

July 23, 2009

Andrew J. Simons, Esq.
Office of the General Counsel
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
MC-2333A
Ariel Rios Building
Washington, DC

Re: Lead Renovation Repair and Painting Rule

Dear Andy:

We are writing to follow up on your conversation with Tom Jackson in which you indicated that, because of the unusual circumstances associated with the Lead Renovation, Repair and Painting Rule – specifically EPA’s commitment to propose certain changes to the Rule – the Agency may be willing to consider addressing other issues in the upcoming rulemaking processes that would normally be addressed through guidance. Representatives of the National Association of Home Builders, the National Center for Healthy Housing and the Alliance for Healthy Homes have met and identified issues that we agree would be an appropriate subject of clarification in the upcoming rulemakings. These issues include the following:

- The definition of “disturb” – As we have discussed previously, we believe that the focus of the Rule should be on activities that create lead dust. There are certain activities that could be considered to disturb painted surfaces where the paint is not deteriorated – such as the installation of new molding where no molding was previously present – that should not be subject to the Rule. Therefore, we believe the scope of the Rule should be clarified through the addition of a definition of “disturb.” This is particularly important in light of 40 C.F.R. § 745.85(d), which states that activities that do not disturb paint are not regulated if they take place after post-renovation cleaning verification has been performed. Given that renovators may choose to do the cleaning verification once all demolition and related work is complete and before new materials are installed, we believe that it would be unnecessary for these installation activities to again trigger the need for the use of lead-safe work practices and cleaning verification because they are considered to “disturb paint.”
- Post-renovation paint disturbance – A related issue concerns the definition of “minor repair and maintenance activities.” As noted above, renovators may adapt the schedule for their activities to comply with the Rule by completing all paint-disturbing activities requiring lead safe work practices before undertaking additional renovation activities. In these instances, after cleaning verification is complete, the renovator would continue with renovation activities that disturb little or no paint. However, these activities may fall

under the definition of “minor repair and maintenance activities” which stipulates that “jobs . . . performed in the same room within the same 30 days must be considered the same job for the purpose of determining whether the job is a minor repair and maintenance activity.” Section 745.83. Thus, activities that might otherwise be exempt from the requirements of the Rule as “minor repair and maintenance activities” would not qualify as “minor repair and maintenance” because of the work that preceded these activities. As a result, under these circumstances a renovator could not complete these minor paint disturbances after completing cleaning verification without again implementing the full package of work practices. Therefore, the “minor repair and maintenance activities” definition should be modified to allow renovators to phase their activities at a job site while limiting the amount of work that could be done which is not undertaken in accordance with the lead safe work practices.

- Acceptability of on-line training – While we are aware that EPA itself is working on an on-line training program, we believe it would be useful for EPA to confirm in the Rule that at least certain portions of the training may be done through an approved on-line course. In this connection, we believe that it would be appropriate for EPA to consider how the specified minimum hours of training would apply to any on-line course, given that an on-line course could be completed by some experienced individuals in less time than others. While it is most important for the certified renovator course, EPA should make the on-line option available for the lead-based paint activities courses. In any event, EPA should confirm that the Agency will separately accredit any on-line training course.
- Requirements for trainer accreditation – We believe that EPA should consider modifying the requirement that qualified instructors themselves receive 16 hours of accredited lead-specific training, particularly in light of the current pace of approval of training providers. The 16-hour requirement was adopted when 16 hours was the minimum lead-based paint activities training available. Instructors should be considered qualified after completing the accredited 8-hour certified renovator course, which contains the information of most relevance for instructors of such courses.
- Certification deadline relief – In light of our increasing concerns about the ability of the Agency to develop the infrastructure necessary to support the development of training provider capacity and ensure access to training for all renovators who wish to be certified by the April 22, 2010 deadline, we urge the Agency to take advantage of the opportunity to write into the Rule a mechanism that would allow EPA to provide relief from the full applicability of the qualifications requirements by the deadline due to inadequate capacity. As you know, there is precedent for this type of approach in a HUD notice subsequent to its 1999 publication of regulations concerning lead-based paint hazards in housing receiving federal assistance. For example, relief could be provided for renovators working for a certified renovation firm who indicate

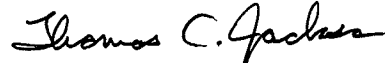
that they will comply with the work practices in the Rule and have taken appropriate steps to seek certification such as taking on-line or unaccredited classroom training. This relief mechanism could be limited to those in compliance with these requirements on or before the April 22, 2010 deadline.

- Definition of “HEPA exhaust control” – The Rule does not define what qualifies as HEPA exhaust control. EPA should clarify the meaning of “HEPA exhaust control” as it applies to restricted and prohibited practices.
- Definition of “HEPA vacuum” – EPA should revisit the definition of “HEPA vacuum” in the Rule, particularly the requirement that “all” of the air pass through the HEPA filter; this absolute standard may be difficult to meet in practice.
- Definition of “for compensation” – EPA should address the issue of whether the provisions of the Rule apply to an organization such as Habitat for Humanity, where most of the workers do not receive financial compensation in the traditional sense for a remodeling job.
- Definition of “claim to perform” – While the undersigned have not reached consensus on the proper approach to this issue, we do agree that it would be appropriate for EPA to take comment on what it means to “claim to perform” renovation services.
- Renovator and Abatement Worker/Supervisor Refresher – Many abatement contractors will also be certified renovators. Abatement workers and supervisors must take an 8-hour refresher training course on a three-to-five year cycle. Many of the issues that would be covered in the abatement and certified renovator courses overlap. We believe EPA should allow training providers to deliver an EPA-approved refresher training course that counts for both the certified renovator and the certified abatement worker or supervisor course.
- Prohibited Work Practices and Lead-Based Paint – When the Rule describes prohibited and restricted work practices in Section 745.85(a)(3), it limits their use only when lead-based paint is present. Nowhere else in the Rule does EPA use the term “lead-based paint” in this manner. We believe EPA should replace the term “lead-based paint” with “paint” in Section 745.85(a)(3). Also, Section 745.85(a)(3)(ii) should apply to all high-speed operations that “disturb” paint, not just those that remove the paint.
- Worker Training – Section 745.90(b)(2) states that the renovator “must provide training to workers on the work practices they will be using in performing their assigned tasks.” Since “work practices” is not defined in the Rule, we believe the requirement should refer to Section 745.85 dealing with work practices pertaining to lead-safe practices. A similar change is needed in Section 745.90(b)(4).

July 23, 2009

We hope to provide you with specific proposed language for a number of the issues identified above. In the meantime, please do not hesitate to call us if you would like to discuss these issues further.

Sincerely,



Thomas C. Jackson
Counsel for National Association of Home Builders



Thomas Neltner
Counsel for Sierra Club, National Center for
Healthy Housing and Alliance for Healthy Homes



Patrick MacRoy
Executive Director, Alliance for Healthy Homes

TCJ:jmd
Enclosures
cc: Angie Purdy
Maria Doa

document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786-1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: August 29, 2000.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00-23224 Filed 9-8-00; 8:45 am]

BILLING CODE 4120-03-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-3482-N-09]

Requirements for Notification, Evaluation and Reduction of Lead-Based Paint Hazards in Federally Owned Residential Property and Housing Receiving Federal Assistance; Notice of Transition Assistance

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of transition assistance.

SUMMARY: This notice describes the transition assistance that will be provided in connection with implementation of HUD's new requirements for notification, evaluation and reduction of lead-based paint hazards in federally owned residential property and housing receiving federal assistance ("Lead Safe Housing Regulation"). The Lead Safe Housing Regulation was published in the *Federal Register* on September 15, 1999, and becomes effective on September 15, 2000. To make certain that adequate service providers exist throughout the country to carry out lead-based paint hazard evaluation and reduction activities safely and effectively, and to target available resources to housing which places children most at risk, HUD has developed a transition assistance policy with three components.

First, HUD is authorizing a six-month transition period for program participants in jurisdictions which notify the Department by November 15, 2000, that they lack the capacity to implement one or more provisions of the Lead Safe Housing Regulation. Second, post-1960 properties occupied by children under six receiving only

tenant-based rental assistance will be provided a twelve month transition period. Third, properties receiving federal rehabilitation assistance greater than \$25,000 that are occupied by the elderly, where no child under six resides or is expected to reside, will be provided a twelve month transition period. No submission by a jurisdiction is required in order for program participants to take advantage of the second and third transition assistance components. All three components are discussed in more detail in the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Lead Paint Compliance Assistance Center, Office of Healthy Homes and Lead Hazard Control, Department of Housing and Urban Development, 451 7th Street, SW, Room P-3206, Washington, DC 20410-0500, 1-866-HUD-1012 (1-866-483-1012) (this is a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the toll-free Federal Information Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

Background

Congress mandated the reduction of lead-based paint hazards in federally owned residential property and housing receiving federal assistance in the Residential Lead-Based Paint Hazard Reduction Act of 1992 (Title X of the Housing and Community Development Act of 1992) (Pub. L. 101-550; 106 Stat. 3897; 42 U.S.C. 4851 *et seq.*), which amended the Lead-Based Paint Poisoning Prevention Act (Pub. L. 91-695; 84 Stat. 2078; 42 U.S.C. 4801 *et seq.*). HUD published the Lead Safe Housing Regulation implementing Sections 1012 and 1013 of Title X in the *Federal Register* at 64 FR 50140 on September 15, 1999. This regulation becomes effective on September 15, 2000.

The Lead Safe Housing Regulation applies advances in the scientific understanding of childhood lead poisoning in the rehabilitation, treatment and maintenance of federally owned residential property and housing receiving federal assistance under a wide array of programs. The regulation also increases the quantity of testing, home maintenance, repair or rehabilitation work that must be performed in a lead-safe manner. In most areas of the country, the Department believes there is an adequate supply of trained contractors and licensed (certified) personnel to do the work required. However, in certain

areas, the market for the services required under the regulation may not yet have reached the point where the requisite expertise is reasonably available for all programs and all requirements of the regulation.

Recognizing that gaps in capacity may exist, the Department believes that to protect children from lead poisoning in federally owned residential property and housing receiving federal assistance, the Lead Safe Housing Regulation must become effective as scheduled on September 15, 2000. Under this notice, the Department is providing program participants with a short transition period during which the geographic areas lacking capacity to comply with the Lead Safe Housing Regulation can build that capacity and resources can be focused on the housing stock with the greatest need. During this transition period, program participants in jurisdictions qualifying for the transition assistance will not be expected to comply with the relevant requirements of the Lead Safe Housing Regulation for certain identified programs. Working in partnership with organizations of housing providers and childhood health advocates, HUD will provide funds for nationwide training of clearance technicians, maintenance workers, rehabilitation workers, program staff and others. HUD will also create a Lead Paint Compliance Assistance Center to respond to requests for training assistance from jurisdictions which have inadequate capacity. The Department will provide funds to defray the costs of testing for lead-based paint and lead-based paint hazards, including clearance testing and risk assessments in the housing choice voucher program, clearance testing for properties receiving federal rehabilitation assistance and inspections and risk assessments for HUD's project-based programs. HUD is issuing program specific administrative notices to all program participants describing the sources of funding available for lead-based paint inspections and other testing, and related training.

Transition Assistance

Component 1—Assistance for Jurisdictions With Inadequate Capacity

For program participants in a particular jurisdiction to qualify for transition assistance based on inadequate capacity to carry out specific requirements of the Lead Safe Housing Regulation, the chief elected official of the jurisdiction, or a senior official designated to act on his or her behalf (such as the official who signs the Annual Consolidated Action Plan

submitted to HUD for the jurisdiction), must submit a Statement of Inadequate Capacity to HUD. A jurisdiction is defined for purposes of this notice as a CDBG Entitlement Grantee or for non-entitlement areas, the State CDBG Grantee or Indian Tribe. If the jurisdiction is the State, the statement must be signed and submitted by the agency head who signs the State Annual Consolidated Action Plan submitted to HUD and by the agency head responsible for the EPA-authorized lead-based paint certification program (if the State has an EPA-authorized lead-based paint certification program). If the jurisdiction is an Indian Tribe, the statement must be signed and submitted by the chief official of the Indian Tribe and by the individual responsible for the EPA-authorized lead-based paint certification program (if the Indian Tribe has an EPA-authorized lead-based paint certification program). The statement submitted by a State may cover all or part of the CDBG non-entitlement area of the State. The Statement of Inadequate Capacity should be circulated to and reviewed by local officials with responsibility for housing and public or environmental health in the State or locality.

The Statement of Inadequate Capacity must be submitted to: David E. Jacobs, Deputy Director, Office of Healthy Homes and Lead Hazard Control, U.S. Department of Housing and Urban Development, Room P-3202, 451 7th Street, SW, Washington, DC 20410-0500.

Specifically, the jurisdiction must indicate in the Statement of Inadequate Capacity that trained, licensed (certified) or accredited personnel or firms are either not available in sufficient numbers or are not available at a reasonable cost to make it practicable to comply with the Lead Safe Housing Regulation between September 15, 2000, and March 15, 2001. The statement must indicate the specific requirements, as well as the particular programs or types of assistance covered by the Lead Safety regulation for which capacity to comply does not yet exist. If the jurisdiction's claim of inadequate capacity is based on unreasonable cost, the statement must be documented by an analysis of actual bids. A sample Statement of Inadequate Capacity which HUD recommends jurisdictions use will be available on the HUD lead website at www.hud.gov/lea.

This Statement of Inadequate Capacity from a jurisdiction must be received by HUD no later than November 15, 2000. At the same time the statement is submitted to HUD, a copy of this statement must also be

submitted to the State agency responsible for the lead-based paint certification program or to the regional EPA office if EPA is operating the lead-based paint certification program directly.

The jurisdiction is required to submit a Transition Implementation Plan with its Statement of Inadequate Capacity no later than December 15, 2000, explaining how the jurisdiction will take the necessary steps to ensure that an adequate supply of personnel or contractors will be available by March 15, 2001. Failure to submit the plan by December 15, 2000, will result in the rescission of the transition assistance.

The plan must include the following: (1) An assessment of actual existing capacity and the additional number and type of personnel that need to be trained and/or certified; (2) how training will be obtained; (3) how assisted housing with the greatest risks and greatest opportunity to control lead-based paint hazards will be prioritized using existing personnel or contractors; (4) how coordination with the State agency responsible for certification of lead hazard control personnel will be achieved; and (5) a schedule of activities that will enable the jurisdiction to obtain compliance as rapidly as possible, but no later than March 15, 2001. Jurisdictions must agree to make the Transition Implementation Plan publicly available. Transition Implementation Plan Guidance will be available on the HUD lead website at www.hud.gov/lea.

If the Statement of Inadequate Capacity from a jurisdiction meets all of the requirements set out in this notice, the Department will conclude that program participants in the jurisdiction lack the capacity to undertake safely and responsibly the evaluation and reduction of lead-based paint and lead-based paint hazards under the Lead Safe Housing Regulation and that transition assistance is needed to build capacity. The Department will publish in the **Federal Register** and make available on the HUD lead website at www.hud.gov/lea a list of the jurisdictions that have applied for transition assistance. HUD will conduct periodic audits of these Statements of Inadequate Capacity and may rescind transition assistance based on a false statement of inadequate capacity.

Jurisdictions that lack capacity will not be required to comply with the affected requirements of the Lead Safe Housing Regulation during a transition period beginning on September 15, 2000 and ending on March 15, 2001. During this transition period, program participants will continue to comply

with HUD's lead-based paint regulations that were effective before September 15, 2000. If there remains a lack of capacity of trained or licensed (certified) professionals to conduct activities under the Lead Safe Housing Regulation at the end of the transition period, the jurisdiction must provide for HUD approval supplemental documentation in the form of an updated Transition Implementation Plan to justify an extension of the transition period consistent with their Annual Consolidated Action Plan schedule.

Component 2—Phase In Period for Post-1960 Properties Receiving Tenant-Based Assistance.

HUD will provide a one year transition period—until September 15, 2001—for all properties built after 1960 receiving only tenant-based assistance that are occupied by a child under six. During this transition period, program participants will continue to comply with HUD's lead-based paint regulations that were effective for this program before September 15, 2000. To receive this transition assistance, no submission by a jurisdiction is required.

Component 3—Phase In Period for Elderly-Occupied Properties Receiving Federal Rehabilitation Assistance Greater Than \$25,000.

HUD will provide a one year transition period—until September 15, 2001—for all properties receiving federal rehabilitation assistance greater than \$25,000 that are occupied by the elderly, where no child resides or is expected to reside. During the transition period, program participants will comply with the requirements in the Lead Safe Housing Regulation for federal rehabilitation assistance between \$5,000 and \$25,000. To receive this transition assistance, no submission by a jurisdiction is required.

Dated: September 5, 2000.

Andrew Cuomo,
Secretary.

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BILLING CODE 4210-32-P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved Tribal-State Compact.

SUMMARY: Pursuant to Section 11 of the Indian Gaming Regulatory Act of 1988