

Submitted to www.regulations.gov

To: Document Control Office (7407M)
Office of Pollution Prevention and Toxics (OPPT)
Environmental Protection Agency
1200 Pennsylvania Ave., NW.
Washington, DC 20460-0001

Regarding Docket ID: EPA-HQ-OPPT-2005-0049, Proposed Rule published in the Federal Register May 6 2010, at 75 FR 25038 - Lead; Clearance and Clearance Testing Requirements for the Renovation, Repair, and Painting Program

The National Center for Healthy Housing (NCHH) is the only national scientific and technical non-profit organization dedicated to creating healthy and safe homes for America's children through practical and proven steps. NCHH develops scientifically valid and practical strategies to make homes safe from hazards, to alert low-income families about housing-related health risks, and to help them protect their children. NCHH also works with governmental and non-governmental organizations to develop standards and programs and guide their implementation through insurers, lenders, federal and state laws and regulations, community organizations, and the courts.

NCHH respectfully submits these comments regarding the proposed Clearance and Clearance Testing Requirements for the Renovation, Repair, and Painting Program and other matters discussed in the proposed Rule. We look forward to EPA's completion of this important aspect of the renovation rulemaking and anticipate that the resultant final rule will advance the protection of children from lead poisoning.

A. Dust Wipe Testing and Clearance

Proposed requirements for dust wipe testing after certain renovations.

Comment: NCHH supports clearance testing in as wide of a range of situations as possible, given the proven reliability of the method and ability to meaningfully interpret a quantitative dust wipe result and associate it with risk of elevated blood lead levels. NCHH believes that dust clearance testing is the only scientifically acceptable standard in all cases where renovation work may have caused an invisible dust lead hazard. Therefore, NCHH believes that the proposed requirement for dust testing, without achieving clearance does not adequately protect children and adults from the renovation activities under discussion. In fact, since the costs of conducting clearance and conducting dust testing are the same, we believe that EPA should require clearance in the cases where only dust testing has been proposed, so that firms will perform post-renovation cleaning so efficiently, thoroughly, and correctly that the benefits of the RRP rule will be fully realized.

However, there is merit to providing the building occupants and owner with knowledge of dust lead levels remaining in the renovation work area since they can act on this information to protect children from lead poisoning caused by leaded dust generated during the renovation activity. Although the current hazard standard is insufficiently protective, and floors well below this standard may endanger children, the quantitative information from a dust test can alert the well-informed occupant to take actions such as requiring clearance or performing additional cleaning. Also, since the test results must be disclosed to future potential buyers or renters, possession of this information could induce the property owner to clean up the hazards for the purpose of marketing, if not risk management. Ultimately dust testing as a performance standard could lead in some instances to clearance achievement as the market-based performance standard -

where property owners become dissatisfied with dust wipe testing that fail clearance or renovators weary of the questions.

EPA's preamble to the proposed Rule states that "As renovation firms become more familiar with the performance requirements for cleaning on projects covered by the RRP rule, their projects are more likely to require fewer cleaning cycles." We concur. In our Evaluation of the HUD Lead-Based Paint Hazard Control Grant Program for HUD, we noted that a firm's success in achieving clearance was associated with experience in needing to achieve it. Although the work activities in this study were for lead hazard control, the practices involved in achieving clearance were the same as RRP: containment, control of dust, and thorough cleaning. Similar to abatement firms in the HUD program, renovators that do not pass clearance the first time can learn how to pass clearance every time.

EPA also stated that it is likely that "having to provide to owners and occupants the specific dust lead levels contained in dust wipe testing results will increase renovation firm cleaning efficiency." We concur that knowledge of failing dust levels will prompt informed occupants and owners to demand passing dust levels of the contractor at the end of the job, and that some property owners will seek the services of those renovators who demonstrate success with clearance. Adherence to the work practices offers no guarantee that a job will be even broom-clean let alone lead-free. For example, extra-sloppy work followed by cursory conduct of each step in the cleaning protocol can conceivably leave behind invisible dust after the second cleaning verification wipe. As with the use of any new method, machine, technology by any professional, renovation contractors will learn how to do what is necessary to clean up. Some will apply that knowledge to all of their work, not just the small percentage of jobs where EPA requires that dust tests be collected.

Whether the threshold for dust wipe testing after renovations involving scraping should be lowered to 6 ft², which is the minor maintenance threshold, or to some other number.

Comment: NCHH concurs that the jobs performed in the Dust Study where the floor dust-lead levels changed markedly between pre-work and post-cleaning and between post-cleaning and verification merit additional safeguards. Specifically, we believe that clearance testing is warranted for interior renovations that involve use of a heat gun at temperatures below 1100 degrees Fahrenheit, removal or replacement of window or door frames, scraping painted surfaces, and removing trim, molding, cabinets, or other fixtures. We do not agree that EPA can limit the dust wipe testing requirement in the case of paint scraping to sixty square feet merely because it did not examine smaller thresholds in the Dust Study. This would add another threshold to the minor maintenance threshold, but minor maintenance already has precedence in setting parameters for restriction on the amount of paint disturbed. Scraping releases significant amounts of lead, thus, the existing threshold should be the cut point between minor and non-minor.

Whether dust test wipe testing requirements for trim and molding removal should be limited to removals of more than 40 ft² of trim or molding

Comment: We do not agree that EPA can limit the dust wipe testing requirement in the case of molding/trim removal to forty square feet merely because it failed to experiment with smaller amounts of molding/trim removal in the Dust Study. From the survey data cited in the economic analysis at page 4-12, we note that reducing the trim-removal threshold from forty to six square feet would increase the number of trim-related projects by only 8.5% over the number that fit the proposed threshold.

Whether the threshold for dust wipe testing after trim, molding, cabinet, or fixture removal should be lowered.

Comment: As discussed above, we believe the threshold for testing after trim, molding, cabinet, or fixture removal should be reduced to six (6) square feet. Maintaining a consistent set of thresholds will make

compliance easier for contractors and avoid confusion. With only 8.5% more jobs requiring testing, the burden will be limited. In the absence of data demonstrating that removal below 40 ft², EPA should issue a regulation that provides full information to the resident about dust lead hazards present in work areas following renovation. We support EPA's decision to calculate the size thresholds on a per job basis.

Whether dust wipe testing should be required in situations where a surface fails the cleaning verification process twice, i.e., when the second wet disposable cleaning cloth is darker than the cleaning verification card.

Comment: Under the current regulation, cleaning verification is considered complete after three passes, regardless of whether the disposal cleaning cloth passes or not. EPA justified this based its contention that the likelihood of elevated dust lead after three passes would be low. However, the sample size that is the basis for this decision is small (only four experiments failed twice) and in two of the four cases (50%) the dust tests found elevated dust lead levels after the third test. Allowing the contractor to walk away from a contaminated job without informing the owner is unacceptable and worse yet, EPA's current regulations give the property owner a false sense of security that the job is safe. Dust testing should be required after two failures of the disposal cleaning cloth.

EPA's justification for not requiring dust testing is inadequate. EPA argues that in one case because the final dust test was within the margin of error, a result above 40 µg/ ft² is acceptable. First, allowing a margin of error has not been proven protective and is not the standard that EPA or HUD has applied to abatement contractors. There is no reason to apply it to this regulation. Second, the standard of 40 µg/ ft² is not protective enough and the result of 41.4 µg/ ft² was well above the more appropriately protective level of 10 µg/ ft² for floors. In the second case, the Agency argues that since the final dust result is lower than the pre-work dust result, an elevated level is acceptable. We don't believe EPA should be allowing elevated dust lead levels in homes; even if this was Congress's intent, then the contractor should be required to document that levels were elevated before its work. In the absence of this evidence, then the contractor should be required to test and disclose the dust lead levels to the family when there is an increased likelihood of elevated levels (i.e., after two cleaning verification failures).

Whether the dust wipe testing would have to be performed in a manner similar to the abatement (and lead hazard control) clearance sampling requirements at 40 CFR 745.227(e)(8).

Comment: We support the proposal to use the same dust sampling protocols as those used after abatement or HUD lead hazard control. There is a certified work force that has been trained to visually assess and test dust using these procedures; there is no reason to introduce a variation for the renovation market. We believe that including a visual assessment by the third party performing clearance will ultimately save money because contractors will be given the opportunity to clean up visual failures in advance of testing and avoid dust lead failures. This will reduce the number of instances where property owners will need to negotiate additional work and costly return visits to the site.

We disagree with the EPA policy that wipe sampling should not be conducted on carpeted floors and recommend reconsideration of this policy. EPA lacks evidence to demonstrate that basic vacuuming cannot reduce elevated dust lead levels to acceptable levels. HUD requires clearance on carpeted floors, and lead hazard control contractors are able to re-clean and clear carpeted floors without resorting to carpet removal. EPA should not rely on anecdotal reports that carpeted floors are harder to clean when data from the Evaluation of the HUD Lead Hazard Control Grant program demonstrates that dust lead levels on carpets at clearance were significantly lower than on bare floors.

Whether the provisions for sampling adjacent areas in HUD's Lead Safe Housing Rule should be

incorporated into this rulemaking.

Comment: We believe that the sampling of the adjacent area should be incorporated into this rulemaking. HUD's protocol requires the collection of a sample adjacent to the work area where containment is used – to test the effectiveness of the containment. HUD recommends that such a sample be collected along the path where most dust and debris were removed from the contained area.

Whether the protocol used for more than a decade in clearance examinations after lead abatements and HUD interim lead hazard control work is sufficient to determine dust lead levels remaining on floors, windowsills, and window troughs.

Comment: We do not support additional sampling within a room. The regulations should direct the dust collector to sample one of each type of representative surface in the area where the renovation of concern was conducted. For example, it should be adequate to test one representative window when multiple windows within a room are replaced. We do not believe that the cost of additional sampling and analysis is justified by the any additional information gathered that may control for physical or laboratory variability.

Whether the provision for random clearance sampling in multiunit buildings in the Lead-based Paint Activities regulations at 40 CFR 745.227(e)(9) should be incorporated into this regulation.

Comment: When the renovation of a large multifamily complex will be uniform throughout the development and the contractor can document to the third party conducting clearance sampling that the controls were consistent in all units, then EPA should allow the third party to apply random sampling. For example, if a multifamily complex is undergoing substantial rehabilitation, then the work practices are likely to be comparable to abatement and similar processes should apply. However, when work is being done across multiple units of a multifamily building, but containment is being set up around residents who are remain in residence during the renovation, the variation in containment and cleaning practices from unit-to-unit is likely to vary too greatly to categorize the work as comparable across the whole development. When the third party cannot verify that work practices were consistent across units, then individual sampling should be required. Where containment and cleaning practices are likely to vary from unit-to-unit, it is important to conduct testing in such a manner that the results for each unit can be made available to the property owner and the residents.

Should a random sampling provision be incorporated, but limited to situations where the HUD rule applies or to situations where the housing is completely vacant, e.g., an entire apartment building is vacant and being renovated.

Comment: Allowing dust sampling technicians to use a random sampling method following large scale renovations in multi-family buildings will support the wider adoption of clearance and dust testing by helping to keep the cost of achieving actual clearance in multi-family buildings to the minimum while not substantially compromising exposure risk. NCHH concurs that random sampling in multiunit buildings should be incorporated, especially in renovations covered by the HUD lead-safe housing rule, where the property is vacant, and where renovation projects involved the same scope such as can occur with kitchen or HVAC or windows upgrade - assuming the same renovation firm(s) was responsible for the work. Random sampling should be limited where the work was performed by different renovation firms for inconsistent scopes of work.

Should EPA modify the dust sampling technician course requirements to include random testing in multi-family buildings so that dust sampling technicians would be able to select units randomly as do certified inspectors and certified risk assessors. EPA also requests comment on whether this could be done and still allow the course to be taught within a single 8-hour day.

Comment: EPA requested comment on whether or not it should include random sampling protocols for multi-family buildings in the dust sampling technician curriculum and whether or not this could be covered within the current eight-hour timeframe of the class. Adding random sampling methods to the curriculum will not take an excessive amount of time or interfere with the completion of the class within an eight-hour timeframe. The course was originally a 5-hour course- there is room for additions. The concept of random sampling and the protocol required to implement it are both straightforward and easily explained in an additional one or two slides with a demonstration of the sampling equation. Unlike determining similar paint histories for exclusion of testing certain components, or assessing the deterioration level of paint taught in the more advanced inspector and risk assessor classes, following a random sampling protocol requires a minimal amount of professional judgment or experience – it's largely applying a simple mathematical formula. Further, if EPA updates the "Lead Dust Sampling Technician Field Guide" to include the random sampling protocols, it would eliminate the need for students to memorize the exact numerical requirements of the protocol, allowing them to simply refer to the guide in the field when they utilizing random sampling.

Regarding the use of technologies that may be available for sampling or testing for lead in dust in addition to dust sample collection for analysis by a stationary lab.

Comment: EPA needs to write the final clearance rule to accommodate new technologies as they develop much in the way it did for spot test kits. It is important to have flexibility. Also, EPA should allow for the use of negative-only spot test kits to continue since negative-only kits are over-protective.

Whether EPA should prohibit the same person performing both the renovation activity and the clearance process.

Comment: NCHH agrees that clearance may be performed "in-house" by an employee of the firm who is not the person who conducted the renovation, as does the HUD Lead Safe Housing Rule.. Using a firm specializing in clearance need not be the only alternative for the one-person firm: subcontractors, inspection firms, and others can obtain sampling technician certification. EPA could provide for a waiver of this requirement for a dust sampling technician who requests authorization for clearing his or her own renovation work. This would expand the available technicians– and enable tracking of such arrangements.

Should the renovation be considered complete, the warning signs can be removed, and the work area can be re-occupied before the results of the testing are available.

Comment: NCHH believes that EPA should factor occupant protection into clearance. The rule requires that the work area be designated by warning signs and barriers, and elements of containment provide additional visual cues. The effectiveness of the rule in protecting occupants depends on, among many other factors in the rule, persons other than renovation workers not entering the work area during the work. Occupant avoidance of entry into the work area can continue after cleaning pending results of dust testing. The clearance and dust testing requirements should be strengthened by extending some occupant protection measures after work has been completed until the dust test results have been delivered to the owner and occupant. In job sites where keeping the work area inaccessible another few days is feasible, renovators could leave the warning sign and temporary barriers in place, without cost to the renovation firm, and remove them only after clearance has been achieved. Where the work area must be accessible to the occupants sooner, the firm could take action to prevent exposure like re-covering floors and other surfaces. EPA could allow occupants to waive the post dust testing occupant protection measures.

Requiring the certified inspector, certified risk assessor, or certified dust sampling technician to provide a dust wipe testing report to the renovation firm within 3 days of the date that the results are obtained.

Comment: Three days after a report has been received from a lab is the maximum time frame for the testing professional to deliver test results to the renovation firm. However, a person performing sampling who is part

of the renovation firm can deliver results to the renovator even sooner, as can those using portable technologies for dust testing. EPA should consider requiring delivery of the report to the renovation firm within three days after the dust test results are obtained from a fixed site lab, and within one day if testing was performed by the firm or with a portable XRF.

Dust wipe testing reports.

Comment: NCHH supports the approach presented for the dust testing report. Specifically, we believe that the report should clearly indicate both the numeric result of each test and whether the result passed or failed the clearance standard, and a statement that dust lead levels equal to or above the standard demonstrate the presence of a hazard. Also, the report should clearly indicate that it must be disclosed to future buyers and renters if the renovation was conducted in target housing. Also, EPA should amend the sample report in the Model Curriculum to delete the references to “hazard reduction” in the summary and description of activities conducted and areas addressed, and should indicate on the visual inspection form in the Model Curriculum that deteriorated paint is not an applicable element of post-renovation clearance unless specified by the contract. If EPA persists with the plan to require only dust testing after some renovations, EPA should delete the word “clearance” from the test results form in the Model Curriculum and add a way to indicate on the form if the form is being used for dust testing only or for clearance. Also, EPA should clarify that all dust testing reports must be provided by the certified technician, inspector, or risk assessor to the renovation firm and that the renovation firm must provide all of them to the owner/occupant/child occupied facility. There would be more than one report, for example, in a situation where clearance is required but not achieved the first time.

Requiring the renovation firm to provide the dust wipe testing report to the building owner and occupants with the final invoice or within 3 days of the date that the report is received, whichever is earlier.

Comment: Because the report may contain information about hazards, EPA should require the renovation firm to deliver the report to the owner/occupant/child-occupied facility as soon as possible.

Requiring the renovation firm to conduct cleaning verification as part of all activities where clearance is required.

Comment: We acknowledge that the Dust Study demonstrates that cleaning verification can be a valuable final step in the work practices that reduce hazardous dust lead from a work area. However, we believe EPA should be open to industry recommendations for alternative standard practices for cleaning should they propose that there are lower cost options to cleaning verification that are just as effective.

We are also open to retaining the provision that clearance testing can be used in lieu of cleaning verification when another Federal, State, or local law or regulation, or the contract between the renovation firm and the property owner, requires the renovation firm to use qualified entities to perform dust wipe testing and requires the renovation firm to achieve clearance. Contractors following HUD regulations have cleared jobs achieving compliance with the current dust lead standards for over 10 years now without a cleaning verification step and thus without incurring the associated costs. We see no reason to add the burden of this extra step to those jobs now.

If a project fails the initial clearance test, we do not believe that cleaning verification should be required after the contractor re-cleans the area. The contractor may choose to use the cleaning verification process as a cleaning method, but if the contractor can adequately clean the area through other means such as the standard clean up protocols used successfully at thousands of lead hazard control jobs, we feel this is sufficient.

Need for a clear definition of demolition.

Comment: EPA has presented a clear definition of demolition in the final regulation: "Clearance is required after renovations involving the demolition, or removal through destructive means, of more than 6 ft² of plaster and lath building component." (745.85(b)-1) . We believe that EPA introduced some unnecessary confusion to the definition by stating on page 25051 that "In most cases, renovation firms will be able to avoid using the work practices that would require clearance afterwards. ... Many plaster removal jobs can be performed by using non-destructive means such as saws and pry-bars to remove sections of plaster and lath wall." We strongly disagree that the use of a saw or pry-bar is a non-destructive method. Either method can result in plaster becoming broken and releasing small pieces of lead-based paint that can contaminate the house dust. We believe that the removal of more than 6 ft² of plaster should always be considered demolition with no exceptions.

Should the correlation between surfaces in poor condition and higher dust lead levels affect clearance or dust wipe testing requirements, and if, so, in what way. EPA is interested in suggestions on how to address the fact that some floors will be more difficult to clean than others.

Comment: We have reviewed data from the Evaluation of the HUD Lead Hazard Control Grant program. We found that in high-risk properties, 13% of floors, 17% of window sills and 48% of window troughs were in poor condition at baseline. Following lead hazard control work, 4% of floors, 2% of sills and 3% of troughs remained in poor condition. Poor condition was defined as a surface that was deteriorated or rough and visually appeared difficult to clean. At the time, the clearance standards were 200 µg/ft² on floors, 500 µg/ ft² on sills and 800 µg/ ft² on troughs. Therefore, assessing how well contractors can clean surfaces that remain poor at clearance would not be appropriate with this dataset.

We acknowledge that there will be some instances when cleaning only will be insufficient to permit a contractor to clear a surface. We support EPA's proposal to require the renovation firm to attempt to clean and clear the surface twice before considering an alternative action. After two failures, we believe that the renovation firm should work with the property owner in the same way they would when they find any other unexpected problem on the job site. For example, if opening a wall cavity exposes dry rot or a wiring problem, we would expect the renovation firm to contact the owner, inform them of the hazard and propose a change order to correct the problem. For this rule, if an area cannot clear after two attempts, the renovation firm would propose further activities (e.g., floor sealing, installation of an aluminum cap on the window trough) and negotiate a change order. If the property owner refuses to take action, the renovator would document the offer and provide the dust lead results to the owner - for future disclosure. Otherwise, the property owner and renovator would negotiate the terms of additional work and further clearance testing.

Whether renovation firms ought to be allowed to perform pre-renovation dust wipe testing on surfaces in the work area that are in poor condition to help demonstrate that they are not leaving behind dust-lead hazards that they created. In this option, the renovation firm would only have to demonstrate that, for surfaces in poor condition in the work area, the dust-lead levels on these surfaces (which could be windowsills and/or floors) after the renovation are no higher than 150 µg/ ft².

Comment: We do not support the development of an alternative guidance level for clearance. It would be a serious mistake to introduce a dust lead level that the renovation community or the general public might misinterpret as an "acceptable" level for dust lead. Adding a level such as 150 µg/ ft² to the provisions of the regulations adds nothing to advance the safety of the residents nor should it suggest that a renovation firm would be absolved of any liability at levels between the regulatory standard and this arbitrary level.

We cannot support a provision to allow for pre-renovation dust wipe testing especially if it is limited only to work areas where the surface is categorized as poor. With EPA's decision to use cleaning verification to judge

regulatory compliance, it has established a de facto standard that all renovation work should result in an outcome where there is a reasonable expectation that the work area will pass a dust lead test. We do not accept a change in philosophy at this stage in the development of the rule where EPA would now allow a home to have dust lead levels above the clearance level just because the home had dust lead levels above those levels prior to renovation. Because the country now expects renovators to clean work areas to a level that is deemed safe by EPA, there is no benefit to pre-renovation testing since its relationship to the final outcome is inconsequential.

Should EPA allow renovation firms to close windows in the work area that are not being worked on and cover them with taped-down plastic or other impermeable material to avoid the requirement to ensure that the window troughs achieve clearance standards? EPA would still require renovation firms to test both the sills and troughs of closed and covered windows, and report the results to the building owners and occupants, but firms would only need to ensure that the sills achieve the clearance standards.

Comment: EPA does not currently have a health-based standard for window troughs. The current standard of 400 $\mu\text{g}/\text{ft}^2$ was established as a performance based standard based on levels to which abatement and other lead hazard control contractors could routinely clean after making the troughs smooth and cleanable. As discussed earlier, in high risk housing, 48% of window troughs were not considered smooth and cleanable prior to work by HUD Lead Hazard Control grantees. Trough treatments are not standard renovation activities. We therefore support EPA's proposal not to require renovation firms to pass trough dust lead tests if they have instituted required controls on windows to prevent troughs from becoming further elevated. The window sill dust lead standard was established using the best health-based research at the time. Although we believe that the standard should be lower, we believe that renovation firms should be held to the current sill standard when conducting clearance sampling.

Whether clearance should be required in other situations such as after any of the activities for which EPA is proposing a dust wipe testing requirement.

Comment: We believe that the proposed requirement for only dust testing without achieving clearance is insufficient to protect children and adults from the renovation activities under discussion. We believe that clearance testing should be applied after renovation at all homes. However, if EPA is unwilling to apply clearance testing to all homes, then the application of clearance testing to the highest risk homes and dust testing to all but the lowest risk homes is an understandable compromise position that will protect some of the nation's families

Whether clearance should be required in rental properties after renovations for which EPA is proposing a dust wipe testing requirement, especially if the renovation firm has been informed that the renovation is being performed to remedy a violation of federal, state, or local laws or regulations or to comply with a federal, state, or local government order, such as an order to correct building code violations, or an abatement order in response to an elevated blood lead level, and whether EPA should require renovation firms to affirmatively ask whether the work is being performed to remedy a violation or comply with an order, and whether renovation firms should provide this information to owners and occupants after the renovation?

Comment: Following the principle that clearance testing should be required in the highest risk jobs, we support expanding the clearance requirement to work activities that take place in rental units where there has been a notice to correct a building code violation or a lead abatement order. The property owner in these cases has already disregarded the safety of his/her tenants, and in such cases, it is important that the work activities are completed in a way that assures the protection of the resident. The only way to assure resident health and safety is to have a dust test conducted at the end of these jobs and require follow-up cleaning if

dust lead levels are elevated. Because renovation firms cannot be expected to research public filings for evidence of housing or health violations, renovators should be required to ask their clients if they are under order to fix violations and proceed based on that information. EPA should provide guidance to renovators about how to collect and document this information.

Whether there are other regulatory options for dust wipe testing or clearance that maximize the potential benefits

Comment: NCHH previously commented that EPA should not use different thresholds.

Regarding an option to apply dust wipe testing or clearance requirements only in homes where pregnant women or children under age 6 reside or in any building that meets the definition of child-occupied facility.

Comment: NCHH believes that it is insufficient to limit safeguards to housing occupied by women who know that they are pregnant and children under age six: this approach still risks exposure to lead dust hazards by visiting children, visiting pregnant women, members of families who buy or rent the home, occupant women of child-bearing age, and occupant children six and older. Take home dust would continue as an exposure risk for the children of workers as well. Family pets would still be at risk of exposure.

Should dust wipe testing only be required when a surface fails the first round of cleaning verification, and, if dust wipe testing is done, whether the second round of cleaning verification should then be performed.

Comment: The most important step for the household is the dust test which documents whether or not they have dust lead hazards in their dwelling. If the work activity is categorized as moderate risk and requires dust testing, there should be no option to avoid dust testing because the initial cleaning verification step passes. We do not support a proposal to substitute cleaning verification for a dust test and/or clearance.

Whether a regulatory option to require clearance for renovations involving the demolition of plaster or the use of high-speed machines designed to remove paint, or a larger set of renovation types, or smaller renovation size thresholds, and not require dust wipe testing in the absence of a clearance requirement.

Comment: EPA's categorization of high risk, moderate risk and low risk jobs is an appropriate method of determining when clearance, dust testing and cleaning verification alone should be required. EPA should revise the thresholds so they are consistent (see earlier comments), but should not revise their current classifications of high and moderate risk work activities. Dust wipe testing is less protective than clearance, but it provides needed disclosure to property owners which will allow them to negotiate a fair solution to protect themselves or their tenants.

B. Test Kits for Lead in Paint

Comment: NCHH supports permitting renovators to collect paint chips for lab analysis. NCHH agrees with EPA that it would be relatively simple to include instructions for paint chip sampling in the model curriculum for renovators. Informing students to submit the paint chip sample to an NLLAP lab and where to find NLLAP labs would take little more than one or two bullets on a slide show. Hands-on Skill Set 1 already involves students using a knife or other cutting tool to gouge the paint to the substrate prior to using the chemical test swabs. While cutting the paint, it would be a simple add-on to have students practice removing a chip with a minimal amount of substrate prior to using the test kit. The exercise already has students documenting where a test kit was performed, and a simple modification to the "Test Kit Documentation Form" to include paint chip samples would make documentation easy and simple to instruct. With an additional step, Skill Set 1 can reiterate the importance of submitting the paint chip to an NLLAP lab and completing the lab's chain of custody form accurately. A sample completed chain of custody form could be demonstrated and in the manual for future reference, with caution since the layout of and information requested on the chain of custody can vary greatly

by laboratory. When a renovation firm engages a laboratory to conduct the sample, the lab will provide the appropriate chain of custody form that it requires and instructions.

Also NCHH supports permitting sampling technicians to collect paint chips for lab analysis. Although this option was not proposed by EPA, it may be a helpful expansion of this provision. Since such individuals will already relate to labs for the analysis of dust samples, some firms may choose to have them deal with their pre-renovation paint chip testing as well. Their training will be relevant preparation, and there is time in the course to allow instruction in gouging the paint to remove a minimal amount of substrate.

C. Training Provider Accreditation

Comment: As one of the first providers accredited by EPA to offer e-learning classes, NCHH strongly supports EPA's efforts to allow the delivery of the training classes in an e-learning format. We believe that EPA's guidance document on e-learning¹ created a rational system for ensuring the quality of e-learning programs that supplement hands-on instruction, and largely support the integration of these guidelines into the regulations.

Knowledge checks in e-learning class formats.

Comment: NCHH believes that EPA's requirements for "knowledge check" questions periodically throughout the class are sensible to help ensure the students are retaining the presented information, with the caveat that its proposed requirements for such questions at the end of each "module" may be overly specific and presuming a delivery similar to the approach used when EPA established its model e-learning system. While the EPA model e-learning curriculum is set up in modules similar to its model classroom curriculum, EPA should provide trainers with the flexibility to design e-learning curricula that for example is designed around a set of situations or practical applications of the rule. It may be difficult to determine what a "module" is for the purposes of knowledge checks in such a curriculum. We encourage the EPA to use more flexible language – such as requiring the system to offer "periodic" knowledge checks or another tool to ensure the student is actively engaged and retaining information.

Requiring an exam at the end of e-learning portion of the class.

Comment: NCHH also supports EPA's requirements to offer an "e-learning" exam prior to officially completing the e-learning portion of the class. It is important to help ensure that students retained information from the class and are ready to complete the hands-on portion of the class and final exam. It would be doing a disservice to both the student and the trainers if a student "completed" the online system without having the base of knowledge that will be necessary to successfully complete the in-person part of the class. We believe that 20 questions is adequate as a minimum, and that 80% is a fair percentage required to pass given the hands-on portion and later test. If a student were required to get 100%, it would likely end up penalizing students for poorly worded questions or alternative interpretations despite the students' actual knowledge. Setting the pass rate higher than that of the final exam, however, is reasonable since students are provided the opportunity to easily review material and re-complete the e-learning class.

As it is essential to ensure that the individual whose photo appears on the certificate has an understanding of the EPA requirements and completed the required curriculum, NCHH strongly believes that an in-person final exam should be required for initial e-learning classes. While the electronic system can use knowledge checks and an online exam to help ensure the person completing the online class actually retained some information, it can not do much to detect fraudulent activity, such as having another individual complete the class for the named participant or having a third party provide the answers to the questions being asked. Requiring the to-be-certified individual to appear in person, be photographed, and have a final proctored examination greatly

¹ Available at <http://www.epa.gov/lead/pubs/elearningimplementation.pdf>

reduces opportunities to cheat, and practically eliminates the utility of cheating. Should an individual fraudulently have another complete the online class on his or her behalf, he or she is likely to have an extremely difficult time passing the in-person exam since he or she will have missed out on much of the instruction. Therefore, we believe the in-person exam serves as an essential “security” control on the e-learning process to reduce the temptation to cheat and ensures that those who become certified as a result actually have knowledge of the rule and its requirements.

Structure of Accredited Training Provider Accountability

Comment: In the current guidelines and in the proposed regulation, EPA essentially considers the provider of the hands-on training to be the same entity as that which provides the online content. Whoever is accredited as a trainer has to essentially meet the entire set of requirements. NCHH believes this assumption fails to account for the realities of the marketplace and encourages EPA to consider separately accrediting the entities that offer the online content from the entities that offer the hands-on training. Establishing an online presence, developing an engaging curriculum, and supporting a learning management system (LMS) are capital-intensive projects that require a substantial volume of trainees to recover the costs. Therefore, it is only logical that a handful of entities nationally might embark upon this task. In contrast, the delivery of hands-on training needs to be very localized or mobile to deliver training where the students are located, requires smaller capital investment, and is often relatively low volume. As a result of this inherent dynamic, we see currently that most of the entities that are delivering the hands-on training are independent of the entity that actually developed and hosted the online system. However, because of the way in which EPA issues accreditations, the local hands-on trainer has to assume all the responsibilities of meeting EPA’s requirements for the delivery of both the online and in-person training. The hands-on trainers have mitigated this liability to some extent through contracts with the online providers requiring them to meet the requirements, meaning if EPA were to fine a hands-on trainer, he or she could probably file a breach of contract suit with the online provider. However, this seems an inefficient way for anyone involved to address problems.

EPA currently recognizes that the hands-on and online providers are unlikely to be the same entities, and in a recent guidance document posted on its website,² created an expedited process for hands-on trainers to become approved to use e-learning curriculums the agency had already reviewed. Rather than continue to muddle through with this make-shift solution, we strongly encourage EPA to separately accredit the online and hands-on providers. EPA should require the online provider to meet the curriculum requirements and LMS standards it outlines in the regulation, as well as require it to keep the records specified in the proposed 745.225(c)(6)(viii)(B). EPA could then audit the online providers and should EPA encounter a problem with a particular LMS delivery, it could then directly work with the provider to address it rather than having to go through a local trainer and ask him or her to use contractual remedies to force the LMS provider to change. A hands-on provider would then be accredited to offer the in-person portion of the e-learning class and accept certificates from any accredited online provider, and only be responsible to EPA for the portion of the class they actually delivered.

In the absence of a regulatory system similar to that outlined above, we would suggest that the proposed 745.225(c)(6)(viii)(B) is unreasonable because it burdens the accredited trainer – the local hands-on provider – to retain the records from the LMS provider showing the specific times the student logged in, their progress, and completion data. For the LMS provider, this is a relatively simple log that their system maintains and that EPA can review. However, for a local trainer, this is a large amount of data that is largely irrelevant to the operation and delivery of a hands-on training. The in-person trainer really just needs to know that a student completed the online portion and when – the specifics of when they logged in, when they completed what section, etc, is not needed by the in-person trainers. Additionally, since an LMS provider is going to have a large number of records of students who end up taking the in-person portion of the class with a large number

² “E-Learning Course Approvals.” <http://www.epa.gov/lead/pubs/elearning-approval.htm>

of in-person instructors, this is going to create an excessive administrative burden on both parties as the LMS provider has to sort out the data student by student to provide certain students' data to an instructor. While we believe that EPA may have a legitimate interest in this data, the only reasonable and efficient way to store, provide, and audit it is at the LMS level, not the individual hands-on instructor level. EPA should amend this requirement to specify that the accredited trainer has the option of having a contractual agreement in place with the LMS to allow EPA to audit the data directly with the LMS provider.

E-Learning Course Completion Certificates and Verifications

Comment: EPA has proposed at 745.225(c)(6)(viii)(E) that the LMS system must generate an "...uneditable copy of an electronic learning course completion certificate." Presumably, EPA is suggesting that the system must generate a certificate with some security so an in-person trainer can reasonably know that a student actually completed the on-line portion prior to attending an in-person class. NCHH would suggest, however, that this is an unachievable standard. Any electronic document is "editable," especially if it is "printable" as allowed by the regulation. Anyone with a reasonable familiarity with computers can take a secure PDF, image, or word processing file and use the "print" function to re-direct the resulting print job from a printer to a file format that is then easily edited, or print the document, scan it, and edit it.

We recommend that EPA therefore replace this section with similar language to that in "Area 7" of its e-learning guidance document, which requires an accredited training provider (the in-person trainer) to "...verify a student's E-learning course completion through their systems or internal processes before allowing the student to attend the required in-person training activities..." In other words, the trainer must have a mechanism in place with the LMS provider to double check that a particular student did actually register for and complete the on-line part of the class. This can be easily accomplished by the in-person trainer providing a class roster to the LMS provider and receiving a confirmation of the completion status for each student. However, NCHH recommends that EPA eliminate the criteria that this confirmation be completed prior to the hands-on training. The nature of training registration is such that there are often last minute registrations and participants, and it's an unnecessary administrative burden to officially check the status of these last-minute registrations prior to the class. Instead, students should be warned that the trainer will electronically check that they had completed the online portion before issuing a certificate, and any student who did not complete the online portion prior to attending the in-person class will not be issued a certificate.

Combined Abatement Worker/Renovator Refresher and Abatement Supervisor/Renovator Refresher courses

Comment: NCHH supports efforts to better accommodate lead abatement professionals who also work in the renovation industry by creating refresher classes that meet the requirements for both abatement worker/certified renovator and abatement supervisor/certified renovator. Much of the content overlaps between these refreshers, and we believe a class significantly shorter than the sum of the two could effectively provide the required information at reduced cost and hassle. While we have no specific data, our experience is that most abatement firms involved in residential abatement also do renovation work. NCHH, does not, however, see a need to harmonize the time frames. The worker or supervisor should simply take the refresher at the lesser interval – every three years – with their renovation certification extended by five years from the date of the last refresher while their abatement certification would only be extended three years.

Duration of Training Record Retention

Comment: NCHH strongly supports EPA's proposed change to increase the length of time an accredited trainer must retain the records from the class from 3.5 years since training programs are accredited for 4 years and issue certifications good for 5 years. Making this change will enhance EPA's ability to document compliance issues with the rule and trainer accountability to its customer base. We would also note to EPA that it may

want to consider the fact that it extended renovator certificates issued prior to 4/22/10 to 7/1/15³. We believe the first accredited trainings for renovators occurred in June 2009, so some trainings were offered that are effectively now valid for a little over six years. As a result, EPA should consider language requiring the retention of records for the five years or until the expiration of certification resulting from the training, whichever period is longer.

D. State, Territorial, and Tribal Program Authorization

State and Tribal program requirements for the accreditation of dust sampling technicians and requirements for on-the-job training of renovation workers that do not receive accredited training.

Comment: NCHH understands that EPA is clarifying current policy regarding State and Tribal programs accreditation of dust sampling technicians. However, we believe that EPA erred in its previous decision in this regard: since the shorter training class time and lower fee structure make this discipline more affordable to the renovation program than risk assessment and inspection, the option of using this discipline should be available nationwide. NCHH agrees that on-the-job training for uncertified renovation workers should be required of renovation firms by State and Tribal programs.

Approval of authorized State and Tribal programs' compliance and enforcement programs and penalties for violations

Comment: NCHH agrees with EPA's assertion that strong enforcement by delegated states and tribes (collectively "states") is critical to the success of the rule and the protection of individuals from exposure to toxic lead dust and debris. We support EPA's requirements that states demonstrate that they have the ability to sue to obtain penalties, that penalties are assessable for each instance of violation, that penalties are assessable on a daily basis, and that the burden of proof be no more difficult than that under TSCA. We also agree with EPA that setting a minimum level for the maximum fine is desirable and will help to establish some level of consistency across states.

A substantial penalty for violating the rule helps establish the seriousness of the rule and the potential dangers of mishandling lead. It is necessary to establish a large maximum penalty in order to secure the attention of the regulated community. Therefore NCHH supports as large a minimum level of maximum penalty as possible. Given that \$10,000 is the minimum maximum used for other delegated environmental programs this seems like an appropriate starting point for EPA to utilize for the lead program. Having a national floor of \$10,000 will ensure that contractors uniformly take the rule seriously and decrease the likelihood that a message could inadvertently be sent that in a particular state the rule is not taken as seriously as in another state.

Although NCHH supports regular updates of penalties to adjust for inflation to ensure they remain a strong deterrent, we also understand that many states do not have an equivalent mechanism commonly used in their statutes to update penalties. If a particular state does not already have mechanisms for doing this, creating a mechanism just for this program may result in political resistance, administrative burdens, or a barrier to State adoption of the program. In addition, as discussed below, NCHH believes other aspects of enforcement are as relevant as the penalty.

EPA asked for input on what factors states should be required to consider when issuing a penalty. NCHH supports considering the impact or risk posed by the respondent's actions when assessing penalties. Violations that clearly increased the risk of exposing people to lead, such as use of a prohibited practice, should accrue

³ <http://edocket.access.gpo.gov/2010/pdf/2010-10100.pdf>

larger penalties than those violations that are “technical” or “paperwork” issues that did not actually result in increased likelihood of lead exposure. Such a system rightly creates larger disincentives for doing activities most likely to result in harm. NCHH also believes that it is appropriate to consider enforcement history to the extent that repeat offenders, who have every reason to be extraordinarily vigilant and aware of the rule requirements, have additional penalties assessed to them. However, we are concerned that a blanket consideration of “enforcement history” would make it appear as though first time offenders will be treated lightly, decreasing the likelihood of widespread compliance with the rule requirements since so few members of the regulated community will have been subject to enforcement action. NCHH is concerned that an excessive reliance on the size of the respondent’s business or ability to remain in business may result in overly small penalties. EPA’s own economic analysis showed that nearly the entire industry consists of small businesses. While we strongly support EPA’s efforts to assist small businesses in achieving compliance with the rules and making the playing field as level as possible for them, we do not want to see states assess penalties in amounts so inconsequential solely because the offender is a small business. Sending such a message would only encourage non-compliance with the rule by the smallest firms, who in many ways are the hardest to reach and most in need of incentives to comply with the rule’s requirements.

NCHH supports EPA’s efforts to ensure consistency of enforcement by setting some national standards for penalties and their assessment, and yet we believe that such approaches may ultimately not affect how vigorously a state enforces the rule. While a high penalty is necessary to attract the attention of the regulated community, ultimately there is a great deal of enforcement discretion left with the authorities investigating and prosecuting a case. A prosecutor could easily choose to pursue violations for each of four days of non-compliance or only for a single day. An investigator may only “write-up” the major violation, or additionally document a number of paperwork violations. It is impossible for EPA to achieve consistency of enforcement through standard fine levels or mitigation/exacerbation criteria.

The resources states put into place to actually inspect and enforce the rule will most substantially impact the extent to which the requirements are followed in a state. Given the large number of events and individuals covered by the rule, the probability of being inspected or caught violating the rule is perceived by many contractors to be extremely low. Further, many contractors expressed great concern that they will be underbid by non-compliant competitors, and without significant enforcement, they will be forced out of business by the non-compliant firms. Therefore, issuing 100 contractors \$100 citations may in many ways do as much to encourage compliance in the broader industry as issuing a single \$10,000 penalty.

Therefore, we strongly encourage EPA to look beyond standard fines, and require states to have consistent, minimum levels of enforcement. States should be required to document their enforcement capacity and estimate the number of annual job-site inspections that will be performed, or what percentage of the regulated community will experience an enforcement visit on an annual basis. Even relatively modest requirements – such as providing adequate staffing to allow an inspection or records audit of each firm once during its certification period - would substantially increase the perception of a broad-based enforcement effort that is essential to convince large numbers of the regulated community to comply.

E. Other Proposed Amendments to the Final RRP Rule

1. Containment.

Comment: We support the clarification as proposed.

2. Prohibited or restricted practices:

Disturbance of painted surfaces, not known lead-based paint, is the focus of these prohibitions.

Comment: NCHH supports clarifying that the prohibitions apply to all painted surfaces. As written these provisions are not protective. The renovator will not necessarily know the paint contents if testing has not been performed, and testing is not required. Paint disturbance is the subject of the renovation rule; paint removal was the subject of the abatement rule.

Clarification of what is meant by HEPA exhaust control by amending 40 CFR 745.85(a)(3)(ii) to read, “The use of machines designed to remove paint through high speed operation such as sanding, grinding, power planing, needle gun, abrasive blasting, or sandblasting, is prohibited on painted surfaces unless such machines are used shrouded and equipped with a HEPA vacuum attachment to collect dust and debris at the point of generation.”

Comment: The proposed definition is an improvement. However, the exhaust from a typical sander would quickly overwhelm the typical HEPA vacuum. If the machine generates 50 cfm of contaminated air, the HEPA vacuum must be designed, operated and maintained to capture that amount of air. Therefore, the definition should be amended to specify that the HEPA vacuum be capable of collecting the air generated by the machine. Also, the definition needs a performance standard to ensure that it the system operates properly. Also, at a minimum, the assembly (machine, shroud, hose, vacuum) combination must neither generate nor release visible dust and must permit no air movement on the outside. A more sensitive dust measure would improve the definition further. We urge EPA to consult with the Indoor Air Quality Association and consider strongly its experience-based comments in this regard .

3. Proposal to clarify that vacuums qualifying as HEPA vacuums for the purposes of this rule must be operated and maintained in accordance with the manufacturer’s instructions, including filter change interval recommendations, that HEPA filters be capable of capturing particles of 0.3 microns with 99.97% efficiency, so that the filters must have a Minimum Efficiency Reporting Value (MERV) of 17 or greater, and that renovation firms use models of vacuum or HEPA filter that meets an applicable test standard, such as ASTM F1471-09.

Comment: NCHH supports EPA’s plan to clarify that HEPA vacuums must be maintained in accordance with manufacturer instructions and encourages the adoption of such language. It is only common sense that a poorly or incorrectly maintained vacuum is not going to be able to perform as required by the rule, and it is the responsibility of the renovation firm to ensure its vacuum performs. NCHH also encourages EPA to better address HEPA vacuum maintenance in the model renovator curriculum. While it could be impractical to have students actually change filters in the classroom given time constraints and the wide range of vacuum designs, students should at least be provided with a baseline understanding that a filter change should be performed using some dust containment in accordance with the manufacturer’s recommendations. Wisconsin Department of Health Services developed an illustrated guide⁴ to HEPA vacuum maintenance that provides a good model of the type of information it would be helpful for EPA to include in its model renovator curriculum.

NCHH encourages EPA to require that HEPA vacuums used for renovation be documented by the manufacturer as meeting the applicable acceptable standard such as ASTM F1471-09. There is a great deal of confusion among renovators and some misinformation from manufacturers as to which vacuums actually meet HEPA standards as a unit (as opposed to just the filter medium). EPA is positioned to influence the industry and market by insisting that the vacuum actually be tested by the manufacturer to ensure it performs. Designs are helpful but add nothing if the unit is not built correctly. Quality control is essential. In addition, EPA should require that the vacuums are field tested periodically with a particle counter. Every two years and whenever the main filter is replaced is reasonable. At a very minimum, EPA should explicitly prohibit use of vacuums where the manufacturer warns that the vacuum is not intended for use “with hazardous

⁴ Available at http://www.healthyhometraining.org/rrp/Cleaning_HEPA_Vacs_Wisconsin_1-25-10.pdf
Submitted by the National Center for Healthy Housing 08/06/10 - page 15

substances” or not intended for lead or asbestos clean-up. If the manufacturer isn’t willing to stand behind the vacuum’s ability to appropriately filter the material, that’s a strong indication it is likely to fail to meet EPA’s requirements.

NCHH supports the suggestion proposed by the National Association of Home Builders that EPA provide a periodically updated list of HEPA vacuums that meet the standard on its website or make that list available through the training providers.

NCHH also recommends that EPA clarify and promote effective standards for filtration by HEPA filters and vacuums. We are aware, per www.healthyhomestraining.org/RRP/PHEAF_Test_Results_1-25-10.pdf, that virtually no vacuums on the market can be expected to meet the current standard for HEPA vacuum except ones that are well beyond EPA’s cost estimates. The type of HEPA vacuum EPA used in its Dust Study that formed the foundation of the rule’s work practices fails miserably. When we evaluated such vacuums that had just been cleaned and had a new filter, they collected 38%, 47%, 64%, 58%, and 70% of the 0.3 micron particles entering the unit – all considerably weaker than the 99.97% cited in EPA’s definition for that size particle. EPA should base the definition of HEPA vacuum on the performance of the units actually used, or develop a definition that is practical and protective.

We urge EPA to consult with the Indoor Air Quality Association and consider strongly its experience-based comments in this regard .

4. On-the-job training for non-certified workers in the work practices required by the RRP rule that the workers will be using in performing their assigned tasks.

Comment: NCHH supports specifying lead-safe work practice subject matter in the worker on-the job training and supervision requirements.

5. Grandfathering of individuals who successfully completed an accredited abatement worker or supervisor course, and individuals who successfully completed the HUD, EPA, or the joint EPA/HUD model renovation training courses

Comment: NCHH supports an absolute limit on the opportunity for previously trained personnel to use a refresher class in lieu of initial renovator training, but believes that the deadline should be one year after the effective date of the final rule. With the introduction of the certified renovator class and the HUD recognition of this class for compliance with the 1012/1013 requirements, the previously delivered Lead Safe Work Practices classes are now obsolete. There is little reason to offer one of these older classes other than to avoid having to meet EPA’s criteria for becoming accredited. Therefore, it makes sense that EPA discourage students from taking the older LSWP classes by not rewarding them with a “grandfathering” and we support a July 31 2011 deadline for this.

EPA should continue “grandfathering” those who completed EPA accredited abatement worker or abatement supervisor courses, until the Agency has added renovator information to the model initial abatement and abatement refresher classes and can offer these individuals dual certification in abatement and renovation.

6. Hands-on requirements

Comment: NCHH strongly supports EPA’s addition of the topic areas in which hands-on activities must be included for the initial renovator and initial dust-sampling technician courses. The topic areas identified by EPA are those critical to experience as well as read or hear about and the hands-on activities in our experience greatly increase the retention of information by students. NCHH, however, is concerned about hands-on

criteria for refresher classes. The current model refresher training for renovators⁵ has two required hands-on skill sets – paint testing and cleaning verification. This is logical given the premise that individuals currently taking the refresher class are “grandfathered” from LSWP or abatement, and learning these skills are the reason they are taking the refresher. NCHH agrees that these “grandfathered” students should have hands-on training. However, in future years when previously certified renovators return for their refresher to remain certified, NCHH believes a hands-on element in the renovator refresher training may be unnecessary. Requiring a hands-on element increases the cost and complexity of offering a refresher, because more equipment, space, and additional guest instructors to meet the lower student-to-teacher ratios are required for hands-on instruction. It may be possible to convey all of the needed information for the refresher classes in various distance-learning systems. This could reduce the cost to renovators. Therefore, EPA should consider limiting the requirement for a hands-on component for renovator refresher classes to those classes held before the deadline (proposed as April 22, 2011) by which, under the grandfathering provision, a renovator can obtain initial certification from completion of a refresher course. Should EPA subsequently develop a model refresher curriculum that provided for meaningful hands-on activities that encompass a wide range of skills, then perhaps it could justify hands-on activities during a post-2011 refresher class.

7. Dust sampling performed by risk assessors and inspectors.

Comment: NCHH supports permitting risk assessors and inspectors to act as dust sampling technicians provided that they are informed about the renovation-specific approach to clearance and do not apply post-abatement clearance requirements to renovation projects.

8. Trainee photographs.

Comment: NCHH believes that no further clarification of the photo requirements are required. EPA has proposed requiring photos be recognizable and printed to at least one square inch on certificates. These guidelines are more than adequate to ensure the purpose of having the photo on the certificate is met. It is important to recognize that the certificate is not a legal form of identification akin to a driver’s license. If a dishonest individual really wants to fraudulently hold him or herself out as a certified renovator, it would be simple to forge a certificate. The true benefit of the photos is that EPA is collecting them from the training providers so that it may have in its databases a picture of someone who was in a classroom and later match that with an image of the person actually on the job site to confirm his or her legitimacy. Therefore, in our view, the requirements for what be printed on the certificate may simply be left as a “recognizable” photo without further clarification. Further, in our opinion, EPA’s requirements for photo submittal and the photographs⁶ are overly burdensome and in need of clarification. In particular, the requirement that photos be “600 pixels high by 600 pixels wide” is extremely burdensome to trainers as this is not a setting found on consumer cameras. Most trainers are forced to expend hours cropping photos in editing software to meet this requirement, driving up the cost of training and increasing the delay between the class and when materials are sent to EPA. We strongly encourage EPA to be less prescriptive in its photo requirements and allow submittal of a wide range of photos so long as they are recognizable and meet the basic need of the agency to be able to match a picture of the person in the classroom with who is in the field. These are not identification photos used to identify individuals for security purposes and should not be held to such high standards.

9. Other Training Requirements.

Comment: EPA has proposed making a number of “clean-up” changes to 40 CFR 745.225 rules for training providers. NCHH supports these efforts to clarify the intention of the regulations. However, we also believe EPA should use this opportunity to require itself to streamline the accreditation process. EPA has allowed 180

⁵ EPA has not yet released a model refresher class for dust sampling technician, so it’s difficult to comment on how the hands-on is envisioned by EPA for this class, hence we will focus on the refresher renovator class.

⁶ <http://www.epa.gov/lead/pubs/trainerinstructions.htm#photo>

days to process an application for accreditation. While setting itself an internal goal of 90 days, both time frames are vastly longer than what should be required. There is no reason to suspend an interested and qualified trainer from starting deliveries for three to six months while EPA ensures little more than that they have met a checklist of requirements. A lengthy delay could be understandable if the trainer was suggesting to EPA an entirely new curriculum that required EPA review, however, nearly all trainers utilize the EPA model curriculum and still have to wait three to six months. It is clear that the first month of the process consists of little more than cashing the check and moving the application around the country to get it to the correct officials for review. Clearly EPA could do substantially better and its regulations should require it to do better by reducing the time frame to a maximum of 45 days for those using the model curriculum and a maximum of 90 days for those proposing new curricula.

Comment: Within 745.225, EPA also establishes a set of requirements for accreditation, including having staff with various qualifications and appropriate documentation. Each of EPA's regional offices has made different interpretations of what is actually required in order to comply with these requirements. Two regions, for example, has mandated that instructors demonstrate their teaching ability by conducting an entire class in the personal presence of a regional official, while other regions have done little more than a paper review or informal meeting with applicants. Some regions have established strict student-to-teacher ratios for hands-on instruction, which they require trainers to write into their applications despite the lack of regulatory clarity on this topic. Other regions have granted accreditations allowing more generous ratios. However, once accredited, a training provider can teach renovation classes nationally in any region without further review or restriction. Since the allowable ratio greatly impacts the cost of offering training, these disparities create competitive disadvantages among trainers based on where they are headquartered and which region reviewed the application. This vast disparity and wide-ranging interpretation of the same requirements by EPA's regional offices suggests a need for greater clarity in the regulations themselves.

Please contact Jane Malone, NCHH's Director of Policy, jmalone@nchh.org, with any questions.