



Office of Advocacy

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March 3, 2000

The Honorable Carol M. Browner  
Administrator  
U.S. Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

Dear Ms. Browner:

Enclosed for your consideration is the Report of the Small Business Advocacy Review Panel (SBAR Panel or Panel) convened for the planned proposed rulemaking on **Lead-based Paint; Certification and Training; Renovation and Remodeling Requirements** that the Environmental Protection Agency (EPA or the Agency) is currently developing.

On November 23, 1999, EPA's Small Business Advocacy Chairperson convened this Panel under section 609(b) of the [Regulatory Flexibility Act \(RFA\)](#) as amended by the [Small Business Regulatory Enforcement Fairness Act of 1996 \(SBREFA\)](#). In addition to the Chair, the Panel consisted of the Director of EPA's Office of Pollution Prevention and Toxics, the Chief Counsel for Advocacy of the Small Business Administration (SBA), and the Deputy Administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget (OMB).

The Report includes a discussion of the options under consideration for the proposed regulation under development, a description of the Panel's outreach to small entity representatives, a summary of small entity comments received by the Panel, and the Panel's findings and discussion.

[Enclosure: Executive Summary](#)

Sincerely,

Thomas E. Kelly, Chair  
Small Business Advocacy  
U.S. Environmental Protection Agency

John T. Spotila, Administrator  
Office of Information and Regulatory Affairs  
U.S. Office of Management and Budget

Jere W. Glover  
Chief Counsel for Advocacy  
U.S. Small Business Administration

Dr. William Sanders, Director  
Office of Pollution Prevention and Toxics  
Office of Prevention, Pesticides, and Toxic  
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U.S. Environmental Protection Agency

## Executive Summary

### Small Business Advocacy Review Panel Report Lead-based Paint; Certification and Training; Renovation and Remodeling Requirements March 3, 2000

This document serves as an executive summary of the Report of the Small Business Advocacy Review Panel (SBAR Panel or the Panel) convened for the proposed rulemaking on the Lead-based Paint; Certification and Training; Renovation and Remodeling Requirements that the Environmental Protection Agency (EPA or the Agency) is currently developing.

The Renovation and Remodeling requirements under development by EPA will regulate renovation and remodeling activities that could potentially generate lead hazards. Firms performing those activities that may be impacted include renovation and remodeling firms, training providers, lead inspection services firms, and multi-family property owners. The potentially impacted industries are characterized by a majority of small firms.

It is important to note that the Panel's findings and discussion are based on the information available at the time that the Panel report was drafted. EPA is continuing to conduct analyses relevant to the proposed rule, and additional information may be developed or obtained during the remainder of the rule development process and from public comment on the proposed rule. Any options the Panel identified for reducing the rule's potential regulatory impact on small entities, may require further analysis and/or data collection to ensure that the options are practicable, enforceable, fully protective of human health and consistent with the Toxic Substances Control Act (TSCA or the Act).

#### Summary of Small Entity Outreach

EPA, alone and in conjunction with SBA and OMB, has had several meetings and conversations with small entity representatives (SERs) to discuss the potential Renovation and Remodeling requirements and the related potential impacts. Prior to the Panel, EPA held two stakeholder meetings in December 1998, and March 1999, to discuss the types of contractors and/or tasks that produce lead hazards during renovation and remodeling. At the onset of pre-panel discussions with SBA and OMB, EPA held three conference calls with potential small entities to obtain feedback on the options and alternatives outlined for the proposal. Small entity representatives that attended the conference calls included renovation and remodeling firms, certified risk assessors, and industry organization representatives. Once the Panel was convened, the Panel met with the SERs on December 3, 1999. Summaries of the meetings in September with the small entity representatives are included in Appendix A of the Panel report. In addition to verbal comments noted by the panel at meetings and teleconferences, the panel also received written comments from members of each of the affected industry segments or their representatives. A summary of the SERs written comments is presented in Section 7 and the complete written comments of the SERs can be found in Appendix E.

#### Summary of Panel Findings and Discussion

- *Number and Types of Small Entities*

A complete description and estimate of the number and type of small entities to which the proposed rule may apply is presented in Section 4 of the Panel Report. The following small entities may be regulated under the Renovation and Remodeling requirement's proposal:

- Contractors and maintenance workers performing renovation and remodeling activities that generate lead hazards.
- Training Providers providing renovation and remodeling training services.
- Risk Assessors, Inspectors and Sampling Technicians involved in the identification of lead-based paint and clearance testing following renovation and remodeling activities.
- Property Owners and Managers of affected housing stock.

## *Potential Reporting, Record Keeping, and Compliance Requirements*

As appropriate, regulated entities may be required to demonstrate that they have met applicable training, certification, and work practice standards by complying with reporting and record keeping requirements. Examples of reporting and recordkeeping requirements that EPA may propose include information demonstrating compliance with certification or accreditation requirements.

## *Relevance of Other Federal Rules*

A discussion of Federal rules related to the Renovation and Remodeling proposed rule is provided in section 2 of the Panel Report.

## *Panel Recommendations and Comments for the Options Considered*

The Panel considered a wide range of options and regulatory alternatives for providing small businesses with flexibility in complying with potential Renovation and Remodeling requirements. A detailed discussion of the eight options and approaches that the Panel discussed for Renovation and Remodeling requirements are presented in Chapter 3 of the Panel report. As a part of the process, the Panel requested and received comments from the SERs on regulatory options developed by EPA and several additional ideas for compliance flexibility that were suggested by SERs and Panel members. The Panel's recommendations on the eight options and one additional area are based on its consideration of the comments received, as well as additional business and technical information. The following is a summary of the Panel discussion and recommendations for each option.

## *Applicability*

Under Title IV of the Toxic Substances Control Act (TSCA) the Renovation and Remodeling proposed rule may apply to individuals and firms conducting renovation in all or certain housing built before 1978, the year that lead-based paint was banned in consumer use.

The Panel received different opinions from the SERs on the applicability options, and discussed the pros and cons of alternatives.

OMB and SBA believe that the protection of public health may be achieved at significantly lower cost by restricting rule requirements to homes built before 1960. Older homes are more likely to have lead-based paint on at least one surface, to have a higher concentration of lead in lead-based paint, and to have a greater surface area coated with lead-based paint. Homes built between 1960 and 1979 contain only 5% of the National total amount of lead-based paint on interior components. Lastly, even those firms not required to comply with a Renovation and Remodeling rule will have the benefit of EPA guidance on lead safe work practices and will be subject to the requirements of the pre-renovation education rule (40 CFR 745 Subpart E).

EPA believes that restricting the applicability of this rulemaking to pre-1960 housing may not provide adequate protection of public health. EPA understands that the quantity and concentration of lead in paint used after 1960 decreased, however, a large number of these homes have some lead-based paint and even small quantities of such paint can produce hazardous lead contamination. Forty-two percent of all housing containing some lead-based paint was constructed between 1960 and 1978. Additionally, despite the availability of educational materials, EPA is still concerned that, should housing constructed between 1960 and 1978 be excluded, owners and occupants of such housing may deduce, incorrectly, that their dwelling is free of lead-based paint and associated lead hazards.

*The Panel recommends 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. Also, the Panel recommends that EPA solicit comments on the pre-1978 option as well as other options that may help to reduce costs while achieving the protection of public health.*

## *Exemptions to Applicability of the Rule*

The Panel discussed two exemptions: (1) a "de minimis" exemption for activities that disturb less than two square feet of lead-based paint; and (2) an exemption for emergency renovations.

SBA and OMB also recommend that EPA provide additional exemptions for firms who routinely disturb small amounts of lead paint or do not create lead hazards. They recommend that EPA apply the regulation to firms that regularly perform painting, construction or renovation work (i.e. general contractors, builders, remodelers, and painters) and exempt specialty contractors (i.e. plumbers and electricians) in the proposal. Under this proposed option, these specialty contractors would still be expected to follow lead-safe practices as outlined in HUD and EPA guidance, but would not be subject to certification, training and other regulatory requirements.

*The Panel recommends that EPA include a "de minimis" exemption and an exemption for emergency renovations in the proposal.*

### Certification of Firms

The proposed regulation may require a firm to be certified by EPA or an authorized state or tribal government when performing renovation and remodeling activities on applicable housing.

*The Panel believes that certification of renovation and remodeling firms would help consumers identify qualified firms. The Panel recommends that EPA attempt to balance the goals and objectives of the statute, with the burden associated with such regulatory requirements, in order to avoid placing compliant firms at an undue competitive disadvantage. The Panel recommends that EPA include firm certification in the proposal.*

### Training and Certification of Individuals

EPA may propose to require all or some individuals engaged in regulated renovation and remodeling activities to complete a training course and possibly become certified by EPA or an authorized state or Tribal government.

*The Panel believes that training renovation and remodeling workers improves lead safe work practices. However, the Panel understands that the rate of worker turnover in the industry is high and firms would probably incur greater training and certification costs. The option of limiting formal training requirements to a job supervisor (or other clearly defined responsible party) provides a less burdensome alternative. The Panel recommends that EPA include formal training for supervisors (or other clearly defined competent person) and informal training for all others in the proposal.*

### Accreditation of Training Providers

EPA may propose to require entities that train renovation and remodeling workers to obtain accreditation from EPA or an authorized state or Tribal government.

*The Panel believes that accreditation provides a mechanism to ensure quality control of training programs, to establish a level of essential training, and to facilitate reciprocity between states. The Panel is also concerned about imposing an undue burden on training providers. The Panel recommends that EPA include accreditation of training providers in the proposal.*

### Work Practice Standards

Current EPA regulations for lead-based paint abatement activities contain specific prescriptive work practice standards that take into account reliability, effectiveness, and safety. EPA could propose to establish prescriptive work practice standards or performance-based standards for renovation and remodeling activities. A prescriptive regulation would require contractors to follow specific detailed procedures, whereas, a performance-based regulation would establish standards that would allow contractors to choose cost-effective techniques to accomplish such standards.

*The Panel recognizes that a prescriptive approach may clearly identify methodologies to minimize lead*

hazards. However, prescriptive practices may not work effectively in some situations a contractor may face. The Panel believes that a performance-based approach would provide the contractor with greater flexibility to manage risk in a cost-effective manner while minimizing the introduction of lead hazards given a particular situation. Therefore, the Panel recommends that EPA include performance-based standards in the proposal.

### Prohibited Practices

EPA may propose to prohibit certain work practices as recommended in HUD's 1995 publication: "Guidelines for the Evaluation and Control of Lead-based Paint Hazards in Housing," because they may produce high levels of lead dust which could be difficult, if not impossible to clean up. These practices include open flame burning or torching of lead-based paint; machine sanding, grinding, abrasive blasting, or sandblasting of lead-based paint *except* when done with HEPA exhaust control; dry scraping of lead-based paint *except* around electrical outlets or for any area no more than two square feet in any one room, hallway, or stairwell, or for any area no more than twenty square feet on exterior surfaces; and operating a heat gun at 1100 degrees Fahrenheit or higher.

The SERs commented that such prohibitions may increase cost, decrease quality, and impede cleanup efforts. Such prohibitions may also cause homeowners and building owners to seek contractors willing to avoid compliance with such prohibitions. These contractors would likely avoid compliance with other lead safe work practices as well, leading to a reduction in public health, rather than an increase. SBA and OMB recommend that EPA not prohibit work practices, relying instead on the effectiveness of containment and cleanup work practice requirements.

*The Panel recognizes concerns over the feasibility of prohibiting or severely restricting common renovation practices when cost-effective alternatives may not exist. The Panel recognizes that prohibiting such practices could adversely affect the cost and quality of renovations. However, the Panel is also concerned about the potential risks associated with the release of significant amounts of lead contaminated dust that may be associated with such activities.*

*The Panel notes that proper training, in combination with reasonable performance, containment and cleanup requirements, may adequately address the introduction of new hazards. The Panel recommends that EPA request public comment on the prohibition of work practices and seek comment regarding the cost, benefit and feasibility of such prohibitions.*

### Exterior Clearance

EPA could propose to require an exterior clearance following exterior renovation and remodeling. This clearance could include a visual inspection or soil testing for lead contamination. A visual inspection would evaluate whether visible amounts of dust and debris remain on exterior horizontal surfaces and if visible paint chips remain on the ground below the work area. Exterior renovation, remodeling, and repainting tasks can create lead-contaminated debris (e.g., paint chips) and lead-contaminated dust levels in soil that are equivalent to those produced during lead-based paint abatement. EPA regulations applicable to exterior lead abatement work call for a visual inspection (40 CFR 745.227(e)(8)(v)(c)) and do not require soil lead testing.

*The Panel recognizes the potential costs associated with exterior soil sampling and the difficulty a contractor may have in achieving clearance due to existing soil lead contamination from the deterioration of lead-based paint, deposition resulting from industrial sources, and leaded gasoline. Also, the Panel does recognize that other Federal regulations (ie., the lead-based paint abatement regulation at 40 CFR 745 subpart L) only require visual clearance following abatement and that consistency with such regulation will be an important factor for consideration. The Panel recommends that EPA include in the proposal a visual inspection provision for exterior clearance.*

### Interior Clearance

EPA may propose to require an interior visual inspection and/or dust clearance testing following

renovation and remodeling activities because this work often creates lead-contaminated dust levels in excess of established hazard criteria.

*The Panel recognizes that the issue of interior clearance has raised many concerns related to the type of clearance (visual or dust testing). These concerns include: the time and expense involved, who would be responsible for conducting clearance, and accounting for existing lead contaminated dust. Recent studies provide some evidence that low clearance levels (e.g., 50 ug/ft<sup>2</sup>) can be achieved following a thorough and professional clean-up, however, there is contrary evidence in some field studies that speak to the difficulty in achieving floor clearance levels as high as 200 ug/ft<sup>2</sup>.*

*The Panel understands that dust clearance testing is the best method currently available to quantify the presence of a lead dust hazard and that visual examination alone may not be adequate to determine the presence of such a hazard. A study being conducted in the State of Maryland to evaluate the effectiveness of visual clearance supports this latter conclusion. Preliminary study results of dust lead samples taken following visual clearance of work areas in which lead risk reduction activities were conducted indicate that the majority of dust lead levels are greater than EPA dust hazard guidance.*

*SBA is concerned about the cost and feasibility of consistently achieving low interior clearance requirements based on currently available field evidence. SBA introduced a new option to the Panel that would include a specific cleanup methodology followed by a visual clearance requirement as a alternative to dust clearance testing. The Panel recommends that EPA include this new option in the proposal and take comment on the merits of all the interior clearance options in the proposal. The Panel also recommends that EPA take comment on options for clearance that are less costly and less burdensome, and yet still demonstrate the absence of lead hazards.*

#### Additional Issues

*The Panel recommends that EPA continue to refine the impact analysis of the proposal, utilizing comments from affected industry and other parties related to costs and other issues. Additionally, with regard to the EPA study titled: "Lead Exposure Associated with Renovation and Remodeling Activities; Phase III" (EPA 747-R-99-002), the Panel recommends that EPA do further analysis of the existing Phase III data to analyze the impact of renovation and remodeling activities by contractors, and building owners (those persons who would be subject to this regulation).*

The Panel discussed the 403 hazard standard, proposed in June 1998, because it includes clearance standards that may be used to determine adequate clean-up in the Renovation and Remodeling rule. As suggested in comments submitted on the 403 proposal, SBA and OMB recommend that EPA reassess the IEUBK and Empirical Models, evaluating each model's predicted distribution of blood lead levels against distributions observed in the Rochester study, the pooled analysis by Lanphear et al. and NHANES III, and make appropriate adjustments to improve the ability of the models to predict the number of children with elevated blood lead.