



National Center for Healthy Housing

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Office of Pollution Prevention and Toxics (OPPT)
Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,
Washington, DC 20460-0001
ATTN: Desk Officer for EPA, 17th St., NW Washington, DC 20503

Re: Docket ID: EPA-HQ-OPP-2005-0049, Lead; Renovation, Repair and Painting Program:
Supplemental Notice of Proposed Rulemaking

The National Center for Healthy Housing (NCHH) respectfully submits these comments regarding EPA's Lead, Renovation, Repair, and Painting Program:

1. Section IV. Renovation Activities in Child-occupied Facilities, A. TSCA Section 402(c)(3) Determination (page 31026, first column) – The National Center for Healthy Housing (NCHH) agrees with EPA's proposed finding that renovation activities that disturb lead-based paint in child-occupied facilities will create, or are reasonably anticipated to create, lead-based paint hazards. From 2003 to 2005, NCHH carried out a demonstration project funded by the US Department of Housing and Urban Development in Rochester and Syracuse, New York, called the "Home-Based Child Care Lead Safety Program." The program reduced injury and lead hazards in 25 homes and improved their indoor environmental quality and energy efficiency. This project confirmed that lead-based paint disturbed during renovation work will create lead-based paint hazards that must sufficiently be contained, controlled and cleaned up before child-occupied facilities can be reoccupied. NCHH's report on this project, entitled *A Guide to Implementing a Home-Based Child Care Lead Safety Program*, is available at www.nchh.org.

NCHH also carried a study funded by the US Department of Energy's (DOE) Oak Ridge National Laboratory, in partnership with state weatherization programs in Rhode Island and Maryland and with local agencies in Indianapolis, Indiana, to evaluate the effect of weatherization activities on levels of lead in settled dust in homes. Although not performed in specific child-occupied facilities, this study supports EPA's finding that renovation activities that disturb lead-based paint will create, or are reasonably anticipated to create, lead-based paint hazards.

Within the study, two smaller studies evaluated the amount of leaded dust created during four paint-disturbing activities (i.e., cutting holes in knee walls and ceilings to gain access to attics, repairing windows, replacing windows and planing thresholds/installing weather-stripping on doors) and the dispersion of leaded dust during two paint-disturbing activities

(i.e., blower door tests and dense-packing of walls with insulation). The results of this study indicate that levels of leaded dust created by typical weatherization work in older housing with lead-based paint are likely to be well above EPA clearance levels, and therefore pose a substantial risk to children. Study findings affirm the need for areas to be cleaned after containment is removed. Despite receiving specialized training in lead-safe weatherization, the work practices examined in the study were found to have either a positive or generally little impact on potential lead dust exposures, underscoring the critical need for clearance dust testing following work that disturbs lead paint. Of the dust samples that exceeded comparison values after final cleaning, dust lead loadings for 70%, 40%, and 18% of floor, sill, and trough samples, respectively, increased from pre-work to post-final cleaning. The study data also indicated that the floors with high dust lead loadings after containment was removed and before cleanup, also had high dust lead-loadings following the final cleaning. This finding, in conjunction with the finding that substantial amounts of leaded dust are created during the work activity itself, suggests that contractors need to exercise care when performing dust dispersion activities and when removing containment, and they need to more thoroughly clean dust creation areas after containment is removed. NCHH's report on this study is available on its website at: www.nchh.org.

2. Section IV. Renovation Activities in Child-occupied Facilities, B. Buildings Covered, 2. Buildings covered by this proposal, a. Background (page 31026, third column) – NCHH disagrees with EPA's proposed modification of the definition of "child-occupied facility" because it limits the applicability "to visits by children under age 6 rather than to visits by children 6 and under." EPA's proposed definition change would effectively eliminate six-year-olds from the protection of the rule. NCHH believes this is not the time to narrow the scope without clear evidence that children six years of age are safer and less at risk. In addition, most of the states have incorporated the six and under standard in their own lead-related statutes and regulations by virtue of the original scope in 40 CFR part 745. Accordingly, NCHH recommends that EPA not revise the definition of "child-occupied facility" so that it will continue to apply to children age six and under.
3. Section IV. Renovation Activities in Child-occupied Facilities, B. Buildings Covered, 2. Buildings covered by this proposal, c. Child-occupied facilities in public or commercial buildings (page 31027, third column) – NCHH questions EPA's statement that "Day care centers in office buildings are likely to have informational signs posted and the centers are likely to be identified in the building directory." It is possible that some companies or firms located in public or commercial office buildings may have day care facilities within their suites and/or on floors that are exclusively for employees' children. In such cases, informational signs might not be posted on the building's directory or marquee. Accordingly, NCHH suggests that EPA not exempt renovation firms from obtaining a signed owner's statement that the public or commercial building includes or does not include a child-occupied facility.
4. Section IV. Renovation Activities in Child-occupied Facilities, B. Buildings Covered, 2. Buildings covered by this proposal, d. Common areas (page 31028, second and third columns) – EPA states that it is "most concerned with those common areas that are actually used by children under age 6, such as classrooms, bathrooms, and cafeterias, and not

common areas that children merely pass through. Similarly, EPA is not proposing to cover all exterior renovation projects on public or commercial buildings that contain child-occupied facilities.” NCHH research supports the fact that any renovation project, including those performed in common areas, that disturbs lead-based paint and that is not properly contained, controlled and cleaned up has the propensity to expose humans to lead-contaminated dust and debris. (See Dixon, S, Wilson, J, Clark, S, Galke, W, Succop, P, Chen, M. (2005), “The Influence of Common Area Lead Hazards and Lead Hazard Control on Dust Lead Loadings in Multiunit Buildings,” *Journal of Occupational and Environmental Hygiene*, 2 (12) 659-666.) Whether in a private residence or in a public or commercial building frequented by young children, common area and exterior renovation projects must be sufficiently contained, controlled and cleaned up to prevent lead exposures. EPA’s proposal relies upon the words “used” and “merely pass through” as the basis for determining whether a particular common area or exterior project should be exempted. NCHH believes that if children have the opportunity to come into contact with such projects, whether they regularly frequent that area or space or not, they are effectively “using” the area or space. Also, exempting common areas ignores the potential for leaded dust to be tracked throughout the building, including into areas occupied by children. Therefore, there should be no such exemption if a reasonably prudent person could envision a young child being near or coming into contact with lead-contaminated dust and debris generated by renovation activities in a common area or on the exterior of a public or commercial building.

5. Part 745 – Amended; Section 745.85 Work practice standards, (b) Standards for post-renovation cleaning verification (page 31042, all three columns) – NCHH strongly opposes the proposed visual inspection procedure outlined in this subsection as an alternative to a traditional clearance examination employing dust samples from floors, window sills and window troughs. HUD-funded research that NCHH conducted in Baltimore, Maryland to evaluate, in part, a visual inspection procedure prescribed in Maryland’s lead law (i.e., Environmental Article 6-8) showed that 73% of the housing units enrolled in the study, which passed independent visual inspections to comply with the statute, had at least one post-intervention dust lead loading result that exceeded the 1995 EPA/HUD clearance dust lead loading guidance of 100 $\mu\text{g}/\text{ft}^2$ for floors, 500 $\mu\text{g}/\text{ft}^2$ for sills and 800 $\mu\text{g}/\text{ft}^2$ for troughs. Had the more stringent 2001 EPA clearance standards of 40 $\mu\text{g}/\text{ft}^2$ for floors, 250 $\mu\text{g}/\text{ft}^2$ for sills and 400 $\mu\text{g}/\text{ft}^2$ for troughs applied, the percentage of “failures” would have been even greater. (See Breysse, J., et al., *Immediate and one-year post-intervention effectiveness of Maryland’s lead law treatments*, Environm. Res. (2007), doi:10.1016/j.envres.2007.04.002.)

Also, in the “Draft Final Report on Characterization of Dust Lead Levels After Renovation, Repair, and Painting Activities,” which was prepared for EPA by Battelle under EPA Contract No. EP-W-04-021, the findings call into the question the use of the cleaning verification procedure outlined in the proposed rule. Under Section 9.4 “Results of Cleaning Verification” on pages 9-6 through 9-9, the report states that “the cleaning verification process...resulted in decreases in lead levels, but under the conditions of the study was not always accurate in identifying the presence of levels above EPA standards for floors and sills. Factors such as floor condition, contractor performance, job type, and dust particle characteristics impacted the cleaning verification process in the study. All interior experiments did result in final passed cleaning cloths for all floor zones and for all window

sills, but nearly half of the experiments ended with average Work room floor lead levels above 40 $\mu\text{g}/\text{ft}^2$ on floors.” This result and other findings articulated in the report clearly show that using a commercially available wet or dry cleaning cloth as a surrogate for the thoroughly researched and accepted practice of performing clearance dust testing does not provide an adequate degree of confidence and safety.

Even if such visual assessment of cleaning cloths had been found to consistently correlate with dust lead loading results, there is the issue of the procedure itself. It 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 visually “passed” or “failed.” NCHH’s subsidiary, Healthy Housing Solutions (Solutions), helped to evaluate the protocol as a subcontractor to Battelle in two EPA-funded control studies in Baltimore. Based on Solutions’ own experience of following the protocol in these field studies, making the visual pass/fail determination can be quite subjective and open to interpretation. It may be unrealistic to expect that renovation workers will consistently make the proper decision using the proposed verification card. Also, given the additional time required to complete the protocol, some workers may be inclined to err on the side of “passing” a surface just to get the work completed. It is worth noting that this procedure has never been employed in a real-world practical setting.

In summary, NCHH believes that the proposed cleaning verification process, which relies solely upon a potentially subjective and non-validated visual assessment, cannot accurately measure dust lead loading or assess small particles not visible to the naked eye. Such small particles can be readily absorbed into the body, particularly a child’s. So NCHH urges EPA to abandon this unproven, potentially risky protocol and instead require that a true clearance examination be performed at the conclusion of renovation projects or a representative sample of such projects.

6. Part 745 – Amended; Section 745.86 Recordkeeping requirements (page 31043, first column) – Under subsection 7, EPA’s proposed amendment states that documentation of complying with the requirements of Section 745.85 must include “*signed and dated descriptions* of how activities performed by the certified renovator or dust sampling technician, including worker training activities, sign posting, work area containment, waste handling, cleaning, and post-renovation cleaning verification or clearance, were conducted” (emphasis added). NCHH recommends that EPA prepare a standardized compliance reporting form or format, which would be used by renovation workers to more accurately and consistently record the required information.