability from the city of \$100 grants to help cover the cost of dust wipe tests when private clearance must be achieved. A flyer with the grant information is currently included with the Notice and Order that notifies the owner of the need for a dust wipe test, but perhaps additional notification could occur.

### *Policy*

- ❖ The City’s expansion of dust wipe tests in year two of the ordinance is likely to improve the impact of the law, given

that 15% of dust wipes result in identification of a lead hazard that would otherwise have gone undetected.

- ❖ Given that a number of property owners delay scheduling dust wipe tests, and some with failed dust wipes are taking longer than expected to achieve clearance, the City should take advantage of its newly granted enforcement opportunity under an amendment to the lead paint ordinance passed by City Council in September 2007 that allows the City to cite owners with a lead violation if they do not complete dust wipe tests within 60 days.
- ❖ With so many landlords asking for financial relief to help with repair costs, we recommend that additional grant programs or tax credits be established for high-cost, effective repairs, such as window replacement. Further, access to existing grant programs should be facilitated.
- ❖ There is clearly an ongoing need for education of both property owners and residents. Local resources for outreach and education should be coordinated to make sure these messages are being delivered clearly, consistently, and effectively.
- ❖ Given the lower than expected rates of lead hazard identification on both visual survey and dust wipe testing, we recommend that a risk assessment be conducted in a random sample of properties that passed city inspection to determine effectiveness of the visual survey and dust wipe test protocol. The assessment should occur as soon as possible following the inspection to reduce the chance of new surface disturbances.
- ❖ Develop and implement a “Rochester module” to be incorporated in lead safe work practices trainings that explains requirements under the lead law, describes resources available to property owners, and encourages use of standard treatments.
- ❖ We recommend that the MCDPH begin coding children’s blood lead level tests by city versus suburbs to allow internal ongoing tracking of trends by this geographic

### *Operating Issues*

distinction, particularly with the City ordinance now in place. Tracking test results by tenure (rental/owner) status could be of use as well. This information would also be of interest to the City School District.

- ❖ We recommend the City consider altering its database to allow for easier monitoring of lead ordinance outcomes, such as dust wipe test lead level results, and dates of inspection and follow-up. The City has some information and data available only in paper format, such as landlord phone numbers and the reasons for housing vacate orders, that could be entered electronically when collected.

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## ACKNOWLEDGMENTS

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## Project Staff Team

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## INTRODUCTION

Children with lead poisoning face decreased IQ levels and a higher likelihood of learning disabilities, behavioral problems, juvenile delinquency and high school dropout rate (Meyer et al., 2003). These outcomes translate into higher costs for special education, health care, and juvenile justice systems, as well as lost wage-earning potential. (Grosse et al., 2002; Landrigan, 2002; Korfmacher, 2003). In July 2006 the City of Rochester's "Lead-Based Paint Poisoning Prevention" law (Municipal Code of the City of Rochester Ordinance 2006-37) went into effect. Rochester's ordinance is being carefully watched by other cities nationwide, as it is considered a breakthrough in legislative approaches to dealing with a significant health and housing problem in the nation's oldest cities (Korfmacher, 2006).

Four percent of all tested children under age 6 in Monroe County in the year 2006, and 5.6% of all children under 6 in the City of Rochester between July 2006 and June 2007 had elevated blood lead levels (EBL) of 10 ug/dL or higher, the Centers for Disease Control and Prevention's "level of concern," as compared with a national rate of 1.6% (CDC, 2005). This represented nearly 600 children countywide, most of whom lived in the City of Rochester. The number of children with lead poisoning has declined in recent years, but still hundreds of children in our community are newly poisoned each year, with devastating impacts on their health, behavior, and ability to learn.

The majority of this lead poisoning burden is attributed to lead in paint, dust, and soil. The distribution of lead poisoning in Rochester closely mirrors the location of high-risk housing—in general, low-value, rental housing built before 1950 (CGR, 2002). Thus, lead poisoning is a health problem with, in large part, a housing cause.

Recognizing that a housing solution was necessary to prevent lead poisoning, the City of Rochester's new law requires inspections for lead paint hazards as part of the City's existing housing inspection

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process, including Certificate of Occupancy (C of O) inspections. It applies to most of the rental properties in the City of Rochester that were constructed prior to 1978. The Year One Implementation Plan encompasses 31 of the 39 census tracts identified as having concentrated numbers of children with EBLs in the city (City of Rochester, 2006).

The main objectives of this evaluation of the new ordinance are to ensure that (1) City Council is well informed of the law's impact; (2) the number of children with lead poisoning is monitored in anticipation that it will continue to drop, and to look for any unintended consequences; and (3) any consequences for the city housing stock and property owners, including barriers to compliance among the property owners directly affected by the ordinance, are identified.

### **Description of the City of Rochester Lead Ordinance**

Under the new ordinance, inspectors visually inspect properties for deteriorated paint or bare soil. These inspections occur at the time of a City housing inspection triggered by a new or renewal C of O, a County Department of Human Services Quality Housing Inspection (QHI), a Neighborhood Empowerment Team (NET) survey, or a tenant or neighborhood group complaint. Housing units are exempt if (1) they are already required to be safe from lead paint hazards under federal law, or (2) an EPA-certified risk assessor deems the unit has no lead-based paint. A copy of the ordinance can be found in Appendix A.

All deteriorated paint in pre-1978 housing is assumed to contain lead, unless additional testing at the owner's expense proves otherwise. Deteriorated paint must be fixed using defined lead-safe work practices.

Properties in "high risk" NET areas that pass the visual inspection also undergo a dust wipe test, designed to find lead paint hazards unseen by the naked eye. A dust wipe test is also required to "clear" units in which lead hazard repairs have been completed. Although these procedures are informed by extensive local and national research as well as federal agencies' protocols, incorporation of these features into a local housing law is unique in the U.S. Therefore, it is essential to evaluate whether or not this policy is having the expected impacts on children's health.

## Advisory Committee

The project team established an advisory committee to provide input over the course of the project. A list of members can be found in Appendix B. The committee met in May 2007 to review study objectives, study design, and the landlord survey design. The committee met again in October 2007 to discuss year one results prior to issuance of this report, and the committee will meet again in September 2008 to discuss year two findings.

## YEAR ONE FINDINGS

This report presents findings from four key components of year one of the evaluation: 1) City inspection data analysis, 2) County blood lead data and environmental investigations, 3) housing issues, and 4) a landlord survey. Year one of the ordinance is defined as July 1, 2006 to June 30, 2007.

### City Inspection Data Analysis

The table below summarizes the units inspected in the first year. The City's year one report indicates that 10,548 properties were inspected, including a total of 16,449 total units (some properties contain multiple units) (Table 1).

Of the units inspected in year one, half were conducted under a C of O process, 34% were conducted under the QHI process, 9% were due to a complaint (from a tenant or other person), and the remaining 7% were due to some other reason.

Overall, 94% of inspected units passed the visual interior inspection, meaning they did not have any visible deteriorated

**Table 1: Units Inspected in Year One, By Case Type:  
Visual Inspection Outcome**

	Case Type									
	C of O		Quality Housing Inspections		Tenant Complaint		Other		TOTAL	
	#	%	#	%	#	%	#	%	#	%
Total Units Inspected	8,264	100%	5,537	100%	1,481	100%	1,167	100%	16,449	100%
Failed Visual: Deteriorated Paint Violations Found	609	7%	152	3%	160	11%	37	3%	958	6%
Passed Visual	7,655	93%	5,385	97%	1,321	89%	1,130	97%	15,491	94%
High Risk Area (B & F), Referred for Dust Wipe	1,554	19%	1,860	34%	195	13%	241	21%	3,850	23%

Source: CGR Calculations based on City of Rochester Year One Report.

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paint on the interior surfaces of the property. Prior to passage of the lead law, a community-based direct action project called “Get the Lead Out” hired an EPA certified risk assessor to look for lead hazards in 67 homes of young children in Northwest Rochester (O’Fallon, 2004). Sixty-five (97%) of these homes had visibly deteriorated lead based paint, on the interior or exterior of the property. Although these inspections were different in that they include interior *or* exterior deteriorated paint, they were conducted in some of the highest lead risk homes in Rochester, and landlords did not have advance notice of the inspections, it is nonetheless surprising that the citywide rate of passing visual inspections was 94% (Korfmacher, 2005).

The pass/fail rate varied somewhat among the different case types, though failure rates were no higher than 11% among any group. For example, 11% of inspections generated by tenant complaint resulted in a failed visual inspection, compared to 7% under C of O, and 3% under QHI. Owners of units that fail the visual inspection must contract for clearance testing services.

Among the 958 units that failed the interior visual inspection at some point during year one, 255 had cleared the violations by the end of year one (27%). It must be noted that some of these visual fails occurred near the end of year one, and therefore have simply not had time yet to make the repairs.

Nearly one-quarter of all inspected units (3,850) were located in a high risk area, NET area B or F, and although they passed the visual inspection, they were referred for a dust wipe test under the ordinance. Of those, 2,850 (74%) had received a lead dust wipe test by the end of year one. The remaining 1,000 were either scheduled but not yet completed, were vacant units that had not been scheduled, or had owners or tenants who were non-compliant with the process. The City is looking into options to increase enforcement for those who do not comply with the dust wipe test in a timely manner.

Units referred for a wipe test may or may not pass on a first attempt. If they do not pass on the first try, and either (1) more than 50% of wipes are positive or (2) any one wipe has a lead level greater than twice the EPA accepted standard, then they are immediately given a lead dust hazard violation. If the initial dust

wipe does not pass but the lead levels are below the above thresholds, the property owner may schedule a second dust wipe test, preferably within one week for the areas that failed. In year one, eighty-five percent of total units undergoing a wipe test passed on either the first or second try (11% were granted a second test) (Table 2). The City of

Rochester database does not collect the actual lead levels found in the dust wipe tests.

**Table 2: Lead Dust Wipe Test Results, Vacant and Occupied Units**

	<u>Total</u>	<u>Vacant</u>	<u>Occupied</u>
Lead Dust Wipe Test	2,850	1,326	1,524
2nd Test	323	156	167
Passed	2,420	1,103	1,317
% passed	85%	83%	86%
Failed	430	223	207
% failed	15%	17%	14%

*Source: City of Rochester Year One Report.*

The rate of passing dust wipes in homes with no visual hazards is surprisingly high in Rochester. A nationally representative sample of 831 housing units evaluated for lead hazards under the National Survey of Lead and Allergens in Housing found that 33% of the homes with interior lead-

based paint in good condition had interior dust hazards (Jacobs, 2002). Given that not all of the Rochester homes tested for dust hazards were known to have lead-based paint, we might expect a slightly lower failure rate; however, finding that only 15% had lead hazards suggests that either Rochester houses are in fact less likely to have dust hazards when leaded paint is intact or that the City's dust wipe inspection protocol is less effective in finding lead hazards than that used in the National Survey. In year two the research team will ask the City for data on dust wipe test results by case type. Those inspections done as a result of a complaint would be a more accurate comparison to the national data described here, since in complaint cases the landlord does not typically have advance notice of the inspection; rather, the inspector is often allowed in the house by the tenant making the complaint. In this case, the landlord therefore does not have the opportunity to make necessary repairs and take other actions to reduce lead hazards.

Dust wipe test passing rates in Rochester were slightly higher among occupied units compared to vacant units. Owners of units that fail the dust wipe test are cited for a lead dust hazard and must eliminate the hazard and contract for clearance testing services. Among the 430 units that failed the dust wipe test, 251 had received clearance for the violation by the end of year one (58%). Although this represents a small percentage of units tested,

it is important that even in the first year, were it not for the dust wipe provisions of the ordinance, these 430 units would not have been identified to have lead hazards.

Summing the 255 units that cleared the interior deteriorated paint violations and the 251 that cleared after testing for lead dust, a total of 506 living units in the City of Rochester had lead-safe interiors as a direct result of the inspection and testing process under the ordinance in year one. If one includes the other units cited and expected to be made lead safe through the implementation and enforcement processes, this total is 430 plus 958, or 1,388 total units, 8.4% of the units inspected.

Exterior inspections apply to an entire building or structure, rather than to individual units. Of the 10,548 properties inspected in year one, 1,960, or 19% were found to have exterior deteriorated

paint or bare soil upon visual inspection. By the end of year one, 730 (37%) of these had been cleared by the City, while the remaining 1,230 had not yet been cleared.

**Table 3: Time From Citation to Clearance, In Days, Among Those Cleared By June 30, 2007**

	Violations Cleared	%
Total Violations	1,698	100%
<=30 days	412	24%
31 to 60 days	358	21%
61 to 90 days	196	12%
91 to 120 days	171	10%
121 to 180 days	209	12%
181 or more	352	21%

Source: CGR analysis of City of Rochester Violation data.

Some units described above had multiple violations with interior and/or exterior causes. Among the 506 units described above that were cleared for lead-safe interiors, and the 730 properties that cleared exterior violations, the city's violation database indicates that a total of nearly 1,700 actual lead *violations* were cleared during year one.

Among those that were cleared, one quarter were cleared within a month of the citation, and over half (57%) were cleared within three months, as shown in Table 3.

## Blood Lead Data

A key contribution of this evaluation project is to link the City's housing inspection data with the County's data on EBLs. The project team partnered with the MCDPH to conduct an analysis of new lead poisoning cases and identify links to housing units that have been inspected by the City.

The MCDPH provided CGR and NCHH with data for three years: July 1, 2004-June 30, 2005; July 1, 2005-June 30, 2006; and July 1, 2006-June 30, 2007 for all finger-stick and venous blood

lead tests of children under six with a zip code wholly or partly in the City of Rochester. CGR geo-coded the addresses and assigned each test result a ‘city’ or ‘suburban’ status. A small number of observations were left out because they had no address, or only a PO box (less than 10 observations in each year had addresses that could not be matched).

NCHH then identified a single test result for each child in the database. Venous test results were given preference over finger-sticks when available.

Table 4 shows that the number of children with elevated blood lead levels has dropped from 604 in the 2004-2005 year to 403 during year one of the ordinance, part of an ongoing downward

**Table 4: Blood Lead Results, City of Rochester,  
July 2004 - June 2007**

	Children Screened	Children $\geq$ 10 ug/dL	% of Children $\geq$ 10 ug/dL
July 2004-June 2005	7,256	604	8.3%
July 2005-June 2006	7,420	490	6.6%
July 2006-June 2007	7,146	403	5.6%

*Source: NCHH and CGR analysis of MCHD blood lead data tests.*

trend in children with elevated blood levels countywide.

About three-quarters of children with elevated blood lead levels over the last three years had levels between 10 and 14 ug/dL (Table 5). However about 10% each year had levels over 20 ug/dL, considered a seriously dangerous level. This included between 38 and 56 children in each of the last three years.

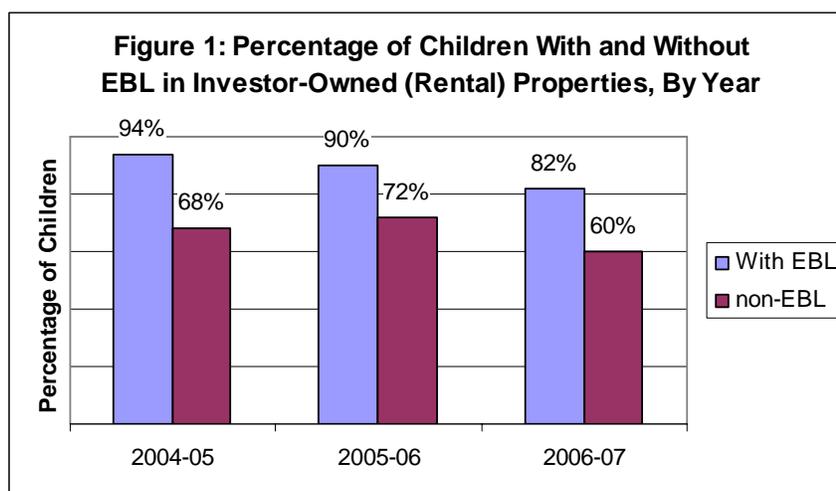
**Table 5: Elevated Blood Lead Results, City of Rochester  
July 2004 - June 2007**

	July 2004-June 2005		July 2005-June 2006		July 2006-June 2007	
	#	%	#	%	#	%
Total Children	604	100%	490	100%	403	100%
10-14 ug/dL	451	75%	371	76%	288	71%
15-19 ug/dL	97	16%	71	14%	77	19%
20+ ug/dL	56	9%	48	10%	38	9%
Mean ug/dL	13.7		13.7		13.6	
Max ug/dL	52		51		43	

*Source: NCHH and CGR analysis of MCHD blood lead data tests.*

Of the 403 children with elevated blood lead levels in 2006-2007 in the City of Rochester, 110 had as a home address a property that was inspected under year one of the lead ordinance (27%). One third of those, 37 properties, were found to have lead violations—15 had interior violations, 18 had exterior violations, and 4 had both. Further investigation would be required to examine the timing of the City inspections and the date of diagnosis of EBL for the 37 children in this group. In addition, the source of lead poisoning for a child is not necessarily the home address, particularly if the family has moved recently or if the child spends a substantial amount of time at another address.

To examine the relationship of owner/renter status (tenure) and blood lead levels, CGR took a random sample of 50 children with EBLs and 50 children without EBLs from each of the three years of data analysis (300 total). CGR then looked up each of the 300 addresses on the City's online property information database to determine whether the property was owner-occupied or a rental as



of September 2007.

Figure 1 shows that for all three years, children with EBLs were more likely to live in a rental property than in an owner-occupied property, including 82% of children with EBLs in 2006-2007 compared to 60% of children without EBLs in that year (chi-square test statistically significant,  $p < .05$ ).

### *Children with EBL by NET area*

During the last three years children with EBLs have been concentrated in NET areas B, C, and particularly F (Table 6). While the proportion of children with EBLs in sector F has declined somewhat over the last three years, nearly one-third of children with EBLs live in this neighborhood, which is composed of planning sectors 9 and 10, directly north of downtown.

**Table 6: Children With Elevated Blood Lead Levels (10 ug/dL +) by NET Sector and Year**

	<u>2004-2005</u>		<u>2005-2006</u>		<u>2006-2007</u>	
	<u>Children</u>	<u>%</u>	<u>Children</u>	<u>%</u>	<u>Children</u>	<u>%</u>
Total	597	100%	480	100%	399	100%
A	43	7%	45	9%	38	10%
B	122	20%	82	17%	76	19%
C	96	16%	96	20%	89	22%
D	28	5%	34	7%	17	4%
E	94	16%	58	12%	60	15%
F	214	36%	165	34%	119	30%

Examination of these data shows that the selection by the City of NET areas B and F for the initial rollout of the dust wipe component was wise, though the most current data show that F and C are now the two sectors with the most children with EBLs. Copies of the NET area and Planning Sector maps have been

included in Appendix C. For year two of the ordinance the City has added approximately half of NET areas C and E to the dust wipe protocol, and added high-risk portions of NET areas A and D starting October 1, 2007 as a result of anticipated additional NYSDOH grant funding. These additions will continue to target resources to the neighborhood where children appear to be most at risk of lead poisoning.

### **County Positive Inspections**

When a child in Monroe County is found to have a confirmed (venous) blood lead level of 15 ug/dL or higher, the County conducts an environmental investigation of the child's home, as well as any other address where the child spends significant amounts of time, such as another relative's home or a day care provider's home, as it is nearly impossible to definitively link a particular source of lead with the child's elevated level. The inspector uses an x-ray fluorescence (XRF) Lead Paint Analyzer to determine first whether paint in the home is leaded, and visually note whether the paint is intact. If there is no lead found through the XRF test, or if lead is found but the paint is intact, the house is considered lead-safe and not a source of the lead poisoning. However if lead is found with the XRF and the paint is not intact, the property is considered a "positive property" for a lead hazard. The County presents the owner with a "Notice and Demand to Abate Lead Poisoning Condition" and also notifies the City. The

City then presents a Notice and Order of its own, but the County remains the priority agency until the matter is resolved.

The MCDPH provided CGR with a list of properties that tested positive for a lead hazard as a result of an environmental investigation over the two year period prior to the ordinance, and for the one year period following the start of the ordinance. CGR compared this list to properties inspected by the City in the first year of the ordinance.

### *Coordination of City and County Inspections*

As shown in Table 7, between 89 and 132 housing units were found to be “positive properties” each year. About one-third of those units were inspected by the City during the first year of the lead ordinance. Of the positive properties from the year 2004-2005, 13 (11%) were found to have lead violations during the first year of the ordinance—two years later. Properties found to have lead hazards in 2004-2005 were presumably corrected and made lead-safe at the time. Nonetheless, two years later they were found to have hazards once again—nine had interior violations and seven had exterior violations. This underscores the importance of periodic inspection for lead hazards. Since much lead work undertaken involves repairing and maintaining deteriorated paint, rather than removal of lead paint, over time deterioration or surface damage can cause an interior or exterior surface to become hazardous once again, if not properly maintained.

**Table 7: MCHD "Positive Properties" in City of Rochester, and Outcome of Subsequent City Inspection Under Ordinance Year One**

	Pre-Ordinance				Ordinance, Year One	
	<u>July 2004- June 2005</u>		<u>July 2005- June 2006</u>		<u>July 2006- June 2007</u>	
	<u>Properties</u>	<u>%</u>	<u>Properties</u>	<u>%</u>	<u>Properties</u>	<u>%</u>
County "Positive Properties" located in City of Rochester	114	100%	89	100%	132	100%
Inspected in Year One of City Ordinance (7/06 to 6/07)	38	33%	29	33%	41	31%
Lead Violations Found	13	11%	1	1%	12*	9%
Interior Violations Only	5	4%	1	1%	6	5%
Exterior Violations Only	5	4%	0	0%	4	3%
Interior & Exterior Violations	3	3%	0	0%	2	2%

Source: CGR analysis of Monroe County Health Department data and City of Rochester Inspection data.

\*In five cases, the city inspection was conducted prior to the county 'positive property' investigation.

Among the 132 positive properties found during the 2006-2007 year, 41 were also inspected by the city under the ordinance, and 12 were found to have lead violations. In five of the 12 cases the city's inspection was conducted prior to the county's inspection, while in the remaining seven cases the city's inspection was conducted after the county's. Among the latter seven, in four cases the city inspection occurred because of a "referral," likely from the county, and in two cases it was due to a C of O. The last case is still open under a County investigation.

In 29 cases in 2006-2007 the City did *not* find a lead violation, and the county *did* find lead hazards during the same 2006-2007 time period. Of those, in 10 cases the City's inspection preceded the County's. This raises the question of why the City did not find a lead hazard, when the county subsequently found lead hazards. The answer could be that the county found a dust hazard in a property where the City earlier found intact paint, in a neighborhood where dust wipes are not required. Or it could be that surfaces were disturbed by damage between the inspections, which in fact happened in at least some of these cases, according to a city representative. Another possibility is that city inspectors mistakenly overlooked lead hazards. Although this is a small absolute number, it is of concern that these account for nearly 8% (10/132) of the positive properties associated with an EBL child.

### *Positive Properties by Owner/Renter Status*

Census data show that 60% of occupied housing units in the City of Rochester were rented in 2000, and that proportion decreased slightly to 56% by 2006 (Census Bureau, 2000; American Community Survey, 2006). An examination of the renter/owner status of "positive properties" over the last three years shows a different distribution. The proportion of positive properties occupied by a renter, or "investor-owned" ranged from 71% to 84% between July 2004 and June 2007 as shown in Table 8. While the owner/investor status is as of September 2007, and could have changed during the three year period, it is still apparent that positive properties are disproportionately rentals. Since occupant care of a property plays a role in the prevalence of lead hazards, this finding could be due to a lack of tenant care of properties (e.g., causing damage to treated surfaces), or it could be due to a lack of property care by the investor-owner, or lack of funds on the part of the investor-owner to replace windows, porches, and

other hazardous surfaces. Whatever the reason, the disproportionate results again underscore the importance of the ordinance in ensuring regular inspection of rental properties through the C of O and other processes.

**Table 8: MCDPH "Positive Properties" in City of Rochester, by Owner Occupied/Investor Status**

	<u>July 2004- June 2005</u>		<u>July 2005- June 2006</u>		<u>July 2006- June 2007</u>	
	<u>Properties</u>	<u>%</u>	<u>Properties</u>	<u>%</u>	<u>Properties</u>	<u>%</u>
County "Positive Properties" located in City of Rochester	114		89		132	
Owner/Investor Status						
Determined as of Sept 2007	108	100%	88	100%	129	100%
Owner-Occupied	23	21%	25	28%	21	16%
Investor-Owned	85	79%	63	71%	108	84%

*Source: CGR analysis of Monroe County Dept of Public Health data and City of Rochester online property information data.*

## Analysis of Selected Housing Issues

The evaluation team met with the Department of Human Services (DHS) to discuss the impact of the lead ordinance on the number and duration of emergency housing placements in the past year. A DHS representative stated that while they anticipated a potential increase in the need for emergency housing, or perhaps increased lengths of stay, that does not appear to have been the case, based on available data. Anecdotally, DHS does not sense any reluctance by landlords to accept DHS clients, which was another potential unintended consequence of the ordinance. DHS feels that landlords appear to have been well prepared in anticipation of the ordinance.

When a client is in need of emergency housing assistance, DHS first determines whether alternatives to emergency care are available, such as staying with a neighbor, friend, or family member. If no such alternative is available, the person or family is then placed in a shelter, or if a shelter option is not available, then in a hotel. Some leased housing is available for emergency placement of large families. Clients are then provided with a short list of five to ten addresses by a case worker, and are given ten days to locate housing (time can be extended). If the client does

not attempt to find permanent housing, they can be denied further assistance.

The County's QHI program was begun in an attempt to decrease the frequency with which clients were moving from one poor housing situation to another. Landlords receive rent directly if they allow their properties to be inspected. DHS contracts with the City to conduct the QHI inspections.

### *DHS Emergency Placements*

CGR requested emergency placement data from DHS for the one-year period immediately before the ordinance went into effect and for the one-year period following. Nearly half (48%) of emergency placements for families, both pre- and post-ordinance, were due to eviction by the primary tenant (family or friend/roommate evicted them) (Table 9). Other primary reasons for emergency placement for families were domestic violence, and eviction by landlord.

**Table 9: Monroe County DHS Emergency Placements, Pre- and Post-Ordinance**

Reason	Individuals		Families	
	7/01/05 to 6/30/06	7/01/06 to 6/30/07	7/01/05 to 6/30/06	7/01/06 to 6/30/07
Eviction by primary tenant	4,414	4,058	1,257	1,113
Released from institution	1,806	1,556	38	43
Domestic violence	555	491	459	305
Eviction by landlord	412	369	479	450
Out of county	302	356	177	179
Sweep (to locate those needing emergency placement)	52	25	0	0
Fire	38	67	80	73
Vacate order (property deemed unsafe)	31	24	73	52
Bldg or utility problem (furnace malfunction, etc.)	10	21	40	66
SSI check problem	5	2	0	0
Lead paint	4	3	2	0
<b>Total</b>	<b>7,629</b>	<b>6,972</b>	<b>2,605</b>	<b>2,281</b>

*Source: Monroe County Department of Human Services, compiled August 2007*

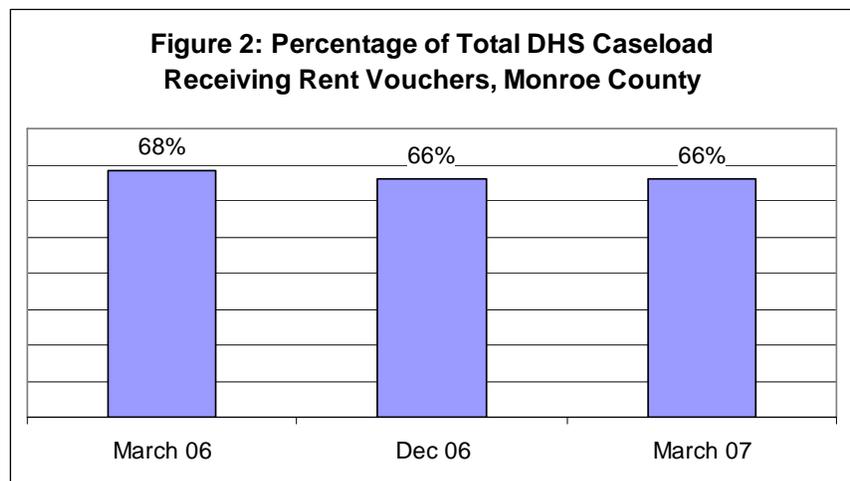
According to the MCDHS, the average length of stay in emergency placement for families and for individuals was nearly unchanged in the year prior to the ordinance and the year following the ordinance. For families the length of stay increased from 9.0 to 9.1 days, and for individuals it decreased from 7.1 to 6.8 days.

Only two families required emergency placement due to lead paint prior to the ordinance, and no families required this service due to lead paint after the ordinance went into effect. Lead paint was cited as the placement reason for *individuals* in four instances pre-ordinance and in three cases post-ordinance.

Based on these data as well as conversations with MCDHS staff, the lead ordinance does not appear to have affected the number of emergency placements of families and individuals, nor the length of stay in emergency housing. However, it is important to note that DHS emergency placements reveal only a partial picture of how the lead law may affect families' ability to find lead safe housing. Further research may be needed to evaluate the impact of the law on tenants.

### *Rent Vouchers*

The County provides rent vouchers for clients receiving Safety Net or Family Assistance. A concern at the time of the ordinance was that landlords might be less willing to accept tenants using DHS vouchers. MCDHS provided data to CGR on the number of rent voucher cases, as well as total caseload, for three points in



time. DHS indicated that the number of rent voucher cases tends to correlate with total caseload, so the adjoining chart shows the proportion of the caseload receiving rent vouchers. The proportion dropped between March and December of 2006, during which time the ordinance went into place. These data will be examined further in year two of the evaluation.

*City of Rochester  
Vacate Orders and  
Vacant Housing*

	<u>July 2006</u>	<u>July 2007</u>	<u>Change</u>
Total Vacant Houses	2,854	2,810	-2%
City-owned	649	458	-29%
Privately-owned	2,205	2,352	7%

*Source: NET Bureau*

As of July 2006, at the start of the lead ordinance, the city had 2,854 vacant houses. This dropped to 2,810 by July 2007, due in part to the city's aggressive demolition program (Table 10). The number of privately owned vacant homes, however, increased by 7%, or by 147. It will be important to continue to follow this trend.

During the year prior to the ordinance, July 2005 to June 2006, the city had 171 vacate orders. In the first year of the ordinance (July 2006 through June 2007) this rose to 203, or a 19% increase. Vacate orders are made when a house is considered a serious health or safety hazard and is not habitable, which can include reasons such as raw sewage, or, as of the date of the lead ordinance, a lead hazard. City staff conducted a case review of reasons for the vacate orders, and estimate that 43 of the 203 vacate orders made in the year following the ordinance included peeling paint or a lead dust hazard as a cause.

**Telephone Survey  
of Property  
Owners**

The objective of the ordinance is to increase the number of homes inspected for lead paint hazards and to ensure those found to be at risk are made lead-safe. This can only happen successfully if the process used to engage property owners, both owner-occupants and investors, is manageable and as streamlined as possible.

To measure investor experience with the lead ordinance the evaluation team designed a survey instrument to be used in a telephone survey of property owners whose two-family housing units were inspected under the new ordinance in Year One. Only two-family structures were included in order to keep the questions about units and costs for repairs consistent across survey respondents. The survey was reviewed by the Advisory Council as well as the president of the New York State Coalition of Property Owners and Businesses, and the president of the Housing Council. A copy of the survey can be found in Appendix D.

The City of Rochester generated a list of property owners who had undergone a City inspection on their property during the first year of the ordinance. The database provided by the City included the owners' name, phone number, and selected property information. CGR provided a phone survey firm, Metrix Matrix, with over 1,000 names and numbers, in random order. Some phone numbers were not current, and some were called three times with no answer. However, of the 373 landlords that were reached by phone, 200 completed the survey, for a response rate of 54%.

Respondents were split nearly evenly between smaller landlords—those who own five or fewer properties (54%)—and larger landlords who own six or more (47%) (Table 11). Respondents who own or operate multiple properties were asked to answer questions for a single property that underwent inspection during

year one of the ordinance. In reference to these properties, respondents were well distributed across the six NET areas, with a somewhat higher proportion in NET areas B (Lyell) and F (Norton), but very similar to the distribution among all 2-family properties inspected during year one. The primary reason for an inspection was a C of O process, or a DHS QHI. The value of the reference properties were also well distributed by housing value, with 50% reporting a value of less than \$40,000, compared to 52% of all those 2-families inspected in year one.

**Table 11: Landlord Respondent Property Characteristics, Compared to All 2-Family Inspections in Year One**

	Respondents		All 2-family inspections
	N	%	
Total	200	100%	100%
Properties Owned/Operated			
1 to 5	107	54%	NA
6 or more	93	47%	NA
NET Area			
A- Charlotte/Maplewood	19	10%	9%
B- Lyell Ave	44	22%	21%
C- Genesee St	33	17%	17%
D- Highland Ave/ South Wedge	17	9%	9%
E- Webster Ave	20	10%	12%
F- Norton St	67	34%	32%
Reason for Inspection			
C of O inspection	92	46%	51%
DHS QHI	83	42%	32%
Complaint from tenant	14	7%	10%
Referral	7	4%	4%
Vacate Notice	4	2%	2%
NET Survey	0	0%	1%
Property Value			
Less than \$30,000	42	21%	25%
\$30,000 - \$39,999	57	29%	27%
\$40,000 - \$59,999	60	30%	27%
\$60,000 +	41	21%	20%

Of the 200 respondents, 24 landlords reported that the reference property had been cited for a lead violation (Table 12), a lower proportion than those in the entire city database of inspections (8% of units inspected citywide had interior violations due to a failed visual inspection or dust wipe test, and 19% had exterior violations. Some have both types, so the total with violations is somewhat less than 27%). CGR compared the list of landlords completing the survey to the City’s list of inspected properties, and found that in fact 57 (29%) of the surveyed landlords had been cited for lead hazards, similar to the citywide rate. Some who self-reported lead hazards were not actually cited, while several who did not self-report a lead hazard were cited by the City. It is possible that landlords are confused about the differences between a code violation, and a lead-related violation in some cases. This is a question the research team will pursue with a landlord focus group this fall.

**Table 12: Respondents Who Reported Their Property Was Cited for a Lead Hazard**

	<u>Respondents</u>	<u>%</u>
Total	24	100%
Monthly Rental Rate of Cited Properties (n=22)		
Less than \$450	11	52%
\$450 or more	10	48%
Property Occupied When Cited? (n=24)		
Yes	17	71%
No	7	29%
Tenants Relocated During Repairs? (n=16)		
Yes	0	0%
No	16	100%

Among the self-reported cited properties 71% (17) were occupied at the time they were cited, but none of tenants relocated during repairs (one person with tenants did not answer the question).

**Table 13: Total Cost of Repairs by Property Value**

	All Respondents		Property Value			
			<\$40,000		≥\$40,000	
	N	%	N	%	N	%
Total Respondents	183	100%	89	100%	94	100%
Total Cost of Repairs*						
\$0	63	34%	21	24%	42	45%
\$1 to \$250	25	14%	16	18%	9	10%
\$251 to \$1000	42	23%	24	27%	18	19%
\$1001 to \$2500	25	14%	15	17%	10	11%
\$2501 to \$5000	16	9%	7	8%	9	10%
\$5001+	12	7%	6	7%	6	6%
Median Cost	\$300		\$400		\$120	
Mean Cost	\$1,726		\$2,265		\$1,211	
Respondents with costs \$1+ (n=120)			(n=68)		(n=52)	
Median Cost	\$950		\$800		\$1,000	
Mean Cost	\$2,618		\$2,964		\$2,165	

\*Difference between property value categories statistically significant,  $p < .10$ .

The survey asked respondents about the total cost of repairs made in response to the lead law, as well as the extent of repairs made in response to the law (either in anticipation of an inspection or in response to a violation). Among the 183 respondents who answered the question about cost, one-third said they did not spend any money on repairs, while about one-third (37%) spent between \$1 and \$1,000, and the remaining 30% spent more than \$1,000 (Table 13).

Respondents whose reference property was valued at less than \$40,000 spent more on repairs than those with higher values; this is likely because the lower valued properties were in poorer condition and more in need of updates such as windows, paint, and porch repair or replacement; this is consistent with national

**Table 14: Total Cost of Lead Repairs In Rochester, Among Landlords Spending Money on Repairs, Versus Nationally**

	Rochester			Nationally
	All with Costs \$1+	Hired a Contractor	Did Work Themselves	
	(n=120)	(n=33)	(n=82)	(n=1,223)
Median Cost	\$950	\$1,500	\$800	\$5,635
Mean Cost	\$2,618	\$3,623	\$2,316	NA
5th Percentile	\$50	\$93	\$29	\$360
95th Percentile	\$9,900	\$21,100	\$7,425	\$12,060

Source: CGR survey of Rochester landlords; NCHH, 2004

evaluation data (Wilson et al., 2006).

Compared to the national evaluation, repair costs in Rochester appear to be lower (Table 14). In the national study, all landlords

used contractors for their lead hazard repair work, and all repairs were in compliance with EPA standards. Comparing the Rochester landlords who used a contractor to the national figures shows that Rochester landlords spent a median of \$1,500 compared to the national median of \$5,635. An important note, however, is that the landlords on the national level were often conducting more major rehabilitation, such as window replacements, and were required by their funding source (HUD) to address all lead hazards using standard treatments. In the Rochester survey, more landlords were repairing or repainting windows, for example, than replacing them.

According to the national evaluation of lead treatment strategies, six variables significantly influence costs:

- ❖ Treatment intensity
- ❖ Size of building (in square feet)—An 800 square foot home costs 10% less than a 1,000 square foot home, the median in the study

<b>Table 15: Window Repairs or Replacements</b>				
	<b>All Respondents</b>		<b>Respondents Spending &gt;\$0 on Repairs</b>	
Window(s) Replaced?				
Yes*	54	40%	52	44%
No	82	60%	66	56%
If 'Yes', how many?				
<5	18	35%	18	35%
5 to 9	10	19%	9	18%
10 to 14	12	23%	12	24%
15+	12	23%	12	24%
Median	9		8	
Window(s) Repaired/Painted?				
Yes	94	70%	90	77%
No	40	30%	27	23%
If 'Yes', how many?				
<5	16	17%	15	17%
5 to 9	25	27%	24	27%
10 to 14	25	27%	23	26%
15+	27	29%	27	30%
Median	10		10	

\*One respondent who replaced windows did not provide cost information, and one indicated costs of \$0.

- ❖ Type of building (single unit v. multiple unit) – homes in single unit buildings cost 23% more than homes in multi-unit buildings
- ❖ Percent of leaded interior paint in poor condition—Units with double the median level of lead-based paint in poor condition incurred costs six times the median
- ❖ Number of dwellings treated by a contractor
- ❖ Whether hazardous waste requirements are placed on the contractor (not applicable in Rochester)

The survey asked about the type of repairs made to properties

specifically in response to the new lead law. Among all respondents answering this question, 40% replaced windows, with nearly half (46%) of those replacing 10 or more windows (Table 15). Among those respondents who said they spent money on repairs, 44% said they replaced windows.

Replacing windows clearly increased the cost of repairs. While the overall median for of repairs was \$300 (Table 13), the median was \$2,500 among those who replaced windows. It should be noted that cost estimates might be overestimates for single-unit repairs; while the survey asked respondents to answer for a single unit, they may have responded for the full structure.

A higher proportion of respondents indicated they repaired or painted windows, 70% of those responding to this question. This

includes 77% of respondents who said they spent money on repairs.

	<b>All Respondents</b>		<b>Respondents Spending &gt;\$0 on Repairs</b>	
Interior Trim Repaired/Painted?				
Yes	90	66%	86	72%
No	46	34%	33	28%
Porch(es) Replaced/Repaired?				
Yes	51	38%	48	41%
No	84	62%	70	59%
If 'Yes', how many?				
1	31	62%	29	62%
2	14	28%	14	30%
3+	5	10%	4	9%
Exterior Siding Replaced?				
Yes	23	17%	23	19%
No	112	83%	95	81%

Two-thirds of respondents said that they repaired or painted interior trim, including 72% of those who spend money on repairs (Table 16). More than one-third replaced or repaired porches, and nearly one in five replaced exterior siding on the reference property. Clearly many landlords made repairs to surfaces typically associated with lead hazards both on the interior and exterior of their

properties.

Respondents were asked if they did any other lead-related work, and 53 respondents said they had. Respondents mentioned planting grass or putting mulch over bare soil; tearing out or cleaning the carpets; refinishing hardwood floors; painting interior walls or exterior siding or trim; scraping and painting garage exteriors; and cleaning and mopping.

Respondents were asked who conducted the lead hazard control work, and whether that person had received Lead Safe Work Practices training. Overall 58% of respondents stated that they did the work themselves, while 26% hired a private contractor (Table 17). Others used a property manager or employee, friends or family. Respondents with more than five units were more likely to indicate they did the work themselves.

**Table 17: Person Conducting Lead Hazard Work and Safe Work Practices Training**

	All Respondents		<=5 Units Owned		>5 Units Owned	
	N	%	N	%	N	%
Who did the lead hazard control-related work?*	127	100%	63	100%	64	100%
Self (property owner)	74	58%	31	49%	43	67%
Property manager/employee	10	8%	4	6%	6	9%
Private contractor	33	26%	23	37%	10	16%
Other	10	8%	5	8%	5	8%
Did the person who did this work receive Lead Safe Work Practices training? **	130	100%	65	100%	65	100%
Yes	94	72%	41	63%	53	82%
No	25	19%	14	22%	11	17%
Don't know	11	8%	10	15%	1	2%

\* Statistically significant difference between # of units ( $p < 0.10$ ); \*\* Statistically significant ( $p < 0.05$ ).

A high proportion of respondents indicated that the person who completed the work had received proper training (72%), while an additional 8% did not know. Larger landlords (more than 5 units owned) were more likely than smaller landlords to indicate that the person completing the work had received lead safe work practices training. Owners completing the work prior to citation would not have been legally required to use lead safe work practices-trained workers.

Lead safe work practices training is available from several resources in the Rochester area, including the Housing Council (which provided training to 444 individuals during year one of the ordinance), Cornell University, through its School of Industrial Labor Relations (451 individuals), Lead Connections (871 individuals), and Atrium Environmental Health & Safety Services, LLC (43 individuals).

Most respondents reported using private funds or a bank loan to conduct the lead hazard control work (93% of respondents who reported spending \$1 or more on repairs) (Table 18). Landlords with more than 5 units were somewhat more likely to report they received grant funding, but the sample size is very small and no conclusions should be drawn from this point. When asked how they will offset the cost of repairs, about one in three respondents stated they will not make other improvements, 23% say they will sell the property, and 17% say they will increase the rent.

**Table 18: Financing of Lead Hazard Work and Impact on Property Value**

	All Respondents		<=5 Units Owned		>5 Units Owned	
	N	%	N	%	N	%
Total Respondents	120	100%	57	100%	63	100%
How did you pay for the lead hazard control work?						
Grant program	9	8%	3	5%	6	10%
Bank loan/private funds	111	93%	54	95%	57	90%
Other	7	6%	1	2%	6	10%
How will you offset the cost of the repairs?						
Increase rent	20	17%	8	14%	12	19%
Not making other improvements*	35	29%	12	21%	23	37%
Sell the property*	28	23%	9	16%	19	30%
Other	12	10%	5	9%	7	11%
Don't know	2	2%	0	0%	2	3%
Do you think the investment you made in the property will improve the value of the property?***						
Yes	59	49%	33	58%	26	41%
No	50	42%	18	32%	32	51%
Don't know	9	8%	6	11%	3	5%

Note: Categories may total to more than 100% because respondents could select more than one option.

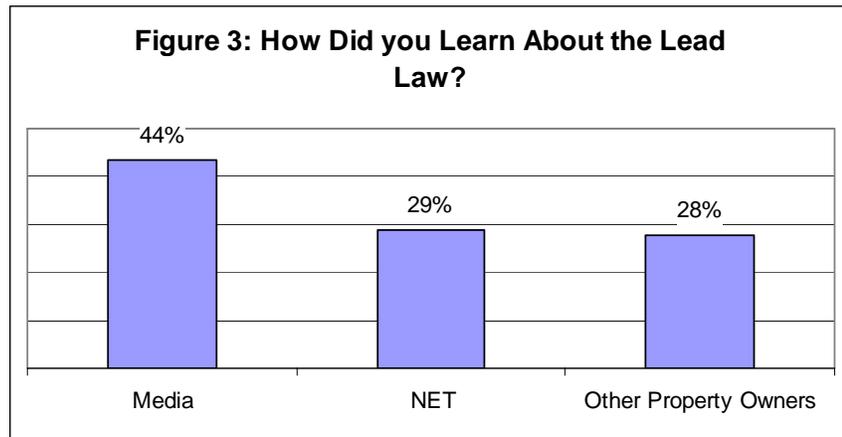
\* Statistically significant difference (p<.10); \*\*Statistically significant difference (p<.05)

About one-half of respondents say the improvements they've made will increase the value of the property; smaller landlords were more likely than larger landlords to feel this way (58% and 41%, respectively).

Nearly one-third of respondents stated that they hope to sell the property in the next two years, but this response did not vary substantially among those who were and were not cited, nor by the size of the landlord's holdings. Those with lower valued properties were seven percentage points more likely than those with higher valued properties to say they would like to sell, but this difference was not statistically significant.

Among those who say they will sell, 56 provided comments on their reasons. The most prevalent reason, stated by thirteen respondents was either the ‘ordinance’ or ‘city policy.’ Eleven respondents said they will sell because of ‘bad tenants.’

Nearly half the respondents heard about the lead law through the media, while the remainder heard about it either through NET and the C of O process, or through fellow property owners and landlord associations.



Among the 178 respondents who knew about the law and expressed an opinion in it both before and after it was implemented, 36% were unfavorable before implementation and 41% were favorable. At the time of the survey, 35% were unfavorable and 46% were favorable, showing a slight increase in positive feelings about the ordinance (statistically significant at the  $p < .05$  level). It is interesting though that while 9% of respondents started out unfavorable and became either neutral or favorable over time, 3% started out favorable and became unfavorable or

**Table 19: Overall Position on the Law Before and After Implementation**

		After			Total
		Unfavorable	Neutral	Favorable	
Before	Unfavorable	28%	7%	2%	36%
	Neutral	5%	11%	7%	23%
	Favorable	2%	1%	38%	41%
	Total	35%	19%	46%	100%

neutral.

On balance it appears that experience with the law is more likely to improve landlords' perceptions of the law than to increase opposition.

## Landlord Comments

At the conclusion of the survey, landlords were asked if they had any additional comments, and 117 of the 200 provided some (59%). Of those providing comments, 26% indicated a need for more financial aid or tax incentives for the landlords. Many refer to a need for more grants, and easier pathways to secure grants. Some state that they are not making much money on the properties, and simply don't have the resources to make substantial repairs.

*"I think if the city is going to enforce they should back it up with grants or something. Just to make it fair."*

*"Have a lot more funds and grants and loans and no pay back if I kept the property for a period of time for investor purposes."*

Nearly one-quarter (23%) said it is important to educate tenants and hold them responsible for the condition of the properties. Others referred to a need for increased owner/investor education.

*"I think the city just needs to have almost a one-stop resource center for landlords, to learn about the law and how to take care of remediating any problems."*

*"Most landlords don't know exactly what's required. The carpet has to be perfectly clean. You can't sweep it. You can't vacuum it. You have to clean it in a certain order. You have to clean the windows first and then the carpet. You have to know which order to clean."*

*"Education classes for the low income to keep on eye on things so they can let the landlord know if there is a problem."*

*"Educate tenants on how to keep property. The Lead law is not a permanent solution."*

Twenty percent of those with comments said the law is not fair to landlords, and 9% (11 respondents) said the law should be abolished. Some of those who feel it is unfair point out that the

lead was in the paint decades ago, and now landlords are being held responsible for that. Some also point out that tenants need to be responsible for their children and need to clean their homes more thoroughly and be more watchful of what their children put in their mouths.

*“I know one thing they blew it out of proportion, the lead is in the paint when we buy it. The landlords are getting the rough end of the stick.”*

*“I think it's unfair to landlords who have tenants who destroy properties and then hold the landlord responsible for it. It's not my fault tenants let their kids eat paint chips. I can't stand outside of their house twenty four hours a day, seven days a week.”*

The survey also generated some positive comments, or acknowledgement of the dangers of lead paint.

*“I think everything is just the way it should be as far as them inspecting homes. They need to check them and make the landlords get rid of the lead paint.”*

*“As long as you maintain your property you won't have a problem.”*

*“I somewhat think it's unfair but I understand the big picture.”*

The Greater Rochester Health Foundation has issued an RFP to establish a one-stop center in Rochester to serve many of the needs noted by respondents, particularly those regarding additional information and resources for both tenants and landlords.

## RECOMMENDATIONS BASED ON YEAR ONE RESULTS

The research team has a number of recommendations in response to analysis of evaluation data from the city inspections, county blood lead tests and positive investigations, housing data, and the landlord survey.

### Landlord Issues

- ❖ With such a high proportion of property owners doing their own lead repair work, the city and county should ensure that sufficient training is available for them to learn to do the repairs safely.

- ❖ More than one quarter of those doing the work may not have received training—this is another reason to be sure training is available and that landlords are made aware of it.
- ❖ Since cost data from the landlord survey suggests a wide range of lead safety measures being used, and because interim controls are not long-term fixes, training and education regarding ongoing maintenance is critical.
- ❖ Increase education programs regarding the availability from the city of \$100 grants to help cover the cost of dust wipe tests when private clearance must be achieved. A flyer with the grant information is currently included with the Notice and Order that notifies the owner of the need for a dust wipe test, but perhaps additional notification could occur.

## Policy

- ❖ The City's expansion of dust wipe tests in year two of the ordinance is likely to improve the impact of the law, given that 15% of dust wipes result in identification of a lead hazard that would otherwise have gone undetected.
- ❖ Given that a number of property owners delay scheduling dust wipe tests, and some with failed dust wipes are taking longer than expected to achieve clearance, the City should take advantage of its newly granted enforcement opportunity under an amendment to the lead paint ordinance passed by City Council in September 2007 that allows the City to cite owners with a lead violation if they do not complete dust wipe tests within 60 days.
- ❖ With so many landlords asking for financial relief to help with repair costs, we recommend that additional grant programs or tax credits be established for high-cost, effective repairs, such as window replacement. Further, access to existing grant programs should be facilitated.
- ❖ There is clearly an ongoing need for education of both property owners and residents. Local resources for outreach and education should be coordinated to make sure these messages are being delivered clearly, consistently, and effectively.

## Operating Issues

- ❖ Given the lower than expected rates of lead hazard identification on both visual survey and dust wipe testing, we recommend that a risk assessment be conducted in a random sample of properties that passed city inspection to determine effectiveness of the visual survey and dust wipe test protocol. The assessment should occur as soon as possible following the inspection to reduce the chance of surface disturbances.
- ❖ Develop and implement a “Rochester module” to be incorporated in lead safe work practices trainings that explains requirements under the lead law, describes resources available to property owners, and encourages use of standard treatments.
- ❖ We recommend that the MCDPH begin coding children’s blood lead level tests by city versus suburbs to allow internal ongoing tracking of trends by this geographic distinction, particularly with the City ordinance now in place. This information could also be of interest to the City School District.
- ❖ We recommend the City consider altering its database to allow for easier monitoring of lead ordinance outcomes, such as dust wipe test lead level results, and dates of inspection and follow-up. The City has some information and data available only in paper format, such as landlord phone numbers and the reasons for housing vacate orders, that could be entered electronically when collected.

## PLANS FOR YEAR TWO

Year two of the evaluation will include an update of the analysis of the city inspection data, county blood lead data, county positive investigations, and housing data, but will not include a repeat of the landlord survey. Here we outline plans for additional research tasks, as well as plans for a landlord focus group and interviews with City Council.

## Research Items

- ❖ The first year of the evaluation found 13 positive properties from 2004-2005 in which lead hazards were found two years later during year one of the ordinance. A more in-depth case study could explore how much time elapsed between clearance of the property as a result of the county investigation, and the violation cited by the city under the ordinance. Ideally the case study would determine whether the lead hazards found in 2006-2007 were on the same surfaces or new areas.
- ❖ Analyze violation data to determine the most common hazards in the ordinance-inspected properties. The research team could look at whether common hazards are more likely to be owner or tenant (or shared) responsibility so that education and training can be appropriately targeted.
- ❖ A more careful review of lead dust test results could be conducted in year 2. The City is unable to provide lead dust test result lead levels for analysis. If such data were available it would be of interest to analyze lead dust results to identify housing characteristics that typically result in high dust lead levels. NCHH has studied this issue and has developed a housing assessment tool that predicts homes that will have high dust levels. Thinking long term, such a tool could possibly be used instead of lead dust tests and could reduce costs.
- ❖ The research team has requested that the City begin recording dust test results electronically, and will include these data in the analysis in year two. In addition, the research team will explore how many inspected units fail the lead dust test the first time versus and the second time.
- ❖ The research team will ask the City for lead dust wipe test results by case type (C of O, QHI, complaint), to determine whether outcomes vary among them.

## Focus Group with Landlords

The survey of landlords generated some useful information in regards to the lead ordinance. But it also raised some questions, such as: why was there a mismatch between self-report of lead violations and the actual issuance of violations as found in the

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city's database? Did the landlords know about the small grants available to offset the costs of the dust wipe testing? To continue the dialogue with landlords without repeating a survey, in year two of the evaluation we plan to hold a focus group with landlords to probe on any questions raised by the survey or incompletely answered by the survey. This process will be informed by the Advisory Committee.

## **City Council Interviews**

CGR will meet with approximately five City Council members to discuss the interim report and determine whether the results improve their level of understanding about the role and impact of the ordinance. We will use these meetings in part to determine further whether any changes are needed for the evaluation of year two results.

Because some Council members in office this fall will be new, and were not in place when the ordinance was passed, we will be sure to meet with both new council members as well as some who were in office when the ordinance was passed.

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## **APPENDIX A: CITY OF ROCHESTER LEAD ORDINANCE**

Chapter 90, Property Code

Article III. Lead-Based Paint Poisoning Prevention.

§90-50. Policy and intent.

It is the policy of the City of Rochester to help prevent the poisoning of its residents by requiring that the presence of deteriorated lead-based paint on the interior and exterior of pre-1978 residential structures and on the exterior of pre-1978 non-residential structures be identified and be correctly addressed by reducing and controlling lead-based paint hazards which may be present in order to prevent human exposure to such hazards.

§90-51. Legislative findings.

- A. Lead poisoning poses a serious public health threat to children and adults in the City of Rochester.
- B. Younger children are particularly susceptible to the hazards of lead-based paint since their bodies are still developing. Fetuses are also vulnerable to the effects of lead-based paint because pregnant women can transfer lead to their fetuses, which can result in adverse developmental effects.
- C. A small amount of lead can cause elevated blood lead levels resulting in serious and irreversible developmental damage, particularly in children under the age of six years.
- D. Exposure to lead hazards from deteriorated lead-based paint is a primary cause of elevated blood lead levels in humans.
- E. Structures built before 1978 are the most likely to contain lead-based paint hazards.
- F. Residential properties are more likely than are non-residential properties to be a source of exposure to lead-based paint hazards by children.
- G. Children living in older, poorly maintained homes are disproportionately at risk for lead-based paint hazards.
- H. The exposure to lead-based paint hazards in the City of Rochester is most common, and presents the most serious risk, to young children residing in rental housing built before 1978.

- I. It is essential to the overall public health of persons in the City of Rochester, and particularly for children younger than six years of age, that they be protected from exposure to lead-based paint hazards.
- J. According to the environmental impact statement, proposed lead-based paint poisoning prevention legislation could have a cost impact on the rental housing market as high as \$540 million, depending on the alternative chosen.
- K. The application of lead-based paint poisoning prevention legislation to the owner-occupied housing market could cause extensive housing abandonment in at least nine distinct neighborhoods.
- L. Although unquestionably positive, the potential health benefits of lead-based paint poisoning prevention legislation are difficult to quantify since the number of people at-risk is undetermined, the transient nature of tenants makes targeting difficult, the mere presence of lead in a structure does not necessarily lead to human exposure to lead-based paint hazards, and the generally agreed-upon group at greatest risk, children from 0-6 years of age, are significantly transient.

#### §90-52. Definitions.

ABATEMENT means any set of measures designed to permanently eliminate lead-based paint or lead-based paint hazards (see definition of "PERMANENT"). Abatement includes: (1) The removal of lead-based paint and dust-lead hazards, the permanent enclosure or encapsulation of lead-based paint, the replacement of components or fixtures painted with lead-based paint, and the removal or permanent covering of soil-lead hazards; and (2) All preparation, cleanup, disposal, and post abatement clearance testing activities associated with such measures.

CERTIFIED means licensed or certified to perform such activities as risk assessment, lead-based paint inspection, or abatement supervision by the United States Environmental Protection Agency (EPA) in accordance with 40 CFR Part 745, Subpart L.

CERTIFIED LEAD-BASED PAINT INSPECTOR means an individual who has been trained by an accredited training program, as defined by 40 CFR §745.223, and certified by EPA pursuant to 40 CFR §745.226 to conduct lead-based paint inspections. A certified lead-based paint inspector also samples for the presence of lead in dust and soil for the purposes of clearance testing.

CERTIFIED RISK ASSESSOR means an individual who has been trained by an accredited training program, as defined by 40 CFR §745.223, and certified by EPA pursuant to 40 CFR §745.226 to conduct risk assessments. A certified risk assessor also samples for the presence of lead in dust and soil for the purposes of clearance testing.

**CHEWABLE SURFACE** means an interior or exterior surface painted with lead-based paint that a young child can mouth or chew. A chewable surface is the same as an "accessible surface" as defined in 42 U.S.C. 4851b(2). Hard metal substrates and other materials that cannot be dented by the bite of a young child are not considered chewable.

**CLEARANCE EXAMINATION** means an activity conducted following lead-based paint hazard reduction activities to determine that the hazard reduction activities are complete and that no soil-lead hazards or settled dust-lead hazards, as defined in this Article, exist in the dwelling unit or worksite.

**COMMON AREA** means a portion of a residential property that is available for use by occupants of more than one dwelling unit. Such an area may include, but is not limited to, hallways, stairways, laundry and recreational rooms, playgrounds, community centers, on-site day care facilities, porches, basements, attics, garages and boundary fences.

**COMPONENT** means an architectural element of a dwelling unit or common area identified by type and location, such as a bedroom wall, an exterior window sill, a baseboard in a living room, a kitchen floor, an interior window sill in a bathroom, a porch floor, stair treads in a common stairwell, or an exterior wall.

**CONTAINMENT** means the physical measures taken to ensure that dust and debris created or released during lead-based paint hazard reduction are not spread, blown or tracked from inside to outside of the worksite.

**DETERIORATED PAINT** means any interior or exterior paint or other coating that, through a visual assessment, is found to be peeling, chipping, crazing, flaking, abrading, chalking or cracking, or any paint or coating located on an interior or exterior surface or fixture that is otherwise damaged or separated from the substrate, or a chewable surface that contains visual signs of chewing.

**DRIPLINE** means the area within 3 feet surrounding the perimeter of a building.

**DRY SANDING** means sanding without moisture and includes both hand and machine sanding.

**DUST-LEAD HAZARD** means surface dust that contains a dust-lead loading (area concentration of lead) at or exceeding the levels promulgated by the EPA pursuant to section 403 of the Toxic Substances Control Act.

**DWELLING UNIT** means a: (1) Single-family dwelling, including attached structures such as porches and stoops; or (2) Housing unit in a structure that contains more than 1 separate housing unit, and in which each such unit is used or occupied, or intended to be used or occupied, in whole or in part, as the home or separate living quarters of 1 or more persons.

**ENCAPSULATION** means the application of a covering or coating that acts as a barrier between the lead-based paint and the environment and that relies for its durability on adhesion between the encapsulant and the painted surface, and on the integrity of the existing bonds between paint layers and between the paint and the substrate. Encapsulation may be used as a method of abatement if it is designed and performed so as to be permanent (see definition of "PERMANENT").

**ENCLOSURE** means the use of rigid, durable construction materials that are mechanically fastened to the substrate in order to act as a barrier between lead-based paint and the environment. Enclosure may be used as a method of abatement if it is designed to be permanent (see definition of "PERMANENT").

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

**FRICTION SURFACE** means an interior or exterior surface that is subject to abrasion or friction, including, but not limited to, certain window, floor, and stair surfaces.

g means gram, mg means milligram (thousandth of a gram), and ug means microgram (millionth of a gram).

**HAZARD REDUCTION** means measures designed to reduce or eliminate human exposure to lead-based paint hazards through methods including interim controls or abatement or a combination of the two.

**HEPA VACUUM** means a vacuum cleaner device with an included high- efficiency particulate air (HEPA) filter through which the contaminated air flows, operated in accordance with the instructions of its manufacturer. A HEPA filter is one that captures at least 99.97 percent of airborne particles of at least 0.3 micrometers in diameter.

**IMPACT SURFACE** means an interior or exterior surface that is subject to damage by repeated sudden force, such as certain parts of door frames.

**INTERIM CONTROLS** means a set of measures designed to reduce temporarily human exposure or likely exposure to lead-based paint hazards. Interim controls include, but are not limited to, repairs, painting, temporary containment, specialized cleaning, clearance, ongoing lead-based paint maintenance activities, and the establishment and operation of management and resident education programs.

**LEAD-BASED PAINT** means paint or other surface coatings that contain lead equal to or exceeding 1.0 milligram per square centimeter or 0.5 percent by weight or 5,000 parts per million (ppm) by weight.

**LEAD-BASED PAINT HAZARD** means any condition that causes exposure to lead from dust-lead hazards, soil-lead hazards, or lead-based paint that is deteriorated or present

in chewable surfaces, friction surfaces, or impact surfaces, and that would result in adverse human health effects.

**LEAD-BASED PAINT INSPECTION** means a surface-by-surface investigation to determine the presence of lead-based paint and the provision of a report explaining the results of the investigation.

**LEAD HAZARD INFORMATION PAMPHLET** means the most recent publication of the LEAD HAZARD INFORMATION PAMPHLET means the pamphlet developed by the EPA, the United States Department of Housing and Urban Development and the Consumer Product Safety Commission pursuant to Section 403 of the Toxic Substances Control Act (15 U.S.C. 2686), entitled "Protect Your Family From Lead in Your Home."

**OCCUPANT** means a person who inhabits a dwelling unit.

**OWNER** means a person, firm, corporation, nonprofit organization, partnership, government, guardian, conservator, receiver, trustee, executor, or other judicial officer, or other entity which, alone or with others, owns, holds, or controls the freehold or leasehold title or part of the title to property, with or without actually possessing it. The definition includes a vendee who possesses the title, but does not include a mortgagee or an owner of a reversionary interest under a ground rent lease.

**PAINT STABILIZATION** means repairing any physical defect in the substrate of a painted surface that is causing paint deterioration, removing loose paint and other material from the surface to be treated, and applying a new protective coating or paint.

**PAINT TESTING** means the process of determining, by a certified lead-based paint inspector or risk assessor, the presence or the absence of lead-based paint on deteriorated paint surfaces or painted surfaces to be disturbed or replaced.

**PAINT REMOVAL** means a method of abatement that permanently eliminates lead-based paint from surfaces.

**PAINTED SURFACE TO BE DISTURBED** means a paint surface that is to be scraped, sanded, cut, penetrated or otherwise affected by rehabilitation work in a manner that could potentially create a lead-based paint hazard by generating dust, fumes, or paint chips.

**PERMANENT** means an expected design life of at least 20 years.

**REDUCTION** means measures designed to reduce or eliminate human exposure to lead-based paint hazards through methods including interim controls and abatement.

**REHABILITATION** means the improvement of an existing structure through alterations, incidental additions or enhancements. Rehabilitation includes repairs necessary to

correct the results of deferred maintenance, the replacement of principal fixtures and components, improvements to increase the efficient use of energy, and installation of security devices.

REPLACEMENT means a strategy of abatement that entails the removal of building components that have surfaces coated with lead-based paint and the installation of new components free of lead-based paint.

RESIDENTIAL PROPERTY means a dwelling unit, common areas, building exterior surfaces, and any surrounding land, including outbuildings, fences and play equipment affixed to the land, belonging to an owner and available for use by residents, but not including land used for agricultural, commercial, industrial or other non-residential purposes, and not including paint on the pavement of parking lots, garages, or roadways.

RISK ASSESSMENT means: (1) An on-site investigation to determine the existence, nature, severity, and location of lead-based paint hazards; and (2) The provision of a report by the individual or firm conducting the risk assessment explaining the results of the investigation and options for reducing lead-based paint hazards.

SOIL-LEAD HAZARD means bare soil on residential property that contains lead equal to or exceeding levels promulgated by the U.S. Environmental Protection Agency pursuant to section 403 of the Toxic Substances Control Act.

TENANT means the individual named as the lessee in a lease, rental agreement or occupancy agreement for a dwelling unit.

VISUAL ASSESSMENT means a visual examination for, as applicable: (1) Deteriorated paint; (2) Visible surface dust, debris and residue found as part of an inspection pursuant to Section 90-55, a risk assessment or clearance examination; or (3) The completion or failure of a lead-based paint hazard reduction measure as part of a clearance examination.

WET SANDING or WET SCRAPING means a process of removing loose paint in which the painted surface to be sanded or scraped is kept wet to minimize the dispersal of paint chips and airborne dust.

WINDOW TROUGH means the area between the interior window sill (stool) and the storm window frame. If there is no storm window, the window trough is the area that receives both the upper and lower window sashes when they are both lowered.

WIPE SAMPLE means a sample collected by wiping a representative surface of known area, as determined by ASTM E1728, "Standard Practice for Field Collection of Settled Dust Samples Using Wipe Sampling Methods for Lead Determination by Atomic Spectrometry Techniques," or equivalent method, with an acceptable wipe material as defined in ASTM E 1792, "Standard Specification for Wipe Sampling Materials for Lead

in Surface Dust."

WORKSITE means an interior or exterior area where lead-based paint hazard reduction activity takes place. There may be more than one worksite in a dwelling unit or at a residential property.

§90-53. Presumptions and obligations.

- A. For purposes of this article, all paint on the interior or exterior of any residential building on which the original construction was completed prior to January 1, 1978, shall be presumed to be lead-based. [Amended 7-18-2006 by Ord. No. 2006-224]
- B. For purposes of this article, all paint on the exterior of any non-residential structure on which the original construction was completed prior to January 1, 1978 shall be presumed to be lead-based.
- C. Any person seeking to rebut these presumptions shall establish through the means set forth in Section 90-56 that the paint on the building or structure in question is not lead-based paint.
- D. Residential buildings shall be maintained free of lead-based paint hazards. [Amended 7-18-2006 by Ord. No. 2006-224]

§90-54. Violations.

- A. Deteriorated paint violation.

The interior and exterior of any residential building on which the original construction was completed prior to January 1, 1978, and the exterior of any nonresidential structure on which the original construction was completed prior to January 1, 1978, shall be maintained in a condition such that the paint thereon does not become deteriorated paint, unless the deteriorated paint surfaces total no more than: [Amended 7-18-2006 by Ord. No. 2006-224]

- (1) 20 square feet on exterior surfaces;
  - (2) 2 square feet in any one interior room or space; or
  - (3) 10 percent of the total surface area on an interior or exterior type of component with a small surface area. Examples include windowsills, baseboards, and trim.
- B. Bare soil violation.

Bare soil shall not be present within the dripline of any residential building on which the original construction was completed prior to January 1, 1978. [Amended 7-18-2006 by Ord. No. 2006-224]

C. Dust-lead hazard violation.

A dust-lead hazard shall be identified and cited in accordance with the procedures set forth in § 90-55, Inspection for violations. [Added 3-14-2006 by Ord. No. 2006-37]

D. Dust sample violation.

A dust sample violation shall be cited upon a failure by an owner of a property to timely cause dust samples to be taken and certified test results to be submitted to the NET Lead Inspection Unit in accordance with the procedures set forth in § 90-55, Inspection for violations. [Added 8-21-2007 by Ord. No. 2007-305]

§90-55. Inspection for violations.

All inspections, including, but not limited to, inspections performed as part of an application for a certificate of occupancy pursuant to § 90-16 of the City Code, a renewal of a certificate of occupancy, or based upon the filing of a complaint, shall include a visual assessment for deteriorated paint and bare soil violations. With respect to units located in the high-risk area identified by the Mayor or the Mayor's designee, when the visual assessment identifies no deteriorated paint violation, the owner shall cause dust samples to be taken and certified test results to be obtained in accordance with the protocols established in 40 CFR 745.227(e)(8)(v)(B) to determine whether a dust-lead hazard exists. The owner shall be given 60 days to cause the dust samples to be taken and to submit all certified test results to the NET Lead Inspection Unit. If all certified test results are not submitted within the specified time, a dust sample violation shall be cited. When a dust-lead hazard is identified and not cleared, a dust-lead hazard violation shall be cited. A certification of clearance as described in § 90-57 shall be required in order to clear a dust-lead hazard violation. The high-risk area to be identified by the Mayor or the Mayor's designee shall, at a minimum, consist of those census block groups which cumulatively encompass an area in which no fewer than 90% of the units identified by the County Health Department for inspections in conjunction with its elevated blood-lead level inspections for the period of the preceding five years are located. Where the filing of a complaint leads to an inspection, the inspection shall include the unit which is the focus of the complaint and all common areas.

§90-56. Remedy for violations.

Following a visual assessment which results in the citation of a deteriorated paint violation, the violation may be removed only by one of the following methods:

- A. Certification by a lead-based paint inspector or risk assessor that the property has been determined through a lead-based paint inspection conducted in accordance with the federal regulations at 40 CFR §745.227(b) not to contain lead-based paint.
- B. Certification by a lead-based paint inspector or risk assessor that all cited violations of § 90-54, Violations, have been abated, or interim controls implemented, and clearance has been achieved in accordance with standards found at 40 CFR 745.227(e), regardless of whether abatement has been achieved or interim controls implemented, and provided, however, that the property has been inspected pursuant to those standards since the deteriorated paint or dust-lead hazard violation was last cited. [Amended 3-14-2006 by Ord. No. 2006-37]
- C. Certification by the Rochester Housing Authority or other state or federal supervising agency which regulates an assisted housing program stating that the property is in compliance with the inspection and clearance requirements of the housing program or, with respect to federally assisted housing, the requirements of 24 CFR Part 35, provided, however, that with respect to the Federal Housing Choice Voucher program, the property has been inspected pursuant to those requirements since the deteriorated paint was last detected.
- D. Where only exterior deteriorated paint violations, including deteriorated paint violations on an open porch, and/or bare soil violations are cited, clearance may be established through a visual assessment by a City inspector after reduction measures have been implemented. [Amended 3-14-2006 by Ord. No. 2006-37]

§90-57. Standards for clearance examination and report.

The remedy available through Section 90-56B shall require that a clearance examination be completed for a property upon which a deteriorated paint violation has been cited in accordance with the following requirements:

- A. Qualified personnel. Certification of clearance shall be issued by:
  - (1) A certified risk assessor; or

- (2) A certified lead-based paint inspector.

B. Required activities.

- (1) A clearance examination shall include a visual assessment, dust sampling, submission of samples for analysis for lead, interpretation of sampling results, and preparation of a report. Examinations shall be performed in dwelling units, common areas and exterior areas in accordance with this section and the steps set forth at 40 CFR 745.227(e)(8) and (9).
- (2) A visual assessment shall be performed to determine if deteriorated paint surfaces and/or visible amounts of dust, debris, paint chips or other residue are present. Both exterior and interior painted surfaces shall be examined for the presence of deteriorated paint. If deteriorated paint and visible dust, debris or residue are present in areas subject to dust sampling, they must be eliminated prior to the continuation of the clearance examination. If exterior painted surfaces have been disturbed by the hazard reduction, maintenance or rehabilitation activity, the visual assessment shall include an inspection of the ground and any outdoor living areas close to the affected exterior painted surfaces. Visible dust or debris in such outdoor living areas shall be cleaned up and visible paint chips on the ground shall be removed.
- (3) Dust samples shall be wipe samples and shall be taken on floors, excluding open porches, and, where practicable, interior windowsills and window troughs. Dust samples shall be collected and analyzed in accordance with 40 CFR 745.227(f) and (g). [Amended 3-14-2006 by Ord. No. 2006-37]

C. Report.

The clearance examiner shall ensure that an examination report is prepared that provides documentation of the examination.

- (1) The report shall include the following information:
  - (a) The address of the residential property and, if only part of a multi-family property is affected, the specific dwelling units and common areas affected.

- (b) The date(s) of the examination;
  - (c) The name, address, and signature of each person performing the examination, including their EPA certification number;
  - (d) The results of the visual assessment for the presence of deteriorated paint and visible dust, debris, residue or paint chips;
  - (e) The results of the analysis of dust samples, in ug/sq.ft., by location of sample; and
  - (f) The name and address of each laboratory that conducted the analysis of the dust samples, including the identification number for each such laboratory recognized by EPA under section 405(b) of the Toxic Substances Control Act (15 U.S.C. 2685(b)).
- (2) When abatement is performed, the report shall be an abatement report in accordance with 40 CFR §745.227(e)(10).

D. Clearance standards.

Where a deteriorated paint or dust-lead hazard violation has been cited, the dust-lead standards in 40 CFR 745.65(b) shall be met before a Certificate of Occupancy may be issued or a violation removed. [Amended 3-14-2006 by Ord. No. 2006-37]

E. Requirement to avoid conflict of interest regarding clearance inspection.

All examinations shall be performed by persons or entities independent of those performing hazard reduction or maintenance activities.

F. This Section shall not apply to the situations set forth in Section 90-56D.

§90-58. Lead-safe hazard reduction and control.

A. No person shall disturb or remove lead-based paint, or in any other way generate excessive dust or debris during work on the interior or exterior of any existing

building or structure except in accordance with the requirements of this section and §§ 90-59 and 90-60. If a residential building is not owner occupied and is in the high-risk area, then the owner or the owner's agent will be required to complete certified Lead Safe Work Practices training prior to conducting any lead paint reduction activity, provided that such training is available to the public for free or at a nominal cost, and except that such training shall not be required with respect to paint hazards below the de minimis levels identified in § 90-60E. [Amended 3-14-2006 by Ord. No. 2006-37

B. Exemptions.

This Section shall not apply to activities that disturb or remove paint where the activities are being performed on buildings on which construction was completed on or after January 1, 1978.

C. Sign required when exterior lead-based paint (or presumed lead-based paint) is disturbed:

- (1) Not later than the commencement date of any lead-based paint hazard reduction work, the owner, or the contractor when the owner has entered into a contract with a contractor to perform such work on the exterior of a building or structure, shall post signs in a location or locations clearly visible to the adjacent properties stating the following:

LEAD-BASED PAINT HAZARD REDUCTION WORK IN PROGRESS

PUBLIC ACCESS TO  
WORK AREA  
PROHIBITED

POSTED IN ACCORDANCE WITH CHAPTER 90  
OF THE CITY OF ROCHESTER CODE

FOR FURTHER INFORMATION, PHONE -----

- (2) The sign required by this subsection shall be not less than 24 inches square and shall be in large boldface capital letters no less than one-half inch in size, and shall contain the notification in both English and Spanish. The sign required by this subsection shall remain in place until the lead-

based paint hazard reduction work has been completed.

- (3) Where it is not possible to post signs in a conspicuous location or locations clearly visible to the adjacent properties, the owner, or where the owner has entered into a contract with a contractor to perform lead-based paint hazard reduction work, the contractor shall provide the notice in written form, such as a letter or memorandum, to the occupants of adjacent properties.

E. Notice to tenants.

Where lead-based paint hazard reduction work is to be performed on the interior or exterior of buildings occupied by one or more tenants, not less than three business days before any lead-based paint hazard reduction work is to commence, the owner shall provide the following information:

- (1) Contents of notice.

Provide written notice to tenants of the building on which the work is being performed that lead-based paint hazard reduction work is being performed. This notice, which shall be in both English and Spanish, shall be in compliance with the EPA pre-renovation notification rules set forth in 40 CFR Part 745, Subpart E, shall be in the form of a sign, letter or memorandum, and shall prominently state the following:

Work is scheduled to be performed beginning \_\_\_\_\_ (date) on this property that may disturb or remove lead-based paint. The persons performing this work are required to follow federal and local laws regulating work with lead-based paint. You may obtain information regarding these laws, or report any suspected violations of these laws, by calling the City of Rochester at \_\_\_\_\_ (a number to be designated by the City). The owner of this property is also required to provide tenants with a copy of the lead hazard information pamphlet. Retaliatory action against tenants is prohibited by Section 90-63 of the Municipal Code.

- (2) The owner shall provide all tenants in the building with a copy of the lead hazard information pamphlet.

F. Notice by contractor.

Where lead-based paint hazard reduction work is being performed by a contractor on residential property, the contractor shall at least three business days prior to the commencement of such work, notify the property owner of potential lead hazards during the project by delivering to the owner a copy of the lead hazard information pamphlet.

G. Early commencement of work by owner.

A property owner may commence, or may authorize a contractor to commence, lead-based paint hazard reduction work less than three business days after providing notices required above when such work must be commenced immediately to correct an emergency condition, such as work necessitated by non-routine failures of equipment, that were not planned but result from a sudden, unexpected event that, if not immediately attended to, presents a safety or public health hazard, or threatens equipment and/or property with significant damage.

H. Early commencement of work requested by tenant.

Upon written request of a tenant, an owner may commence or authorize a contractor to commence, lead-based paint hazard reduction work on that tenant's unit less than three business days after providing notices required in subsection E above.

§90-59. Occupant protection and worksite preparation.

A. Occupant protection.

- (1) Occupants shall not be permitted to enter the worksite during hazard reduction activities (unless they are employed in the conduct of these activities at the worksite) until after hazard reduction work has been completed and clearance has been achieved.
- (2) Occupants shall be temporarily relocated during hazard reduction activities and until a clearance examination has been successfully completed on the occupant's unit, and occupants who relocate to a unit not owned by their landlord shall not be liable for rent accruing during that time, except relocation shall not be necessary if:

- (a) Treatment will not disturb lead-based paint, dust-lead hazards or

soil-lead hazards;

- (b) Only the exterior of the dwelling unit is treated, and windows, doors, ventilation intakes and other openings in or near the worksite are sealed during hazard control work and cleaned afterward, and entry free of dust-lead hazards, soil-lead hazards and debris is provided;
  - (c) Treatment of the interior will be completed within one period of 8-daytime hours, the worksite is contained so as to prevent the release of leaded dust and debris into other areas, and treatment does not create other safety, health or environmental hazards (e.g., exposed live electrical wiring, release of toxic fumes, or on-site disposal of hazardous waste); or
  - (d) Treatment of the interior will be completed within 15 calendar days, the worksite is contained so as to prevent the release of leaded dust and debris into other areas, treatment does not create other safety, health or environmental hazards; and, at the end of work on each day, the worksite and the area within at least 10 feet of the containment area is cleaned to remove any visible dust or debris, and occupants have safe daily access to sleeping areas, and bathroom and kitchen facilities.
- (3) The dwelling unit and the worksite shall be secured against unauthorized entry, and occupants' belongings protected from contamination by dust-lead hazards and debris during hazard reduction activities. Occupants' belongings in the containment area shall be relocated to a safe and secure area outside the containment area, or covered with an impermeable covering with all seams and edges taped or otherwise sealed.
- (4) In addition to protections afforded elsewhere by law, if interior hazard reduction activities will not be or are not completed within sixty calendar days, occupants shall have the right to terminate their lease and shall have no further obligation to pay rent under that rental agreement, provided, however, that this subsection shall not relieve the occupant of the obligation to pay any previously accrued rent for which he or she is otherwise liable.

B. Worksite preparation.

- (1) The worksite shall be prepared, including the placement of containment barriers, to prevent the release of leaded dust, and contain lead-based

paint chips and other debris from hazard reduction activities within the worksite until they can be safely removed. Practices that minimize the spread of leaded dust, paint chips, soil and debris shall be used during worksite preparation.

- (2) A warning sign shall be posted at each entry to a room where hazard reduction activities are conducted when occupants are present; or at each main and secondary entryway to a building from which occupants have been relocated. Each warning sign shall be as described in 29 CFR §1926.62(m), except that it shall be posted irrespective of employees' lead exposure and, to the extent practicable, provided in the occupants' primary language.

§90-60. Safe work practices.

- A. Lead-based paint shall not be applied to any exterior or interior surface.
- B. Prohibited methods.

The following methods of paint removal shall not be used:

- (1) Open flame burning or torching.
- (2) Machine sanding or grinding without a high-efficiency particulate air (HEPA) local exhaust control.
- (3) Abrasive blasting or sandblasting without HEPA local exhaust control.
- (4) Heat guns operating above 1100 degrees Fahrenheit or charring the paint.
- (5) Dry sanding or dry scraping, except dry scraping in conjunction with heat guns or within 1.0 foot of electrical outlets, or when treating defective paint spots totaling no more than 2 square feet in any one interior room or space, or totaling no more than 20 square feet on exterior surfaces.
- (6) Paint stripping in a poorly ventilated space using a volatile stripper that is a hazardous substance in accordance with regulations of the Consumer Product Safety Commission at 16 CFR §1500.3, and/or a hazardous chemical in accordance with the Occupational Safety and Health

Administration regulations at 29 CFR §§1910.1200 or 1926.59, as applicable to the work.

C. Worksite preparation.

The worksite shall be prepared in accordance with Section 90-59B.

D. Specialized cleaning.

After hazard reduction activities have been completed, the worksite shall be cleaned using cleaning methods, products and devices that are successful in cleaning up dust-lead hazards, such as a HEPA vacuum or other method of equivalent efficacy, and lead-specific detergents or equivalent.

E. *De minimis* levels.

Safe work practices are not required when maintenance or hazard reduction activities do not disturb painted surfaces that total more than:

- (1) 20 square feet on exterior surfaces;
- (2) 2 square feet in any one interior room or space; or
- (3) 10 percent of the total surface area on an interior or exterior type of component with a small surface area. Examples include windowsills, baseboards, and trim.

§90-61. Emergency actions, weather conditions.

- A. For emergency actions necessary to safeguard against imminent or immediate danger to human life, health or safety, or to protect property from further structural damage, including demolitions ordered pursuant to Sections 47A-16B & C of the Municipal Code, occupants shall be protected from exposure to lead in dust and debris generated by such emergency actions to the extent practicable. This exemption does not apply to any work undertaken subsequent to, or above and beyond such emergency actions, other than the demolitions noted above.
- B. Performance of lead-based paint hazard reduction or lead-based paint abatement on an exterior painted surface as required under this Article may be

delayed for a reasonable time during a period when weather conditions render impossible the completion of conventional construction activities, provided however, that this limitation shall continue only for the period in which work cannot be performed in the work safe manner as provided for herein.

§90-62. Exemptions.

- A. This Article shall not apply to properties taken by a governmental entity in a foreclosure proceeding which are vacant and secured and: (1) scheduled for demolition, or (2) scheduled for sale within twelve months.
  
- B. The requirements of §§ 90-54 through 90-57 which are applicable to residential buildings shall not include single-family owner-occupied dwellings. [Amended 7-18-2006 by Ord. No. 2006-224]

§90-63. Prohibition of retaliatory action.

- A. It is unlawful for an owner, or any person acting on his or her behalf, to take any retaliatory action toward a tenant who reports a suspected lead-based paint hazard to the owner or to the City. Retaliatory actions include but are not limited to any actions that materially alter the terms of the tenancy (including rent increases and non-renewals) or interfere with the occupants' use of the property.
  
- B. There shall be a rebuttable presumption that any attempt by the owner to raise rents, curtail services, refuse to renew or attempt to evict a tenant within six months after any report to the City or the owner or any enforcement action in connection with a suspected lead hazard is a retaliatory action in violation of this section, except that in instances of nonpayment of rent or commission of waste upon the premises by the tenant no such presumption shall apply. After six months from the date of the reporting of a suspected lead hazard, or the most recent activity related to any enforcement action, the defense of retaliatory eviction shall remain available to the tenant, but without the benefit of the presumption created by this section.
  
- C. The provisions of this section shall not be given effect in any case in which it is established that the condition from which the complaint or action arose was caused by the tenant, a member of the tenant's household, or a guest of the tenant. Nor shall it apply in a case where a tenancy was terminated pursuant to the terms of a lease as a result of a bona fide transfer of ownership.

§90-64. Notification to County of violations.

The City shall continue to send notices to the County of Monroe listing any health and safety violations found in properties inspected by the City. Any violation of Section 90-54 shall be included on that list.

§90-65. Database for properties.

- A. The City shall maintain a database, accessible to the public, of all residential properties where lead hazards have been identified, reduced and controlled with funds received by the City from the United States Department of Housing and Urban Development which require that such a database be maintained. The City shall further maintain a database of all residential properties granted a Certificate of Occupancy after the effective date of this ordinance.
- B. The databases created pursuant to this section shall be kept available for “walk-in” inspection by the public. No person requesting access shall be required to complete a Freedom of Information request in order to view this database.

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## **APPENDIX B: LIST OF ADVISORY COMMITTEE MEMBERS**

## Lead Ordinance Evaluation Advisory Committee

**Alma Balonon-Rosen**

Local Office Director  
Enterprise Community Partners

**Molly Clifford**

NET Director  
City of Rochester

**Dan Condello**

Financial Assistance Coordinator  
Monroe County Department of Human Services

**Bret Garwood**

Director of Development Services  
Bureau of Housing and Project Development  
City of Rochester

**James Graham**

Executive Director  
Genesis REI, LLC

**Derrick Hazle**

Executive Director  
Coalition to Prevent Lead Poisoning

**Dawn Hyde**

Program Coordinator  
Monroe County Dept of Public Health

**Wade Norwood**

Director, Safety Net Initiative  
Finger Lakes Health Systems Agency

**Joan Roby-Davison**

Executive Director  
Group 14621

**Karen Wingender**

CEO  
Greater Rochester Association of REALTORS®, Inc.

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## **APPENDIX C: NET AREA AND PLANNING SECTOR MAPS**

## Rochester NET Areas

★ indicates NET area office

A - 1495 Lake Ave.

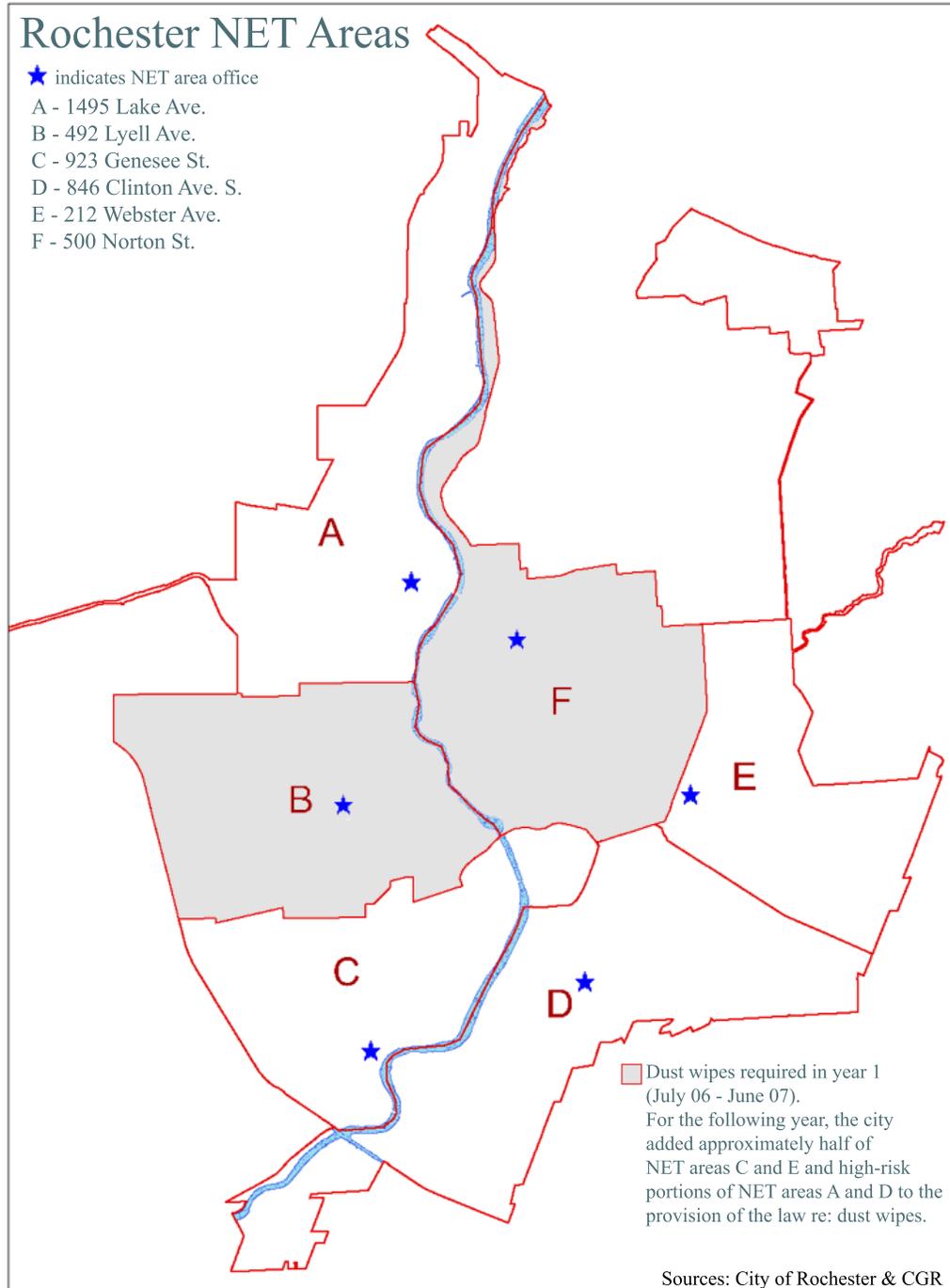
B - 492 Lyell Ave.

C - 923 Genesee St.

D - 846 Clinton Ave. S.

E - 212 Webster Ave.

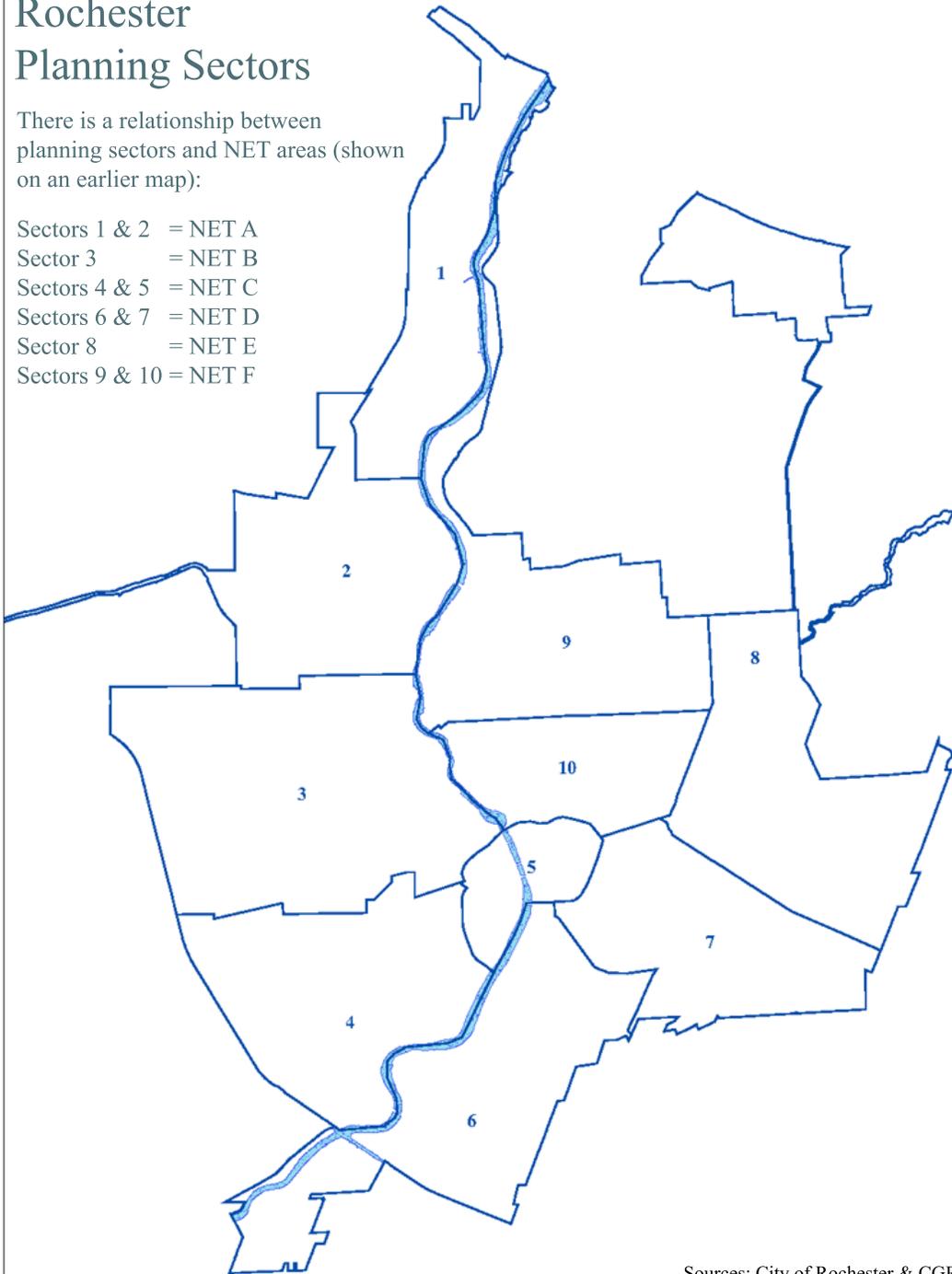
F - 500 Norton St.



# Rochester Planning Sectors

There is a relationship between  
planning sectors and NET areas (shown  
on an earlier map):

- Sectors 1 & 2 = NET A
- Sector 3 = NET B
- Sectors 4 & 5 = NET C
- Sectors 6 & 7 = NET D
- Sector 8 = NET E
- Sectors 9 & 10 = NET F



Sources: City of Rochester & CGR

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## **APPENDIX D: LANDLORD SURVEY**

## PROPERTY OWNERS SURVEY

**Intro:** Hello, this is [name] calling on behalf of CGR, a nonprofit research organization located here in Rochester. We are calling in regards to the City of Rochester's one-year-old lead law. That law is being evaluated now and we need your help as a property owner to provide feedback. Your name was selected at random from the list of all properties that have been inspected within the past year. No personal identification information is required and only summary group results will be reported. Would you be willing to participate in this short phone survey?

### Section A

A1. What is the total number of apartment units that you operate in the City of Rochester: \_\_\_\_\_

*We understand that a property located at [address] underwent a city inspection in [month/year]. Are you the owner/operator of that property? [If yes, continue with survey. If no, thank and discontinue.]*

A2. During the most recent city inspection, was this property cited for any lead hazard violation?  
 Yes  No (Skip to C1)  Don't know yet (Skip to C1)

### Section B: Tenant issues (cited units only)

*Please answer the following questions for the property at [address]. If both units were inspected and cited at the same time, please answer for just the downstairs unit, or pick one if they are side-by-side.*

B1. What is the current monthly rental rate for this unit? \$ \_\_\_\_\_/month

B2. When the unit was cited for a lead hazard, was it occupied?  Yes  No (Skip to C1)

B3. What happened to the tenants while the work was being done? Did they  
 Stay in the property (skip to C1)  
 Relocate to relatives/friends at their own expense while work was done  
 Relocate at your expense (estimated cost: \_\_\_\_\_)  
 Don't know (skip to C1)

B4. How long were the tenants relocated? \_\_\_ days [If response is in weeks, convert to days]

### Section C: Property Repairs (all respondents)

*In preparing for the inspection, or in responding to a lead violation, you may have made repairs to the property. We would like to document just those costs associated with repairs made because of the lead law.*

C1. Please tell me the total cost of repairs just in response to the lead law: \$ \_\_\_\_\_ (estimate or range is OK)

C2. I'd like to ask you about the types of repairs you made. Again, please focus *only on the work that was done specifically related to the lead law.*

Component	Details
A. Did you replace any windows?	<input type="checkbox"/> Yes. If so, how many? _____ <input type="checkbox"/> No <input type="checkbox"/> Don't know
B. Did you repair or paint any windows?	<input type="checkbox"/> Yes. If so, how many? _____ <input type="checkbox"/> No <input type="checkbox"/> Don't know
C. Did you repair or paint any interior trim?	<input type="checkbox"/> Yes <input type="checkbox"/> No
D. Did you replace or repair any porches?	<input type="checkbox"/> Yes. If so, how many? _____ <input type="checkbox"/> No <input type="checkbox"/> Don't know
E. Did you replace any exterior siding?	<input type="checkbox"/> Yes, all siding <input type="checkbox"/> Yes, some siding <input type="checkbox"/> No <input type="checkbox"/> Don't know

F. Did you do any other lead-related work?	Briefly Describe:
--	-------------------

C3. Who did the lead hazard control-related work? Was it

- Yourself (Property owner)  
 A Property manager/employee  
 A Private Contractor  
 Or some Other person (Describe: \_\_\_\_\_)  
 Don't know

C4. Did the person who did this work receive Lead Safe Work Practices Training?

- Yes  
 No  
 Don't know

C5. How did you pay for the lead hazard control work? (Check all that apply)

- Grant program  
 Bank loan/myself/private funds  
 Other (Describe: \_\_\_\_\_)  
 Don't know

C6. How will you offset costs associated with the repairs?(Check all that apply)

- Rent will be increased  
 By not making other improvements  
 Will sell the property  
 Other (Describe: \_\_\_\_\_)  
 Don't know

C7. Do you think the investment you made in the property will improve the value of the property?

- Yes  
 No  
 Don't Know

### Section D: Intent to sell, Perceptions of Law, Comments (all respondents)

D1. Do you hope to sell this property within the next one to two years? \_\_\_Yes \_\_\_No (Skip to D3) \_\_\_ Don't know (Skip to D3)

D2. If so, why? \_\_\_\_\_

D3. What was your position on the lead law when it was initially considered by City Council?

- Unfavorable  Neutral  Favorable  Didn't know about it

D4. Now that the law is in place, what is your position on the law?

- Unfavorable  Neutral  Favorable  Don't know about it

D5. How did you learn about the lead law?

- Media (news/TV)  
 Other property owners/professional associates  
 NET inspector/ C of O process

D6. Do you have any comments or suggestions for changes to the lead law?

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D7. If you would like a copy of the final report when it is available, please give us your email address or mailing address. This contact information will be kept separate from the survey data.

NAME: \_\_\_\_\_  
 ADDRESS: \_\_\_\_\_  
 EMAIL: \_\_\_\_\_

### **ORDINANCE 2008-3**

#### **ORDINANCE CONTROLLING LEAD HAZARDS IN PRE-1978 STRUCTURES, INCLUDING ESTABLISHING MINIMUM STANDARDS FOR INSPECTIONS AND PROVIDING PENALTIES FOR VIOLATION OF THE PROVISIONS**

Whereas, lead poisoning poses a serious public health threat to citizens in the City of Hamtramck.

Whereas, younger children are particularly susceptible to hazards of lead-based paint since their bodies are still developing. Fetuses are also vulnerable to the effects of lead-based paint because pregnant women can transfer lead to their fetuses, which can result in adverse developmental effects.

Whereas, a small amount of lead can cause elevated blood lead levels resulting in serious and irreversible developmental damage, particularly in children under the age of six years.

Whereas, exposure to lead hazards from deteriorated lead-based paint is a primary cause of elevated blood lead levels in humans.

Whereas, structures built before 1978 are more likely to contain lead-based paint hazards.

Whereas, residential properties are more likely than are commercial properties to be a source of exposure to lead-based paint hazards by children.

Whereas, children living in older, poorly maintained homes are disproportionately at risk for lead-based paint hazards.

Whereas, exposure to lead-based paint hazards in the City of Hamtramck is most common, and presents the most serious risk, to young children residing in rental housing built before 1978.

Whereas, it is essential to the overall public health of persons in the City of Hamtramck, and particularly for children younger than six years of age, that they be protected from exposure to lead-based paint hazards.

Whereas, the application of lead-based paint poisoning prevention legislation to the owner-occupied housing market could cause extensive housing abandonment in at least nine distinct neighborhoods.

Whereas, although unquestionably positive, potential health benefits of lead-based paint poisoning prevention legislation are difficult to quantify since the number of people at-risk is undetermined, the transient nature of tenants makes targeting difficult, the mere presence of lead in a structure does not necessarily lead to human exposure to lead-based paint hazards, and the generally agreed-upon group at greatest risk, children from 0-6 years of age, are significantly transient.

NOW, THEREFORE, BE IT ORDAINED, by the Council of the City of Hamtramck as follows:

### **Section 1. Policy and Intent.**

It is the policy of the City of Hamtramck to assist in poison prevention of its residents by requiring that the presence of deteriorated lead-based paint on the interior and exterior of pre-1978 residential structures and on the exterior of pre-1978 non-residential structures be identified and be addressed by reducing and controlling lead based paint hazards which may be present in order to prevent exposure to these hazards.

### **Section 2. Definitions.**

ABATEMENT is any set of measures designed to permanently eliminate lead-based paint or lead-based paint hazards (see definition of "PERMANENT"). Abatement includes: (1) The removal of lead-based paint and dust-lead hazards, the permanent enclosure or encapsulation of lead-based paint, the replacement of components or fixtures painted with lead-based paint, and the removal or permanent covering of soil-lead hazards; and (2) All preparation, cleanup, disposal, and post abatement clearance testing activities associated with such measures.

CERTIFIED is licensed or certified to perform such activities as risk assessment, lead-based paint inspection, or abatement supervision by the United States Environmental Protection Agency (EPA) in accordance with 40 CFR Part 745, Subpart L.

CERTIFIED LEAD-BASED PAINT INSPECTOR means an individual who has been trained by an accredited training program, as defined by 40 CFR §745.223, and certified by EPA pursuant to 40 CFR §745.226 to conduct lead-based paint inspections. A certified lead-based paint inspector also samples for the presence of lead in dust and soil for the purpose of clearance testing.

CERTIFIED RISK ASSESSOR is an individual who has been trained by an accredited training program, as defined by 40 CFR §745.223, and certified by EPA pursuant to 40 CFR §745.226 to conduct risk assessments. A certified risk assessor also samples for the presence of lead in dust and soil for the purposes of clearance testing.

CHEWABLE SURFACE is an interior or exterior surface painted with lead-based paint that a young child can chew. A chewable surface is the same as an "accessible surface" as defined in 42 U.S.C. 4851b(2). Hard metal substrates and other materials that cannot be dented by the bite of a young child are not considered chewable.

CLEARANCE EXAMINATION is an activity conducted following lead-based paint hazard reduction activities to determine that the hazard reduction activities are complete and that no soil-lead hazards or settled dust-lead hazards, as defined in this Article, exist in the dwelling unit or worksite.

COMMON AREA is a portion of a residential property that is available for use by occupants of more than one dwelling unit. Such an area may include, but is not limited to, hallways, stairways, laundry and recreational rooms, playgrounds, community centers, on-site day care facilities, porches, basements, attics, garages and boundary fences.

COMPONENT is an architectural element of a dwelling unit or common area identified by type and location, such as a bedroom wall, an exterior window sill, a baseboard in a living room, a kitchen floor, an interior window sill in a bathroom, a porch floor, stair treads in a common stairwell, or an exterior wall.

CONTAINMENT is the physical measure taken to ensure that dust and debris created or released during lead-based paint hazard reduction are not spread, blown or tracked from inside to outside the worksite.

DETERIORATED PAINT is any interior or exterior paint or other coating that, through a visual assessment, is found to peel, chip, flake, chalk or crack, or any paint or coat located on an interior or exterior surface or fixture that is otherwise damaged or separated from the substrate, or a chewable surface that contains visual signs of chewing.

DRIPLINE is the area within 3 feet surrounding the perimeter of a building.

DRY SANDING is sanding without moisture and includes both hand and machine sanding.

DUST-LEAD HAZARD is surface dust that contains a dust-lead loading (area concentration of lead) at or exceeding levels promulgated by the EPA pursuant to section 403 of the Toxic Substances Control Act.

DWELLING UNIT is a: (1) Single-family dwelling, including attached structures such as porches and stoops; or (2) Housing unit in a structure that contains more than 1 separate housing unit, and in which each such unit is used or occupied, or intended to be used or occupied, in whole or in part, as the home or separate living quarters of 1 or more persons.

ENCAPSULATION is the application of a cover or coat that serves as a barrier between the lead-based paint and environment and is dependent that relies for its durability on adhesion between the encapsulant and the painted surface, and on the integrity of the existing bonds between paint layers and between the paint and the substrate. Encapsulation may be used as a method of abatement if it is designed and performed so as to be permanent.

ENCLOSURE is the use of rigid, durable construction materials that are mechanically fastened to the substrate in order to act as a barrier between lead-based paint and the environment. Enclosure may be used as a method of abatement if it is designed to be permanent.

EVALUATION is risk assessment, a lead hazard screen, a lead-based paint inspection, paint testing, or a combination of these to determine the presence of lead-based paint hazards or lead-based paint.

FRICION SURFACE is an interior or exterior surface subject to abrasion or friction, including, but not limited to, certain window, floor, and stair surfaces.

HAZARD REDUCTION is a measure designed to reduce or eliminate human exposure to lead-based paint hazards through methods including interim controls or abatement or a combination of the two.

HEPA VACUUM is a vacuum cleaner with a high-efficiency particulate air (HEPA) filter through which contaminated air flows. A HEPA filter is one that captures at least 99.97 percent of airborne particles of at least 0.3 micrometers in diameter.

IMPACT SURFACE is an interior or exterior surface subject to damage by repeated sudden force, such as certain parts of door frames.

INTERIM CONTROLS is a set of measures designed to reduce human exposure or likely exposure to lead-based paint hazards. Interim controls include, but are not limited to, repairs, painting, temporary containment, specialized cleaning, clearance, ongoing lead-based paint maintenance activities, and the establishment and operation of management and resident education programs.

LEAD-BASED PAINT is paint or other surface coatings that contain lead equal to or exceeding 1.0 milligram per square centimeter or 0.5 percent by weight or 5,000 parts per million (ppm) by weight.

LEAD-BASED PAINT HAZARD is any condition that causes exposure to lead from dust-lead hazards, soil-lead hazards, or lead-based paint that is deteriorated or present in chewable surfaces, friction surfaces, or impact surfaces, and that would result in adverse human health effects.

g means gram

mg means milligram (thousandth of a gram)

ug means microgram (millionth of a gram)

**LEAD-BASED PAINT INSPECTION** means a surface-by-surface investigation to determine the presence of lead-based paint and the provision of a report explaining the results of the investigation.

**LEAD HAZARD INFORMATION PAMPHLET** is the most recent publication of the developed by the EPA, the United States Department of Housing and Urban Development and the Consumer Product Safety Commission pursuant to Section 403 of the Toxic Substances Control Act (15 U.S.C. 2686), entitled "Protect Your Family From Lead in Your Home."

**OCCUPANT** is a person who inhabits a dwelling unit.

**OWNER** means a person, firm, corporation, nonprofit organization, partnership, government, guardian, conservator, receiver, trustee, executor, or other judicial officer, or other entity which, alone or with others, owns, holds, or controls the freehold or leasehold title or part of the title to property, with or without actually possessing it. The definition includes a vendee who possesses title, but does not include a mortgagee or an owner of an opposing interest under a ground rent lease.

**PAINT STABILIZATION** is repair any physical defect in the substrate of a physical defect painted surface that is causing paint deterioration, removing loose paint and other material from the surface to be treated, and applying a new protective coating or paint.

**PAINT TESTING** is the process of determining, by a certified lead-based paint inspector or risk assessor, the presence or absence of lead-based paint on deteriorated paint surfaces or painted surfaces to be disturbed or replaced.

**PAINT REMOVAL** is a method of abatement that permanently eliminates lead-based paint from surfaces.

**PAINTED SURFACE TO BE DISTURBED** is a paint surface that is to be scraped, sanded, cut, penetrated or otherwise affected by rehabilitation work in a manner that could potentially create a lead-based paint hazard by generating dust, fumes, or paint chips.

**PERMANENT** is an expected design life of at least 20 years.

**PORCH, OPEN** – An open structure projecting from the exterior wall of a building and having at least 70% of the total area of the vertical planes forming its perimeter unobstructed in any manner except by screen between floor and ceiling.

**REDUCTION** means measures designed to reduce or eliminate human exposure to lead-based paint hazards through methods including interim controls and abatement.

REHABILITATION is the improvement of an existing structure through alterations, additions or enhancements. Rehabilitation includes repairs necessary to correct the results of deferred maintenance, replacement of fixtures and components, improvements to increase the efficient use of energy, and installation of security devices.

REPLACEMENT is a strategy of abatement that entails removal of building components that have surfaces coated with lead-based paint and installation of new components free of lead-based paint.

RESIDENTIAL PROPERTY is a dwelling unit, common area, building exterior surface, and any surrounding land, including outbuildings, fences and play equipment affixed to the land, belonging to an owner and available for use by residents, but not including land used for agricultural, commercial, industrial or other non-residential purposes, and not including paint on the pavement of parking lots, garages, or roadways.

RISK ASSESSMENT is: (1) An on-site investigation to determine the existence, nature, severity, and location of lead-based paint hazards; and (2) Provision of a report by an individual or firm conducting risk assessment which explain results of the investigation and options for reducing lead-based paint hazards.

SOIL-LEAD HAZARD is bare soil on residential property that contains lead equal to or exceeding levels promulgated by the U.S. Environmental Protection Agency pursuant to section 403 of the Toxic Substances Control Act.

TENANT is the individual named as the lessee in a lease, rental agreement or occupancy agreement for a dwelling unit.

VISUAL ASSESSMENT is an examination for, as applicable:

- (1) deteriorated paint;
- (2) visible surface dust, debris and residue found as part of an inspection pursuant to Section 90-55, a risk assessment or clearance examination;
- (3) the completion or failure of a lead-based paint hazard reduction measure as part of a clearance examination.

WET SANDING or WET SCRAPING means a process to remove loose paint in which the painted surface to be sanded or scraped is kept wet to minimize dispersal of paint chips and airborne dust.

WINDOW TROUGH is an area between the interior window sill (stool) and the storm window frame. If there is no storm window, the window trough is the area that receives both the upper and lower window sashes when they are both lowered.

WIPE SAMPLE is a sample collected by wiping a representative surface of known area, as determined by ASTM E1728, "Standard Practice for Field Collection of Settled Dust Samples Using Wipe Sampling Methods for Lead Determination by Atomic Spectrometry Techniques," or equivalent method, with an acceptable wipe material as defined in ASTM E 1792, "Standard Specification for Wipe Sampling Materials for Lead in Surface Dust."

WORKSITE is an interior/exterior area where lead-based paint hazard reduction activity takes place. There may be more than one worksite in a dwelling unit or at a residential property.

### **Section 3: Presumptions and obligations.**

- A. For purposes of this article, all paint on the interior or exterior of any residential building for which a Certificate of Occupancy is required on which the original construction was completed prior to January 1, 1978.
- B. For purposes of this article, all paint on the interior or exterior of any non-residential structure on which the original construction was completed prior to January 1, 1978 shall be presumed to be lead-based.
- C. Any person seeking to rebut these presumptions shall establish through the means set forth in Section 4 that the paint on the building or structure in question is not lead-based paint.
- D. Residential buildings subject to the Certificate of Occupancy requirements are maintained free of lead-based paint hazards.

### **Section 4. Violations.**

#### **A. Deteriorated paint violation.**

The interior and exterior of any residential building for which a Certificate of Occupancy is required, on which the original construction was completed prior to January 1, 1978, and the exterior of any non-residential structure on which the original construction was completed prior to January 1, 1978, shall be maintained in a condition such that the paint thereon does not become deteriorated paint, unless the deteriorated paint surfaces total no more than:

- (1) 20 square feet on exterior surfaces;
- (2) 2 square feet in any one interior room or space;
- (3) 10 percent of the total surface area on an interior/exterior type of component with a small surface area. Examples include windowsills, baseboards, and trim.

B. Bare soil violation.

Bare soil shall not be present within the drip line of any residential building for which a Certificate of Occupancy is required pursuant to Section 90-16 on which the original construction was completed prior to January 1, 1978.

C. Dust-lead hazard violation.

A dust-lead hazard shall be identified and cited in accordance with the procedures set forth in Section 5, Inspection for Violations.

**Section 5. Inspection for Violations.**

All inspections, including, but not limited to, inspections performed as part of an application for a Certificate of Occupancy, or renewal of a Certificate of Occupancy, or based upon the filing of a complaint, shall include a visual assessment for deteriorated paint and bare soil violations.

**Section 6. Remedy for violations.**

Following a visual assessment which results in the citation of a deteriorated paint violation, the violation may be removed only by one of the following methods:

- A. Certification by a lead-based paint inspector or risk assessor that the property has been determined through a lead-based paint inspection conducted in accordance with the federal regulations at 40 CFR §745.227(b) not to contain lead-based paint.
- B. Certification by a lead-based paint inspector or risk assessor that all lead-based paint in the property has been identified and cited. Violations, have been abated, or identified and interim controls implemented, and clearance has been achieved in accordance with standards found at 40 CFR §745.227(e), Regardless of whether abatement has been achieved or interim controls Implemented, and provided however that the property has been inspected Pursuant to those standards since the deteriorated paint or dust-lead hazard violation was last detected cited.

**Section 7. Standards for clearance examination and report.**

The remedy available shall require that a clearance examination be completed for a property upon which a deteriorated paint violation has been cited in accordance with the following requirements:

- A. Qualified personnel. Certification of clearance shall be issued by:
  - (1) A certified risk assessor; or
  - (2) A certified lead-based paint inspector.

## B. Required activities.

- (1) A clearance examination shall include a visual assessment, dust sampling, submission of samples for analysis for lead, interpretation of sampling results, and preparation of a report. Examinations shall be performed in dwelling units, common areas and exterior areas in accordance with this section and the steps set forth at 40 CFR 745.227(e)(8) and (9).
- (2) A visual assessment shall be performed to determine if deteriorated paint surfaces and/or visible amounts of dust, debris, paint chips or other residue are present. Both exterior and interior painted surfaces shall be examined for the presence of deteriorated paint. If deteriorated paint and visible dust, debris or residue are present in areas subject to dust sampling, they must be eliminated prior to the continuation of the clearance examination. If exterior painted surfaces have been disturbed by the hazard reduction, maintenance or rehabilitation activity, the visual assessment shall include an inspection of the ground and any outdoor living areas close to the affected exterior painted surfaces. Visible dust or debris in such outdoor living areas shall be cleaned up and visible paint chips on the ground shall be removed.
- (3) Dust samples shall be wipe samples and shall be taken on floors, including/excluding open porches, and, where practicable, interior windowsills and window troughs. Dust samples shall be collected and analyzed in accordance with 40 CFR 745.227(f) and (g).

## C. Report.

The clearance examiner shall ensure that an examination report is prepared that provides documentation of the examination.

- (1) The report shall include the following information:
  - (a) The address of the residential property and, if only part of a multifamily Property is affected, the specific dwelling units and common areas affected.
  - (b) The date(s) of the examination;
  - (c) The name, address and signature of each person performing the Examination, including their EPA certification number.
  - (d) The results of the visual assessment for the presence of deteriorated paint and visible dust, debris, residue or paint chips;
  - (e) The results of the analysis of dust samples, in ug/sq. ft., by location

of sample and

- (f) The name and address of each laboratory that conducted the analysis of dust samples, including the identification number for each laboratory recognized by EPA under section 405(b) of the Toxic Substances Control Act (15 U.S.C. 2685(b)).

(2) When abatement is performed, the report shall be an abatement report in Accordance with 40 CFR §745.227(e)(10).

D. Clearance standards.

Where a deteriorated paint or dust-lead hazard violation has been cited, the dust-lead standards in 40 CFR §745.65(b) shall be met before a Certificate of Occupancy may be issued or a violation removed. With respect to porches, the standard required for clearance shall be 400 ug/sq. ft., provided however, that if a porch is found to contain more than 40 ug/sq. ft., the inspector or assessor shall advise the occupants of the premises that the porch constitutes a potential lead-based paint hazard that requires continued caution and that the occupants should read and follow closely the information in the lead hazard information pamphlet regarding lead safe maintenance practices such as frequent washing, and that pamphlet shall be provided to the occupants.

- E. Requirement to avoid conflict of interest regarding clearance inspection. All examinations shall be performed by persons or entities independent of those performing hazard reduction or maintenance activities.

**Section 8. Lead-safe hazard reduction and control.**

- A. No person shall disturb or remove lead-based paint, or in any other way generate excessive dust or debris during work on the interior or exterior of any existing building or structure except in accordance with the requirements of this Section and other Sections of this ordinance.
- B. This Section shall not apply to activities that disturb or remove paint where the activities are being performed on buildings on which construction was completed on or after January 1, 1978.

C. Sign required when exterior lead-based paint is disturbed.

- (1) Not later than the commencement date of any lead-based paint hazard reduction work, the owner, or the contractor when the owner has entered into

a contract with a contractor to perform such work on the exterior of a building or structure, shall post signs in a location or locations clearly visible to the adjacent properties stating the following:

LEAD-BASED PAINT HAZARD REDUCTION WORK IN PROGRESS  
PUBLIC ACCESS TO WORK AREA PROHIBITED POSTED IN  
ACCORDANCE WITH THE CITY OF HAMTRAMCK CODE FOR  
FURTHER INFORMATION, PHONE -----

- (2) The sign required by this subsection shall be not less than 24 inches square and shall be in large boldface capital letters no less than one-half inch in size, and shall contain the notification in English. The sign required by this subsection shall remain in place until the lead based paint hazard reduction work has been completed.
- (3) Where it is not possible to post signs in a conspicuous location or locations clearly visible to the adjacent properties, the owner, or where the owner has entered into a contract with a contractor to perform lead-based paint hazard reduction work, the contractor shall provide the notice in written form, such as a letter or memorandum, to the occupants of adjacent properties.

#### **Section 9. Notice to tenants.**

Where lead-based paint hazard reduction work is to be performed on the interior or exterior of buildings occupied by one or more tenants, not less than three business days before any lead-based paint hazard reduction work is to commence, the owner shall provide the following information:

- (1) Content of notice.

Provide written notice to tenants of the building on which the work is being performed that lead-based paint hazard reduction work is being performed. This notice shall be in compliance with the EPA pre-renovation notification rules set forth in 40 CFR Part 745, Subpart E, shall be in the form of a sign, letter or memorandum, and shall prominently state the following:

Work is scheduled to be performed beginning \_\_\_\_\_ (date) on this property that may disturb or remove lead-based paint. The \_\_\_\_\_ persons performing this work are required to follow federal and local laws regulating work with lead-based paint. You may obtain information regarding these laws, or report any suspected violations of these laws, by calling the City of

Hamtramck at \_\_\_\_\_ (a number to be designated by the City). The owner of this property is also required to provide tenants with a copy of the lead hazard information pamphlet. Retaliatory action against tenants is prohibited by the Municipal Code.

(2) The owner shall provide all tenants in the building with a copy of the lead hazard information pamphlet. F E. Notice by contractor. Where lead-based paint hazard reduction work is being performed by a Contractor on residential property, the contractor shall at least three business days prior to the commencement of such work, notify the property owner of potential lead hazards during the project by delivering to the owner a copy of the lead hazard information pamphlet.

(3). Early commencement of work by owner.

A property owner may commence, or may authorize a contractor to commence, lead-based paint hazard reduction work less than three business days after providing notices required above when such work must be commenced immediately to correct an emergency condition, such as work necessitated by non-routine failures of equipment, that were not planned but result from a sudden, unexpected event that, if not immediately attended to, presents a safety or public health hazard, or threatens equipment and/or property with significant damage.

(4). Early commencement of work requested by tenant.

Upon written request of a tenant, an owner may commence or authorize a contractor to commence, lead-based paint hazard reduction work on that tenant's unit less than three business days after providing notices required in subsection 1 above.

## **Section 10. Occupant protection and worksite preparation.**

### **A. Occupant protection.**

(1) Occupants shall not be permitted to enter the worksite during hazard reduction activities (unless they are employed in the conduct of these activities at the worksite) until after hazard reduction work has been completed and clearance has been achieved.

(2) Occupants shall be temporarily relocated during hazard reduction activities and until a clearance examination has been successfully completed on the occupant's unit, and occupants who relocate to a unit not owned by their landlord shall not be liable for rent accruing during that time, except relocation shall not be necessary if:

- (a) Treatment will not disturb lead-based paint, dust-lead hazards or soil lead hazards;
  - (b) Only the exterior of the dwelling unit is treated, and windows, doors, ventilation intakes and other openings in or near the worksite are sealed during hazard control work and cleaned afterward, and entry free of dust-lead hazards, soil-lead hazards and debris is provided;
  - (c) Treatment of the interior will be completed within one period of 8 daytime hours, the worksite is contained so as to prevent release of leaded dust and debris into other areas, and treatment does not create other safety, health or environmental hazards (e.g., exposed live electrical wiring, release of toxic fumes, or on-site disposal of hazardous waste); or
  - (d) Treatment of the interior will be completed within 15 calendar days, the worksite is contained so as to prevent the release of leaded dust and debris into other areas, treatment does not create other safety, health or environmental hazards; and, at the end of work on each day, the worksite and the area within at least 10 feet of the containment area is cleaned to remove any visible dust or debris, and occupants have safe daily access to sleeping areas, and bathroom and kitchen facilities.
- (3) The dwelling unit and the worksite shall be secured against unauthorized entry, and occupants' belongings protected from contamination by dust lead hazards and debris during hazard reduction activities. Occupants' belongings in the containment area shall be relocated to a safe and secure area outside the containment area, or covered with an impermeable covering with all seams and edges taped or otherwise sealed.
- (4) In addition to protections afforded elsewhere by law, if interior hazard reduction activities will not be or are not completed within sixty calendar days, occupants shall have the right to terminate their lease and shall have no further obligation to pay rent under that rental agreement, provided, however, that this subsection shall not relieve the occupant of the obligation to pay any previously accrued rent for which he or she is otherwise liable.

#### B. Worksite preparation.

- (1) The worksite shall be prepared, including the placement of containment barriers, to prevent the release of leaded dust, and contain lead-based paint chips and other debris from hazard

reduction activities within the worksite until they can be safely removed. Practices that minimize the spread of leaded dust, paint chips, soil and debris shall be used during worksite preparation.

- (2) A warning sign shall be posted at each entry to a room where hazard reduction activities are conducted when occupants are present; or at each main and secondary entryway to a building from which occupants have been relocated. Each warning sign shall be as described in 29 CFR §1926.62(m), except that it shall be posted irrespective of employees' lead exposure and, to the extent practicable, provided in the occupants' primary language.

### **Section 11. Safe work practices.**

A. Lead-based paint shall not be applied to any exterior or interior surface.

B. Prohibited methods.

The following methods of paint removal shall not be used:

- (1) Open flame burning or torching.
- (2) Machine sanding or grinding without a high-efficiency particulate air (HEPA) local exhaust control.
- (3) Abrasive blasting or sandblasting without HEPA local exhaust control.
- (4) Heat guns operating above 1100 degrees Fahrenheit or charring the paint.
- (5) Dry sanding or dry scraping, except dry scraping in conjunction with heat guns or within 1.0 foot of electrical outlets, or when treating defective paint spots totaling no more than 2 square feet in any one interior room or space, or totaling no more than 20 square feet on exterior surfaces.
- (6) Paint stripping in a poorly ventilated space using a volatile stripper that is a hazardous substance in accordance with regulations of the Consumer Product Safety Commission at 16 C CFR §1500.3, and/or a hazardous chemical in accordance with the Occupational Safety and Health Administration regulations

at 29 CFR §§1910.1200 or 1926.59, as applicable to the work.

C. Worksite preparation

The worksite shall be prepared in accordance with Section 90-58B 90-59B.

D. Specialized cleaning.

After hazard reduction activities have been completed, the worksite shall be cleaned using cleaning methods, products and devices that are successful in cleaning up dust-lead hazards, such as a HEPA vacuum or other method of equivalent efficacy, and lead-specific detergents or equivalent.

E. *De minimis* levels.

Safe work practices are not required when maintenance or hazard reduction activities do not disturb painted surfaces that total more than:

- (1) 20 square feet on exterior surfaces;
- (2) 2 square feet in any one interior room or space; or
- (3) 10 percent of the total surface area on an interior or exterior type of component with a small surface area. Examples include windowsills, baseboards, and trim.

**Section 12. Emergency actions, weather conditions.**

A. For emergency actions necessary to safeguard against imminent or immediate danger to human life, health or safety, or to protect property from further structural damage, including demolitions ordered, occupants shall be protected from exposure to lead in dust and debris generated by such emergency actions to the extent practicable. This exemption does not apply to any work undertaken subsequent to, or above and beyond such emergency actions, other than the demolitions noted above.

B. Performance of lead-based paint hazard reduction or lead-based paint abatement on an exterior painted surface as required under this Article may be delayed for a reasonable time during a period when weather conditions render impossible the completion of conventional construction activities, provided however, that this limitation shall

continue only for the period in which work cannot be performed in the work safe manner as provided for herein.

### **Section 13. Exemptions.**

- A. This Article shall not apply to properties taken by a governmental entity in a foreclosure proceeding which are vacant and secured and: (1) scheduled for demolition, or (2) scheduled for sale within twelve months.
- B. The requirements of this Article which are applicable to residential buildings for which a Certificate of Occupancy is required shall not include owner-occupied dwellings for which a Certificate of Occupancy may be required.
- C. The requirements of this Article shall not apply to any person(s) who owns fewer than 3 residential buildings in the county of Wayne, Michigan for which a Certificate of Occupancy is required.
- D. All dwellings for which a Certificate of Occupancy is required shall be inspected regardless of their exemption but shall receive only documentation of the problem(s) noted during the inspection.

### **Section 14. Prohibition of retaliatory action.**

- A. It is unlawful for an owner, or any person acting on his or her behalf, to take any retaliatory action toward a tenant who reports a suspected lead-based paint hazard to the owner or to the City. Retaliatory actions include but are not limited to any actions that materially alter the terms of the tenancy (including rent increases and non-renewals) or interfere with the occupants' use of the property.
- B. There shall be a rebuttal presumption that any attempt by the owner to raise rents, curtail services, refuse to renew or attempt to evict a tenant within six months after any report to the City or the owner or any enforcement action in connection with a suspected lead hazard is a retaliatory action in violation of this section, except that in instances of nonpayment of rent or commission of waste upon the premises by the tenant no such presumption shall apply. After six months from the date of the reporting of a suspected lead hazard, or the most recent activity related to any enforcement action, the defense of retaliatory eviction shall remain available to the tenant, but without the benefit of the presumption created by this section.
- C. The provisions of this section shall not be given effect in any case in

which it is established that the condition from which the complaint or action arose was caused by the tenant, a member of the tenant's household, or a guest of the tenant. Nor shall it apply in a case where a tenancy was terminated pursuant to the terms of a lease as a result of a bona fide transfer of ownership.

#### **Section 15. Database for properties.**

- A. The City shall maintain a database, accessible to the public, of all residential properties where lead hazards have been identified, reduced and controlled with funds received by the City from the United States Department of Housing and Urban Development which require that such a database be maintained. The City shall further maintain a database of all residential properties granted a Certificate of Occupancy after the effective date of this ordinance.
- B. The databases created pursuant to this section shall be kept available for "walk in" inspection by the public. No person requesting access shall be required to complete a Freedom of Information request in order to view this database.

#### **Section 16. Enforcement.**

- A. The City Manager is hereby authorized and directed to promulgate any rules and regulations deemed necessary to implement the provisions of this ordinance.
- B. The City may commence an action to obtain injunctive relief to prevent actions prohibited by this ordinance, to enforce corrective orders and conciliation agreements authorized by this subchapter.
- C. In cases involving alleged violations of this ordinance, the City may enter into agreements whereby persons agree to methods of conforming to this ordinance in case of hardship as determined by the city manager. Violations of such agreements shall be violations of this ordinance and may be punishable through the appropriate judicial processes. Such agreements shall be a part of public record, and the City shall maintain the right to make any and all parts of such agreement public.
- D. (1) Criminal enforcement – Violation of this ordinance shall be deemed a misdemeanor. Each violation of this ordinance shall be punishable by a fine not to exceed five hundred dollars (\$500.00), imprisonment of not more than ninety (90) days, or both.

- (2) Civil enforcement – If after the expiration of any period of time set for

compliance under this ordinance, there has been no compliance, or if there is a violation of section 15 of this ordinance, then the tenant aggrieved may commence a civil action in any appropriate court to enforce this ordinance, as well as other applicable federal, state, or local laws. Upon request or upon its own motion, the court may enter such orders as are appropriate to the enforcement of this subchapter and other applicable laws, enjoining respondents from engaging in practices in violation of this ordinance and the granting of actual damages, plus costs and attorney's fees.

Section 17. If any section, subsection, sentence, clause, phrase or portion of this amendment for any reason is held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions hereof.

Section 18. This ordinance shall take effect after its passage, approval and publication in accordance to law.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF HAMTRAMCK, WAYNE COUNTY, MICHIGAN THIS 11th DAY OF MARCH, 2008.

AYES: Majewski, Ahmed, Algazali, Gordon, Klein, Shulgon, Stackpoole  
NAYS: None  
ABSTENTIONS: None  
ABSENT: None

ATTEST:

\_\_\_\_\_  
Karen Majewski, Mayor

\_\_\_\_\_  
T. Edwin Norris, City Clerk

Enacted: March 11, 2008  
Published: March 19, 2008

# **Policy Advocacy: The Ten Minute Version By Nancy Amidei**

If you have ever:

- Gone to bat for your child when there was a problem at school;
- Helped a relative or neighbor get care when they were sick; or
- Asked friends to support a favorite project—

then you have been an advocate.

Advocacy mean to *speak up*, to *plead the case of another*, or to *champion a cause*. Usually advocacy involves bringing influence to bear to win change. It is something most of us do routinely on behalf of ourselves, our families, our neighbors, and our friends.

**Policy advocacy** is no different, except that the advocacy may be on behalf of people we don't personally know, and those being influenced work with laws, public programs, or court decisions. That includes anyone in a public policy-making role (like a county commissioner, state legislator, or government employee).

Policy advocacy can be useful at all levels of government. For example, if you have a family member with a mental or physical disability, policies at federal, state, and local levels already affect your lives:

- Local school boards must carry out the federal law that requires an Individualized Education Plan for handicapped children;
- County government is usually responsible for such social services as sheltered workshops and adult day care;
- City government is likely to be responsible for whether or not buses, roadways, and public buildings are accessible to wheelchairs;
- State government determines the income eligibility limits for Medicaid; and
- The federal government is responsible for protecting the civil rights of people with disabilities.

One way or another, legislators, government agencies and the courts all affect whether people with disabilities and their families can live full and productive lives. But sometimes it takes the help of an advocate to make everything work as it should.

*If you want to make a positive difference for vulnerable people in your community, then you will need to take three steps.*

**1. Be informed.** This part is obvious. It doesn't help to be well-meaning but misinformed. Getting the basic facts is the first step, and not very hard.

Get on the mailing list of an advocacy group that focuses on your issue. If you are concerned about the need for child care in your community, you could get on the mailing list of a national or local child advocacy group, and go to public meetings where child care needs are discussed. Local advocates can direct you to reports on the subject, and you could follow the issue in the media. Before long, you'll know a lot about child care.

**2. Be involved.** This step is also pretty obvious, and one that most people take almost instinctively. It makes sense to want to act once you know the need.

Here too there are many possibilities. You could volunteer at a Head Start program, attend a conference, or answer telephone inquiries at a Resource and Referral line. Others help by babysitting for the children of homeless families while their parents are out looking for housing or work.

Taking steps one and two will help alleviate some immediate problems. That is a good thing, but the problems will still be there, as will their causes — largely unchanged. Just being informed — without acting — is like going to a restaurant just to read the menu. You'd be informed, but you'd be missing the point. To be effective, one more step is needed.

**3. Be an advocate.** This does not come as easily to most people, but it represents the best hope for getting at why there is a problem in the first place.

Here too there are many choices for action. You could make calls or write letters about child care measures before your state legislature. You could help design and carry out a campaign to educate the voters. You can urge your governor to support adequate child care funding. You can write comments letters when federal regulations affecting child care are revised. In short, you can take steps to insure that there will be real child care choices available to meet the needs in your community.

## Three Basic Tools, Two Critical Audiences

No matter what the level of government, the nature of the change desired, or the need, there are three basic tools available to every policy advocate and two key audiences. When you want to reach a policy maker, you should plan to:

### **Write      Call      Visit**

If policy makers are to represent your wishes in the policy process, they need to hear from you. The fundamentals of contacting policy makers are so reasonable you'll wonder why you haven't done it (or more of it) before.

- Be brief and to the point;
- Identify yourself and how you (or people you know) will be affected by what's being proposed – that is, a new law, a cut in the budget, a change in the rules that govern a program;
- Be clear about what you want. Name the law that's being discussed or the program rules that are about to be changed, and specifically what you want the policy-maker to do.
- Mention provisions that you agree and disagree with, and if possible, offer some alternative
- Let them know how you can be reached for further information, a clarification, or help.

In addition to reaching policy makers directly, there's a second audience to keep in mind: other voters. If enough of them get aroused, they will help make your case, and your job will be easier.

The same basic tools apply.

### **Write**

With a few minor changes, the letter you sent to a legislator can also be sent as a letter-to-the-editor. That way your message may reach many other voters.

### **Call**

The same message you leave on your Congressperson's message machine can be called in to a radio call-in show. That's another way your message can reach other voters.

### **Visit**

Or, you can take the "little speech" you memorized to speak to the county commissioner the other day at the mall, and repeat it at your church group, rotary club, or PTA. That's one more way that your message can reach other voters.

## Basic Advocacy Is Not Hard

While it is certainly true that some advocacy is carried out by experts, and may involve super-sophisticated organizations and strategies, there is still much to do that is simple and easy. You don't need to be an expert, you just need to care enough to get involved and speak up. That means bringing whatever power you have – as a taxpayer and a voter – to make our democratic system work. Your influence is greater than you think and not hard to use. Just consider:

- Speaking up won't guarantee that you will win, but not speaking up guarantees that your wishes won't be known.
- Advocacy is easier, and frequently more fun, if you are part of a group. (It also helps boost your courage and bolster morale.)
- It helps to go along with someone more experienced the first few times. It won't seem so intimidating and having someone else do the talking helps a lot. Much of learning involves watching (and imitating) others. Advocacy is no different.
- Don't be afraid of being asked something you can't answer. Many politicians have message machines, so you may just be talking to a machine. And, as one Senate aide explained, her job was to record each caller's name, address, and message – not to put the Senator's constituents on the spot by interrogating them.
- What if you are asked something you can't answer? Simple, do as the politicians do: say you don't know, but you'll find out and get back to them. Then do. When Utah Governor Norman Bangert met with human needs advocates at a "Citizen's Day At the Legislature," there were questions he couldn't answer. He acknowledged the fact and said he'd get back to the groups with the answer. You can do the same.
- Don't be afraid of being rejected. As one politician explained, even if he thought your idea was goofy, he'd fudge around or nod rather than say so. Elected officials are not likely to risk losing your vote by telling you off.
- Practice helps. Memorize a little speech, or write out a script to use on the phone. Role-play the meeting or call with a friend. And don't worry if you lack the charm of Ronald Reagan or the moral stature of Mother Teresa.

*Your only task is to be yourself: a citizen and voter who wants government policies to work for the most vulnerable as well as they do for the most powerful.*