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MEMORANDUM

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

SUBJECT: Issuance of the Toxics Substances Control Act Compliance Monitoring Strategy

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Office of Compliance

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TO: Regional Compliance/Enforcement Division Directors
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I am pleased to provide you with a copy of the Toxic Substances Control Act (TSCA) Compliance Monitoring Strategy (CMS or Strategy). The Office of Compliance worked closely with the Regions, the Office of Civil Enforcement, and the Office of Chemical Safety and Pollution Prevention to develop this Strategy. The TSCA CMS addresses the essential elements of a compliance monitoring program for the four TSCA program areas: the New and Existing Chemicals program; the PCB program; the Asbestos program; and the Lead-based Paint program.

This new Strategy introduces a "One-TSCA" approach for regional compliance monitoring programs in which Regions are expected to use available compliance monitoring capabilities, within all relevant offices in the Region and among participating states, to address the Region's most significant TSCA challenges while sustaining essential capacity in all of the TSCA program areas. The goals of the TSCA CMS, as a companion document to the National Program Manager Guidance and applicable grant guidance, are to: prioritize Agency enforcement activities; promote national consistency; efficiently allocate resources; and coordinate the responsibilities of Headquarters, the Regions, and the States.

We appreciate the support of your offices in developing this final TSCA CMS. While we implement this Strategy over the coming year we will be seeking your input on the need for any refinements to address implementation issues that may arise. For additional information or comments, please contact Ann Pontius in the Monitoring, Assistance and Media Program Division at (202) 564-6266 or at pontius.ann@epa.gov.

Attachment

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U.S. Environmental Protection Agency
Office of Enforcement and Compliance Assurance

**Compliance Monitoring Strategy
for the
Toxic Substances Control Act (TSCA)**

September 16, 2011



Foreword

This document is a publication of the U.S. Environmental Protection Agency (EPA or Agency) Office of Enforcement and Compliance Assurance (OECA). It was developed in consultation with EPA's Office of Chemical Safety and Pollution Prevention; EPA Regions; and state enforcement agencies authorized to administer programs pursuant to the U.S. Toxic Substances Control Act (TSCA).

This document provides guidance to employees of EPA and authorized states with respect to administering and implementing an Agency program for TSCA compliance monitoring. Any statutory and regulatory provisions cited in this document contain legally binding requirements. This document does not substitute for those provisions, and is not a regulation itself. Thus, it does not impose legally binding requirements on EPA, states, federally-recognized tribes, or the regulated community; and does not create any rights or benefits enforceable by any person. EPA may revise this policy at any time without public notice and after consultation with authorized state agencies.

The *TSCA Compliance Monitoring Strategy (CMS)* cites a variety of Agency guidance documents. Most of these are available via the Internet, and Internet addresses are provided. Certain documents, however, were developed for Agency personnel, and may be posted only on EPA's Intranet or distributed directly to Agency personnel. For documents not posted on the Internet, authorized states may consult their respective Regional TSCA contact persons.

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Executive Summary

The Office of Compliance worked closely with the Office of Civil Enforcement, EPA Regions, and the Office of Chemical Safety and Pollution Prevention to develop this Compliance Monitoring Strategy (CMS) for the Toxic Substances Control Act (TSCA) to help EPA Regions better understand and implement compliance monitoring for the four TSCA program areas: the New and Existing Chemical program, PCB program, Asbestos program, and Lead-based Paint program. The CMS creates a “One-TSCA” program framework for regional compliance monitoring programs.

“One-TSCA” Program Approach

One-TSCA means that each Region is expected to use all available compliance monitoring capabilities (within all relevant offices in the Region, at Headquarters, and among participating states) to address the Region’s most significant TSCA challenges, while sustaining essential capacity in all of its TSCA program areas.

The CMS is comprised of:

- The CMS (main document) describes the scope and purpose of the CMS; presents the One-TSCA approach and regional expectations; describes the operation of the national TSCA program, and each of the four TSCA program areas; and discusses the program elements applicable to all four program areas (targeting and compliance monitoring tools; program priorities, planning, and oversight; reporting; and special approaches in Indian country).
- Four program-specific appendices, one for each of the TSCA program areas.
- Resources
- Appendices, referenced in the foregoing documents, which provide relevant and helpful information.

For further information regarding TSCA compliance monitoring, contact the Monitoring, Assistance and Media Programs Division of OECA’s Office of Compliance.

I. INTRODUCTION

A. Overview

This Compliance Monitoring Strategy (the CMS) for the Toxic Substances Control Act (TSCA)¹ covers compliance monitoring for the following TSCA program (or “focus”) areas:

- TSCA New and Existing Chemicals (TSCA NEC), also known as Core TSCA;
- Polychlorinated Biphenyls (PCBs);
- Asbestos, including the Asbestos Hazard Emergency Response Act (AHERA), Worker Protection Rule (WPR), and Model Accreditation Program (MAP)^{2, 3}; and
- Lead-based Paint (LBP).⁴

Compliance Monitoring

The term “compliance monitoring” in the CMS is not limited to inspections. It encompasses the array of methods EPA uses to determine the compliance status of a regulated “operation” and gather evidence for potential enforcement, including but not limited to field inspections; information request letters (IRLs) and so-called “desk inspections”; subpoenas; and other measures to determine and promote compliance.⁵

The CMS presents an overarching (multi-year) framework and principles for TSCA compliance monitoring. Also it presents a strategic approach which will move TSCA compliance monitoring *from* primarily a program-by-program perspective *to* a “one-TSCA-program” (One-TSCA) approach. As discussed below, Section II, this approach means that each Region is expected to have an overarching perspective in allocating its resources to ensure that the Region focuses on its most significant environmental problem(s) yet sustains essential capacity in each of its TSCA focus areas by, for example, responding appropriately to tips and complaints (collectively, Tips).⁶

¹15 U.S.C. §§ 2601-2695d. See Appendix A for acronyms and generic terms (unofficial nomenclature) in the CMS.

² In the CMS, “MAP” refers to the Model Accreditation compliance monitoring *program*, rather than to the “model accreditation *plan*” which establishes accreditation requirements. See Appendix A for acronyms and generic terms.

³ Collectively, the Asbestos and PCB programs are known as the TSCA Legacy Chemicals Program.

⁴ See the program-specific appendices to the CMS for details on each TSCA program area: Appendices B-E, TSCA NEC, PCBs, Asbestos, and LBP, respectively.

⁵ See also Appendix A. The CMS does not examine OECA policy or practice with respect to accounting for (or giving Regions credit for) the various compliance monitoring methods.

⁶ The appropriate compliance response to a Tip, if any, depends on the circumstances and, for instance, may entail referring the matter to the appropriate State or Headquarters office. See Section V.C.7, Targeting, below.

The Region's One-TSCA approach is expected to be consistent with the principles in the CMS, the annual performance expectations in the National Program Managers Guidance (NPMG),⁷ and the accountability requirements of applicable grant guidance.⁸ The NPMG sets annual compliance program priorities and/or other regional commitments, and is the primary means by which the CMS is implemented. Furthermore, the Region's One-TSCA perspective should be evident in both its own *direct implementation* compliance monitoring,⁹ and its *oversight* of TSCA compliance monitoring programs implemented by States and Tribes (collectively, "States"¹⁰).

Through the Annual Commitment System (ACS) negotiation process, the Region is expected to provide a summary of its rationale that supports its ACS bids by explaining how the Region's bid comports with the One-TSCA approach, e.g., addresses the Region's major TSCA challenge(s); retains capacity in program areas; and meets the expectations of the NPMG, CMS, and applicable grant guidance.

The CMS is intended for Regions,¹¹ but also provides useful information for States empowered to conduct TSCA compliance monitoring. The CMS is effective immediately upon issuance.¹²

B. Legal Background

TSCA was enacted in 1976 to prevent unreasonable risk of injury to human health or the environment associated with the manufacture, processing, distribution in commerce, use, or disposal of chemical substances.¹³ EPA conducts compliance monitoring of regulated operations (facilities, activities, and entities) pursuant to TSCA:

- Title I, sections of which comprise the New and Existing Chemicals program.¹⁴
- Section 6 (within Title I), which regulates PCBs, and asbestos (WPR and MAP).
- Title II, which regulates asbestos in schools, and public and commercial buildings.
- Title IV, which regulates LBP. Title IV operates in conjunction with the Section 1018 Lead Disclosure Rule (LDR) of the Residential Lead-Based Paint Hazard Reduction Act of 1992.

⁷ www.epa.gov/ocfo/npmguidance/index.htm.

⁸ The CMS does not change the Regions obligation to follow other applicable guidance, such as relevant inspector guidance and policies.

⁹ *Direct implementation* compliance monitoring means inspections (and other monitoring activities) primarily to ensure adequate monitoring (coverage) of the regulated universe and identify violations by regulated operations, distinguished from *oversight* compliance monitoring EPA may conduct to assess a State's program.

¹⁰ The CMS does not distinguish or examine whether EPA has determined that certain TSCA compliance monitoring activities or programs are delegable only to States but not Tribes, or vice versa.

¹¹ Federal inspections include those conducted by EPA's Senior Environmental Employees (SEEs).

¹² Although the CMS is scheduled to be issued during or shortly before FY2012, it does not modify FY2012 regional or State agreements or commitments.

¹³ See 15 U.S.C. § 2601.

¹⁴ Title I also establishes TSCA's inspection, subpoena, and enforcement authorities.

The program-specific Appendices provide detailed legal background on each TSCA focus area.

C. Purpose of the CMS

Each of the four TSCA program areas is distinctly prescribed to govern a unique subset of the array of chemicals and chemical-related activities that are pervasive throughout our society. These diverse programs, however, share an overarching goal: to protect people and the environment from chemical risks. The CMS is intended to provide a unified conceptual framework that empowers Regions to act strategically to advance this overarching goal.

Specifically, the CMS aims to:

- Promote national consistency; and a better understanding of, and compliance with, expectations for the national program.
- Articulate guiding principles of the One-TSCA approach to help Regions prioritize their efforts and allocate resources across the TSCA program areas.
- Promote coordination between TSCA compliance monitoring and other TSCA-related activities.
- Help Regions effectively target regulated operations for potential compliance monitoring (and enforcement).
- Clarify the respective roles and responsibilities of Headquarters, Regions, and States; and strengthen regional oversight of State compliance monitoring programs.
- Shift the focus of the national program *from* a concentration on “stove-pipe” (rule-specific) outputs (number of inspections) *to* a focus on getting strategic results.
- Clarify the Regions’ responsibilities for TSCA compliance monitoring in Indian country.

II. STRATEGIC APPROACH FOR TSCA COMPLIANCE MONITORING

A. Overview

The primary objectives of the national TSCA compliance monitoring program are to:

- Address the most significant TSCA-regulated problems; and
 - Promote compliance generally throughout the various TSCA-regulated universes.
- Thereby, TSCA compliance monitoring advances both EPA's national enforcement goal and TSCA priorities established by EPA's Office of Chemical Safety and Pollution Prevention (OCSPP).¹⁵

TSCA covers vast and diverse regulated universes. Thus, EPA compliance monitoring can directly reach only a small portion of the regulated entities. The CMS adopts the strategic One-TSCA approach to give each Region the flexibility, consistent with the National Program Managers Guidance, to shift its priority focus as needed to address its most significant compliance, human health, and environmental issue(s). It is important for the Region to also maintain capacity in each TSCA program under the Region's purview.

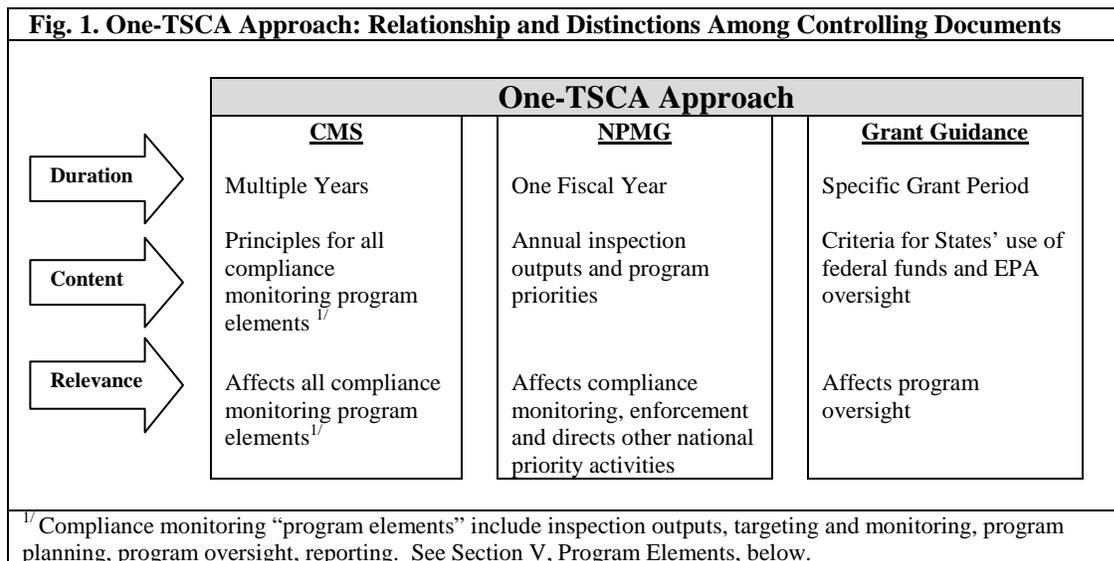
B. Strategic One-TSCA Approach

Each Region is expected to have a strategic One-TSCA approach for its TSCA compliance monitoring program whereby the Region looks at its entire capacity as a means to address its most important environmental issue(s), while sustaining its various TSCA program areas. The Region's approach is expected to be consistent with the following documents:

- **The CMS**, which provides overarching (multi-year) guidance for developing and implementing regional TSCA compliance monitoring programs.
- **The NPMG**, which sets *annual* compliance monitoring and enforcement priorities, and inspection or other output expectations. **Grant Guidance**, as applicable, which establish accountability and other obligations for States receiving federal funds; and oversight responsibility for Regions to ensure the States' appropriate use of such funds.

Figure 1, below, illustrates the relationship among these three controlling documents. Also, regional programs are expected to follow other applicable guidance, such as relevant inspector guidance and policies.

¹⁵ See Section III.B, below, regarding OCSPP's mission and activities.



Under a One-TSCA perspective, Regions should use their available TSCA compliance monitoring resources (including any PCB resources that may have shifted to the regional RCRA programs¹⁶) to focus on the priorities identified in the NPM guidance and on the most significant regional environmental problem(s). Those resources include capacity within the Region’s TSCA compliance monitoring office, in other relevant offices within the Region, at Headquarters,¹⁷ and among participating States. To the extent possible, the Region should leverage those various resources through the use of innovative approaches, such as checklists or other screening tools for other media inspectors to use to help cover TSCA compliance issues.¹⁸

In applying the One-TSCA approach, the Region is expected to make several informed judgments regarding its program.¹⁹ For example, the Region is expected to be knowledgeable about the array of environmental problems across the Region and the regulated universe subject to each of its TSCA focus areas (e.g., the universe size, constituent sectors, compliance level). Also, the Region is to consider, and address, the potential impact that directing most of its resources to its priority issue(s) likely will have on its other TSCA programs and activities. See also Section IV.C, Resource Allocation, below. Although the Region may focus its efforts on

¹⁶ For example, in some Regions, TSCA resources are located in the hazardous waste (RCRA) office, so that RCRA and TSCA compliance monitoring should be integrated by, for instance, including PCB monitoring during inspections at RCRA facilities that store/dispose of PCBs.

¹⁷ For example, certain Regions may refer Tips to OECA’s Core TSCA Enforcement Program (CTEP). See Appendix B, New and Existing Chemicals.

¹⁸ See e.g., Section V.C.7.d (and note therein), Compliance Response Options, below.

¹⁹ The FY2012 NPMG, for example, establishes expectations regarding how Regions are to allocate their inspection resources across the various TSCA program areas. In future years when NPMG allocation expectations change, if a Region wants to allocate its resources differently than the NPMG, then the Region should explain its rationale for such deviation and negotiate its proposed inspection outputs through the ACS process.

one (or several) significant issue(s), the Region also is expected to sustain each of its TSCA program areas. For instance, at a minimum, the Region is expected to maintain inspector expertise and capacity (whether that expertise/capacity resides within the Region or is obtained through agreements with other entities) to respond appropriately to tips in each TSCA area.²⁰

The One-TSCA perspective should be evident in the Region's direct implementation compliance monitoring, and in its working collaboratively with States to plan program priorities. See Program Planning, Section V.E, below. Over time, the Region is expected to modify its priorities (and resource allocation) as necessary to respond to new and emerging issues.

As part of the ACS negotiation process, , if a Region does not adhere to the allocation of resources outlined in the NPM, the Region will need to provide a rationale (in whatever detail is necessary to support the Region's inspection/activities bid) that explains how what the Region plans to address its major challenges. Also, the Region should be able to explain to OECA the basis for selecting its priority issue(s); how directing its resources to the priority issue(s) likely will affect the other TSCA program areas; and how the Region plans to sustain those other areas.

The One-TSCA approach means that EPA will manage the national compliance monitoring program as a single-TSCA program, rather than relying primarily on the number of inspections a Region conducts annually in the separate TSCA focus areas. Accordingly, OECA will focus increasingly on the extent to which the Region's compliance monitoring outputs (inspections, Information Request Letters (IRLs), etc.) obtain strategic results.

C. The TSCA Challenge

Despite the significant distinctions among the four TSCA program areas, they share a common goal: to protect human health and the environment from risks associated with chemicals. This goal is the unifying principle for the One-TSCA approach.

First, each TSCA focus area governs a distinct set of chemicals, activities, and regulated operations. The challenge, therefore, is to maintain the breadth of expertise and activities needed to concurrently operate effective compliance monitoring across multiple focus areas, some of which involve State participation. Figure 2 summarizes this complexity. The program-specific appendices provide details.

Fig. 2. Distinctions Among the Purview of the Four TSCA Program Areas

²⁰ While the One-TSCA approach gives the Region flexibility to allocate its resources, the approach is not intended to allow a Region to unilaterally disinvest indefinitely from any of its TSCA focus areas.

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Scope of Regulation	New & Existing Chemicals	PCBs	Asbestos: AHERA WPR MAP	Lead-based Paint	
				TSCA Title IV Abatement Rule RRP Rule PRE Rule ^{1/}	Title X § 1018 LDR
Chemicals	New & existing chemical substances	PCBs	Asbestos-containing material (ACM)	LBP	LBP
Activities	- Manufacture - Import - Use / Processing - Distribution in commerce	- Use - Storage - Disposal	Presence of friable ACM	- Abatements, Risk Assessments, Inspections - Renovations - Dust Sampling	Sale or lease of “target housing”
Operations	- Manufacturers - Importers - Processors	Any user, or storage / disposal facility	- Local Education Agencies - Training Providers - Asbestos Professionals - Federal & State asbestos operations	- Abatement contractors - Risk assessors - Inspectors - Renovators & Firms - Dust Sampling Technicians - Training providers & Employees - Project managers	- Landlords - Sellers - Agents

^{1/} TSCA LBP includes three separate regulatory programs. See Appendix E, Lead-based Paint.

Second, the Region’s primary function and activities in each jurisdiction (state, territory, etc.) *for each particular TSCA program area* vary depending upon whether EPA, or a State (or Tribe), has responsibility for direct implementation compliance monitoring (i.e., monitoring to cover the regulated universe and determine the compliance status of individual operations). This means that *for each particular TSCA program area*, each jurisdiction is either a **“Federal Implementation Jurisdiction”** or **“State (or Tribal) Implementation Jurisdiction”** for compliance monitoring for *that* program area.

“Federal Implementation Jurisdictions” versus “State Implementation Jurisdictions”

The CMS frequently references the distinction between Federal, versus State, Implementation Jurisdictions because this difference affects the Region’s compliance monitoring responsibilities, priorities, and activities. The distinction is particularly relevant with respect to the “program elements” of the TSCA compliance monitoring program, such as targeting, program planning, direct implementation compliance monitoring, and oversight. See Section V, Program Elements, below.

Section III.C, Regional versus State Roles, below, describes how this distinction plays out, and affects the Region, in each TSCA program area.

III. ORGANIZATION, LEADERSHIP, AND IMPLEMENTATION OF THE TSCA COMPLIANCE MONITORING PROGRAM

A. TSCA “Core” Compliance Monitoring Program versus National Areas of Focus

EPA’s national TSCA compliance monitoring program encompasses both the “core” compliance monitoring program,²¹ and any OECA “national areas of focus” that might periodically include a TSCA program area.

- The TSCA core program encompasses *ongoing* compliance monitoring activities aimed at achieving and maintaining compliance with all applicable requirements, by all types of regulated operations. The CMS addresses the core program.
- National areas of focus include OECA’s official National Enforcement Initiatives, and any nationally significant compliance problems that OECA may, from time-to-time, designate as warranting a response by all or most Regions. National areas of focus may or may not include a TSCA program area.

B. Coordination with Headquarters

Regions are encouraged to coordinate their monitoring efforts with other compliance assurance activities (assistance, incentives, and enforcement), and to coordinate with affected Headquarters offices, as appropriate.

- OECA’s Office of Compliance (OC) has primary responsibility for TSCA compliance monitoring and assistance.. OC issues the TSCA CMS.
- OECA’s Office of Civil Enforcement (OCE) is responsible for TSCA civil enforcement. OCE and OC work cooperatively and through complementary efforts.²²
- OECA’s Office of Criminal Enforcement, Forensics and Training (OCEFT) is responsible for TSCA criminal enforcement. OCE and OCEFT coordinate as necessary and appropriate on potential criminal violations of TSCA.
- EPA’s Office of Chemical Safety and Pollution Prevention (OCSPP) administers the Agency’s “program” activities for TSCA, such as rule development, voluntary prevention initiatives, permitting, regulatory orders, research, testing, demonstration projects, and outreach.

²¹ Note that the “core” compliance monitoring program is distinguished from the “Core TSCA” program area (now known as the TSCA New and Existing Chemicals [TSCA NEC] program).

²² Other OECA offices include: the Office of Site Remediation Enforcement (OSRE), which handles cleanup of Superfund and other sites contaminated with PCBs and other hazardous substances; and the Federal Facilities Enforcement Office (FFEO), which has compliance assurance responsibility for federal facilities.

C. Regional versus State Roles

Implementation of TSCA compliance monitoring is a collaborative effort between Regions and States. The Region's primary responsibility depends upon the particular TSCA program area.

1. Federal Implementation

EPA has responsibility for *direct implementation* of the compliance monitoring (and enforcement) program for:

- All Indian country for all TSCA program areas²³;
- Federal-only programs (LDR and TSCA NEC);
- For states that do not have a waiver for AHERA and states that have not been authorized for PCBs or the TSCA abatement or RRP programs (as explained below).²⁴

The Region's priority is its direct implementation activities. Regions should work with States as appropriate to ensure EPA's compliance monitoring complements the state's environmental programs under state law. See also, Section V.F, Program Planning, below.

2. State Implementation

States that have a waiver for AHERA are responsible for fully implementing the compliance monitoring program. Federal inspections in waiver states are solely for the purpose of state oversight. States that have been authorized for the TSCA abatement or RRP programs are responsible for fully implementing the compliance monitoring program. Federal inspections in these states should be primarily focused on state oversight, but may also be for the purpose of determining compliance. . States that have received a grant to perform inspections in the PCB, Asbestos, and TSCA LBP programs are responsible for performing inspections in compliance with the grant. Generally, EPA supports the State's activity under a Performance Partnership Agreement (PPA), Performance Partnership Grant (PPG),²⁵ or other form of cooperative agreement²⁶ where EPA provides federal funding.

²³ All Indian countries are Federal Implementation Jurisdictions since EPA conducts compliance monitoring in Indian country, unless a Tribe is empowered to do so, such as under a TSCA LBP authorization. See Section V.H, Indian Country, below.

²⁴ EPA also has direct implementation responsibility where a federal, state or tribal government is the regulated operation. For example, even though a State may be authorized to implement its own TSCA-equivalent LBP program, EPA would conduct the LBP inspection of state-owned target housing.

²⁵ The CMS does not examine the various grant mechanisms specifically applicable to each program area.

²⁶ Regions negotiate inspection goals with States, and memorialize the agreed-upon goals in documents such as PPAs and PPGs or other grant agreements. Some Regions report using other forms of cooperative agreements in working with a state agency *other than* the state's environmental agency. All such documents are vital tools in the Region's oversight of State programs. See Section V.F, Program Oversight, below.

The Region is expected to provide leadership and support to the State where federal intervention is needed to address complex or multi-jurisdictional issues; whereas the State typically alerts EPA to regulatory implementation issues on-the-ground (e.g., regulatory interpretation problems), and identifies new and emerging issues that may warrant a national focus. Figure 3 summarizes these distinctions.

Fig. __. Primary Objectives of Regional versus State Compliance Monitoring		
Primary Objectives:	In Federal Implementation Jurisdictions	In State Implementation Jurisdictions
Region	- Direct implementation - Compliance monitoring in Indian country	- State program oversight & capacity-building - Leadership/support to states on complex issues - Compliance monitoring in Indian country
State	N/A	- Direct implementation - Alert EPA to regulatory issues / emerging problems

3. Implementation by Program Area

The distinction between and effect of Federal, versus State, direct implementation plays out in each TSCA focus area as shown below. The program-specific appendices provide further information.

- **TSCA New and Existing Chemicals**

TSCA NEC is a federal-only program. There is no state compliance monitoring.

- **PCBs**

EPA may engage a State to conduct inspections (but not enforcement) on EPA’s behalf. EPA conducts any enforcement that may arise from State inspections.

- **Asbestos**

- In waiver jurisdictions, State inspectors conduct inspections under the State’s EPA-approved AHERA-equivalent law. State, rather than federal, requirements apply; and the State conducts its own enforcement. In “non-waiver” States, EPA engages a State to conduct inspections (but not enforcement) on EPA’s behalf; and EPA conducts any enforcement that may arise from State inspections.
- The Worker Protection Rule (WPR) program requirements apply if a state or local government employer is *not* subject to either a state asbestos standard approved by the U.S. Occupational Health and Safety Administration (OSHA), or a state asbestos plan exempted by EPA. Approximately half of the states have OSHA-approved state asbestos standards; and there is no EPA program oversight. A state subject to WPR (i.e., without an OSHA-approved program) may seek an exemption from WPR by operating its own EPA-approved program,²⁷ but no state has received an exemption as of FY2011.

²⁷ See 40 C.F.R. §763.123.

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- The Model Accreditation Program (MAP) provides standards for state-run asbestos accreditation programs (i.e., the licensing of asbestos professionals). States Implement the MAP and the Region conducts oversight.²⁸

- **Lead-based Paint**

For TSCA LBP, a State or Tribe may obtain authorization to implement its own TSCA-equivalent program for one or more of the three LBP regulatory programs, i.e., the:

- Section 402(a) Lead-Based Paint Activities, Certification, and Training Rule (“Abatement Rule”);
- Section 402(c)(3) Renovation, Repair, and Painting Rule (RRP Rule); and
- Section 406(b) Pre-renovation Education Rule (PRE Rule).

For authorized programs, State requirements apply, and the State conducts its own enforcement. EPA, however, retains the authority to inspect for compliance with these programs.

- Section 1018 is a federal-only law.

Figure 4, below, summarizes this jurisdictional matrix.

Fig. 4. Programs that Allow for State Implementation

	New & Existing Chemicals	PCBs	AHERA		LBP			Title 10
			Waiver States	Non-waiver States	TSCA		LDR	
					Abatement Rule § 402(a)	RRP Rule § 402(c)		
Inspections	No ^{1/}	Yes ^{2/}	Yes ^{3/}	Yes ^{2/}	Yes ^{4/}	Yes ^{4/}	Yes ^{4/}	No ^{1/}
Enforcement		No		No				

^{1/} Federal-only program.
^{2/} EPA may engage State inspectors to inspect on EPA’s behalf.
^{3/} States must implement EPA-approved AHERA-equivalent programs.
^{4/} State must be authorized to implement an EPA-approved TSCA LBP-equivalent program.

²⁸ As of FY2011, approximately half of the states have obtained MAP approval. See also Appendix D, Asbestos, Section I.C, Introduction.

IV. STRATEGIC USE OF RESOURCES

A. Overview

In employing the One-TSCA approach (Section II, above), the Region will need to annually:

- *Prioritize its work* to ensure the Region addresses its most important TSCA issue(s); and
- *Ensure its resources* support the NPM guidance and the Region's most significant environmental or human health concern,²⁹ while sustaining its remaining TSCA focus areas; and to support oversight of State programs.

The guidance below is intended to help Regions make strategic prioritization and allocation decisions.

B. Prioritizing the Work

Prioritization requires collaborative planning between Headquarters and Regions, and between Regions and States, to ensure that regional and State plans are consistent with and support national goals and expectations.

1. Federal Implementation

The Region's first priority is to ensure that it meets its annual commitments for direct implementation compliance monitoring consistent with the NPMG, with an appropriate level of field presence for its priority issue(s). The Region also is expected to sustain the TSCA programs under its purview consistent with the CMS by, at a minimum, responding appropriately to Tips. See Section V.C.7, below. Additionally, the Region is to provide adequate oversight of State programs consistent with the CMS and applicable principles for state oversight in Section V.H, below. EPA is authorized to unilaterally inspect any regulated operation at any time; these unilateral inspections may be used for oversight purposes.

2. State Implementation

The Region and State should work in concert to determine the State's annual program priorities; address any program deficiencies; and ensure that State performance is consistent with grant guidance, and any applicable PPA/PPGs or other agreements. See Sections V.E and V.F, below, Program Planning and Program Oversight, respectively.

²⁹ For example, in a given year, a Region may devote most of its resources to inspections for the LBP RRP Rule, versus for AHERA or PCBs, because the Region determines that RRP non-compliance poses a greater risk of harm.

C. Resource Allocation

The Region is expected to consider the following criteria to strategically allocate (or re-allocate) its resources annually to meet its commitments and address its priorities.

1. Critical Criteria

Regions are expected to always consider the following critical criteria:

- **Human Health and Environmental Benefit** – The Region must allocate its resources so that it can directly address the most serious environmental problems in the Region consistent with the NPM and the One-TSCA approach in the CMS (Section II, above).
- **Uncorrected or Repeat Non-Compliance** – The Region should review compliance data each year to identify significant trends and recurring non-compliance, including reviewing data reported or maintained by States. In particular, Regions should take action where uncorrected non-compliance results in exposure risks, or unfair and inconsistent enforcement across States. In addition, Regions should consider taking federal action (along with appropriate oversight and guidance to States) where States are not meeting minimum program expectations.

2. Additional Criteria

Regions also should consider the following additional criteria, which may influence the balance of resources across the four TSCA focus areas.

- **New Rules and Programs** - The introduction of new rules and accompanying programs may necessitate an investment of extra resources for a start-up period. This may require temporarily diverting some resources from an established TSCA program to the new one. Such diversions should be of limited duration (typically, a single program year), and should not prevent the Region from meeting its primary responsibilities (e.g., NPMG expectations, if different).³⁰ Within a short period of time, the need for diverting resources to the new program should diminish, as the regulated community becomes familiar with the new requirements, and the Region becomes more efficient in compliance monitoring for the new program.
- **Effective Use of Alternatives to Inspections** – Where a Region contemplates significantly reducing the number of inspections for a particular TSCA focus area, especially for a federal-only program (LDR and TSCA NEC), then the Region should ensure that alternative

³⁰ The One-TSCA approach is not intended to allow a Region to unilaterally disinvest indefinitely from any TSCA program area under the Region's purview.

activities are implemented to maintain a presence among the regulated community which encourage and facilitate compliance. For example, the Region may:

- Establish or expand partnerships or initiatives with other enforcement and regulatory agencies that have a similar focus and mission, to encourage them to conduct compliance monitoring activities.³¹
- Employ screening tools that enable inspectors from non-TSCA programs to spot potential TSCA hazards and violations.³²
- Issue Information Request Letters (IRLs).
- Review records in other agencies' possession (e.g., local health departments, local building departments).

- **Additional Activities to Promote Compliance** I The Region may also conduct other activities that maintain a federal presence in the regulated community which encourages and facilitates compliance. For example, the Region may:
 - Employ integrated strategies that include compliance assistance and compliance incentives in combination with traditional inspection and enforcement approaches.
 - Partner with EPA's programmatic offices to combine outreach with compliance and enforcement. The Region is encouraged to focus such coordinated efforts on particular regulated sectors, geographic areas and/or vulnerable populations.

³¹ For instance, the Region could partner with the U.S. Department of Housing and Urban Development (HUD), and state/local health, sanitation, and housing code enforcement agencies concerning LBP; and with school systems and parent-teacher associations for AHERA compliance.

³² See Section V.C.7.d, Compliance Response Options, below.

V. PROGRAM ELEMENTS

A. Overview

Although the four TSCA compliance monitoring program areas are distinct, they share certain common (cross-cutting) elements:

- Compliance monitoring output expectations (inspections or other agreed-upon activities), which are established annually in the NPMG.^{33, 34}
- Targeting.
- Compliance monitoring tools.
- Program Priorities.
- Program Planning.
- Program Oversight.
- National Reporting.
- Special approaches in Indian country.

This section discusses these cross-cutting elements. The program-specific appendices discuss their application, any variations, and additional principles for each program area.³⁵

B. Targeting

1. Overview

TSCA compliance monitoring commences with targeting, i.e., the pro-active identification and prioritization of regulated operations for potential monitoring (usually inspection). Through targeting, the Region should strive to identify those operations which, if non-compliant, pose the greatest risk of harm to human health and/or the environment. Effective targeting requires that the Region possess accurate and up-to-date knowledge of its regulated universes (e.g., size, sectors, compliance issues).

Effective targeting is important for both the Region's direct implementation inspections, and any oversight inspections the Region may conduct. Also, since both Regions and States should use targeting to pursue the most significant problems, regional targeting (for any oversight inspections) and State targeting (for direct implementation inspections) generally should result in identifying the same high-priority operations. Consequently, the Region generally should find that when it independently identifies an operation for an oversight inspection, the State ordinarily

³³ Refer to the current NPMG for details. See also Section II.B, Figure 1, above.

³⁴ See also Appendix A (generic terms) for examples of various compliance monitoring outputs.

³⁵ See Appendices B-E, TSCA NEC, PCBs, AHERA, and LBP, respectively.

should have already inspected the same operation.³⁶ See also, Section V.F, Program Oversight, below.

2. Targeting Principles

Region's should have an overall annual strategy for its TSCA compliance monitoring efforts, i.e., how the Region targets operations for potential inspection, prioritizes its compliance monitoring activities, balances its use of the various compliance monitoring options (discussed below), and otherwise deploys its resources. The Region should select the most appropriate and effective compliance monitoring tools, e.g. on-site inspection, IRL, or partnering with local authorities.

The Region's targeting efforts should classify inspections as either "neutral scheme" inspections, which encompass both criteria-based and random inspections; or "for-cause" inspections, which includes Tips. The Region's targeting should:

- Consist predominantly of criteria-based inspections in which the Region uses relevant targeting factors to identify operations most likely to be in violation or posing a risk of harm to human health and/or the environment.
- Include for-cause inspections, based on Tips and other information that indicates non-compliance.
- Provide an appropriate response to Tips. See Section V.C.7, below.
- Make limited use of completely "random" inspections. See Section V.C.8, below.

The Region's targeting scheme should also be consistent with the following principles:

- **Focused Effort** - Generally deploy inspection resources in a few high-priority geographical areas, or among particular regulated sectors or populations, for an appropriate duration (usually, one year).³⁷ Concentrating the Region's effort allows the Region to maximize its impact on the selected area. The Region, however, should retain sufficient flexibility to, on a case-by-case basis, conduct compliance monitoring outside of its priority area, for instance to respond to violations elsewhere that may pose an imminent and substantial risk of harm to human health and/or the environment.
- **Vulnerable Communities** - Pay particular attention to disproportionately impacted communities, such as Indian country and environmental justice (EJ) areas, by taking into account whether regulated operations are impacting communities that are already vulnerable to other environmental and/or human health risks.

³⁶ Generally, States that apply to EPA to administer a TSCA-equivalent program (LBP authorization or AHERA "waiver" status) must demonstrate the ability to target inspections to ensure compliance with their rules. See e.g., 40 C.F.R. § 745.327(c)(5)(LBP). Therefore, although States need not adopt the targeting strategy in this CMS, they can use its principles in developing their own targeting approaches to provide adequate monitoring (and enforcement).

³⁷ For example, in a given year, the Region may focus on particular EJ areas for LBP, industry sectors for TSCA NEC or PCBs, or type of LEA for AHERA.

- **Data-mining** - Use available EPA databases and other information systems to pro-actively search for potential violators.
- **Baseline** - If practicable, establish a baseline of known or suspected violators, risks, or hazards against which to later assess outcomes and compare future activities. Even if the Region is unable to establish an initial baseline, it should proceed with compliance monitoring, since the Region can later measure outcomes even if it cannot compare those outcomes to a baseline.³⁸
- **Partnerships** - Leverage inspection resources by addressing problems holistically with other offices within the Region, at Headquarters, and/or with other regulatory partners.
- **Prevention** - Focus on preventing exposure to potential hazards. Efforts should be focused on proactive activities that achieve strategic results.

Additional, program-specific guidance is provided as follows:

TSCA NEC (Appendix B §IV)	PCBs (Appendix C §IV)	Asbestos (Appendix D §IV)	Lead-based Paint (Appendix E §IV)
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C. Compliance Monitoring Tools

Compliance monitoring serves a dual purpose:

- To determine the compliance status of a regulated operation; and
- Where potential non-compliance exists, to obtain specific, objective evidence to support a potential enforcement action.

The Region should select the compliance monitoring tool which best serves to fulfill these purposes relative to available resources. (Also, having an effective compliance monitoring *presence* has a deterrent effect throughout a regulated community.)

1. Criteria-based Inspections

Criteria-based inspections are particularly relevant for TSCA because the Region can target based on criteria pertinent to each particular focus area. For example, to find Local Education Agencies (LEAs) likely to have schools with asbestos risks subject to AHERA, the Region's targeting criteria could include the age and condition of the LEA's school building inventory or the LEA's compliance history. Similarly, the targeting criteria for the LBP program should include whether an area has widespread childhood lead poisoning (a so-called "Lead Hot Spot"³⁹) or is an EJ community.

³⁸ For instance, even if a Region cannot estimate the baseline number of properties with LBP hazards in a target area, the Region nonetheless can measure the number of properties at which LBP hazards were eliminated as a result of regional intervention.

³⁹ See Appendix E, Section III.

OECA encourages Regions to confirm and address the extent and nature of suspected non-compliance. For example, the Region might explore the extent of non-compliance among certain operations assumed to be subject to the TSCA NEC's Inventory Update Rule (IUR).⁴⁰ To do so, the Region could "mine" EPA's IUR database to identify the universe of former IUR reporters that, without apparent change in status, failed to submit an updated filing. Then, the Region would conduct exploratory activities (e.g., inspections or screening activities) among a subset of such operations, such as those that process the highest-risk chemicals. If the exploratory inspections confirm a pattern of non-compliance among this subset, then the Region might broaden its search to inspect other IUR non-reporters based on the pattern of non-compliance indicated by the exploratory inspections.

2. For-Cause Inspections

The Region's compliance monitoring regime should include an appropriate portion of for-cause inspections. For-cause inspections are those for which EPA *has* a basis to suspect non-compliance by a regulated operation. Regions use for-cause inspections *proactively* when they select inspection subjects based on EPA targeting research and analysis that indicates non-compliance – and *reactively* when they inspect in response to Tips.

3. Information Request Letters (IRLs)

The Region should use IRLs where appropriate. IRLs request the submission of records, and can be particularly effective when followed by on-site inspections of all, or a selected subset, of the IRL recipients. Generally, the Region should use an IRL when it has a basis to suspect a violation, such as a Tip or other indicator of non-compliance. As with any compliance monitoring tool – inspections, as well as IRLs and other methods (e.g., self-certifications) – the aim is to obtain sufficient information to determine compliance. Therefore, the Region should subject any documents it receives in response to the IRL to the same level of scrutiny and analysis the Region employs for documents obtained via an on-site inspection.

As of FY2011, OECA policy does not equate the issuance of an IRL to the performance of a full on-site inspection.⁴¹ Nonetheless, IRLs help the Region maximize its resources, expanding its monitoring activities to reach greater numbers of regulated entities and Regions are encouraged to use them.

4. Subpoenas

A Region may choose to issue a subpoena pursuant to Section 11 of TSCA rather than conduct an inspection.⁴² When an operation fails to respond to a subpoena, then the Region may request that the U.S. Department of Justice (DOJ) seek judicial enforcement. Therefore, prior to issuing

⁴⁰ See generally Appendix B, Section II.

⁴¹ The CMS does not examine OECA policy with respect to "crediting" regional compliance monitoring activities.

⁴² 15 U.S.C. § 2610(c).

a subpoena, the regional TSCA office should consult with its Office of Regional Counsel (ORC) and its assigned DOJ contact person.⁴³

5. Telephone Inquiries

Telephone contact with a potential violator may provide the Region with useful information regarding compliance, but it does not count as a formal TSCA inspection. TSCA requires a written notice of inspection (NOI) for all inspections.⁴⁴ Furthermore, requesting regulated operations to send EPA records that are required to be *maintained* but not submitted under the regulations may require submission of an Information Collection Request to, and approval by, the U.S. Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act (PRA).

6. Tips and Complaints (Tips)

a. Overview

Providing appropriate responses to Tips⁴⁵ is important. It advances EPA's ability to pursue pollution problems that matter to communities; increases the credibility of the compliance/enforcement program; promotes a level playing-field among the regulated community; and may be the primary means by which a Region is able to sustain a program when resources must be diverted to address more significant TSCA problems. See also Section II, Strategic Approach, above.

As explained below, Regions have a range of response options, and the appropriateness of a particular option depends upon a variety of factors specific to each Tip. *Inspections* based on Tips should constitute a minor component of the Region's *pro-active* targeting regime, since the Region can only *react* to Tips. Upon receiving a Tip, the Region generally should perform three functions:

- **Information-Gathering:** Decide whether – and, if so, how -- to gather additional information about the alleged violation.⁴⁶
- **Triage:** Triage the Tip to make an informed judgment about the priority of the Tip and the compliance response, if any. Triaging is particularly important where a Region is inundated with Tips, such as when a new rule or requirement first becomes effective.

⁴³ Under certain circumstances, EPA has authority to seek a court-issued warrant to obtain access for an on-site inspection. If the Region's TSCA compliance monitoring office contemplates seeking a warrant, then the office should promptly consult with ORC and DOJ.

⁴⁴ 15 U.S.C. § 2610(a).

⁴⁵ Tips include, but are not limited to, informal "referrals" from States. See Appendix A for acronyms and generic terms.

⁴⁶ In some instances, a Region may decide *not* to seek further information, such as where a Tip clearly pertains only to an unregulated activity. See e.g., note 55, *infra*.

- **Compliance Response:** Select and implement the appropriate compliance response option, which may or may not entail compliance monitoring by the Region.

b. Information Gathering

Often, a Tip provides insufficient information for the Region to immediately make an informed judgment about the appropriate response. Typically, to obtain such information, a Region:

- Contacts the “tipster” or alleged violator (by telephone, e-mail, or U.S. mail) to obtain relevant details and corroborating documentation;
- Reviews EPA’s compliance records to ascertain the alleged violator’s compliance history, if any; and/or
- Contacts relevant regulatory agencies to determine whether they have pertinent information.⁴⁷

c. Triage

Generally, Regions should triage each Tip to determine the priority to place on performing a compliance monitoring response, if any.

- **No Action** - The Region generally should triage a Tip for “No Action” where: (a) the Tip pertains to an unregulated or exempt activity;⁴⁸ or (b) the Region is unable to obtain sufficient information about the alleged violation, and has no apparent basis upon which to conclude that any compliance response is in order (e.g., has no independent information about non-compliance).
- **Possible Action** - Generally, the Region should apply this classification if it needs additional or corroborating information to make an informed judgment about whether - and if so, how - to proceed. Upon receipt of such information, the Region can make an *Action* or *No Action* determination.
- **Action** - Generally, the Region should use this classification where the Region has sufficient information to conclude that the alleged misconduct involves a violation and/or risk of harm to human health and/or the environment. The Region may rank *Action* items from low-to-high priority, depending upon a variety of factors. Ordinarily, a Region conducts on-site inspections only for its highest-priority *Action* items, e.g., where the violation is ongoing, *and* presents an imminent and substantial risk of harm to human health and/or the environment.

⁴⁷ For example, the U.S. Customs Department may have information about a chemical importer subject to TSCA NEC; or a local health or housing agency may have information, or even have issued an abatement order to, a landlord concerning lead-related housing or sanitation violations.

⁴⁸ For example, a LBP Tip that does not involve “target housing” or a “child-occupied facility” is not subject to the LBP rules. Even where a Tip involves a regulated activity, the Region may elect to triage the Tip as a *No Action* item based upon the totality of the circumstances. For instance, the Region may find widespread *de minimis* technical errors which suggest the regulated community has misinterpreted a rule. In such case, the Region may advise Headquarters that EPA should clarify the rule as an appropriate first course of action. Alternatively, the Region could designate such *de minimis* technical errors as low-priority *Action* items.

d. Compliance Response Options

The Region’s compliance response options include, but are not necessarily limited to:

- No action (discussed above).
- Sending a compliance assistance letter to the alleged violator.
- Sending an IRL, show cause letter, or subpoena to the alleged violator;
- Conducting a documentary (“desk”) inspection (e.g., review and analyze documents submitted in response to an IRL).
- Arranging for “screening” of the potential TSCA violation in the course of another inspection.⁴⁹
- Conducting a full on-site TSCA inspection.

The appropriateness of a particular response to a Tip depends upon the totality of circumstances, considering factors such as:

- The source of the Tip.⁵⁰
- The timeliness of the Tip (e.g., whether the violation is ongoing or recent, versus long ago).
- The nature and extent of the reported misconduct.
- The alleged violator (e.g., its size, sophistication, compliance history).
- The nature and source of corroborating information, if any.
- The known or apparent risk of harm to human health or the environment associated with the alleged misconduct.
- Where the alleged violation occurred. If the alleged violation occurs in a State that is authorized or waived or that has received a grant to inspect, then the Region should refer the matter to the appropriate State and follow-up with the State to confirm that appropriate action has been taken. (Such follow-up should be a routine aspect of the Region’s oversight of the State’s program. See Section V.F, Program Oversight, below.)

7. Random Inspections

Random inspections based on neither evidence of non-compliance nor targeting criteria should constitute a very minor component of the Region’s pro-active targeting regime, since such forays offer little likelihood of finding actual or significant non-compliance.

In limited circumstances, however, random inspections may be justifiable. For example, to establish an initial federal presence to promote compliance with a new rule, the Region might use risk-based criteria to select a geographical area with widespread childhood lead poisoning (Lead

⁴⁹ For instance, screening might occur when an inspector uses a TSCA screening tool (e.g., checklist) to spot obvious potential TSCA violations: (a) in the course of conducting an inspection at the same facility under *another* media program such as RCRA (for PCBs) or the Clean Air Act (for asbestos); or (b) when the inspector conducts a full TSCA inspection at one operation, and makes a brief visit (for screening purposes) at a second, neighboring TSCA operation.

⁵⁰ For example, the Region may decide that, as a general principle, an LBP Tip from a local health or housing agency that involves LBP hazards and lead poisoned children merits a higher priority than does an individual’s complaint about a contractual lease dispute that alleges an LDR violation.

Hot Spot), and then conduct a brief campaign within that area which includes random inspections for their general deterrent effect. Also for instance, a Region might use risk-based criteria to identify a group of potential inspection subjects, and then randomly select individual subjects for inspection from among that group (e.g., where a Region uses criteria to select an AHERA LEA, and then randomly pick the schools within that LEA to be inspected).⁵¹

Additional program-specific guidance is provided as follows:	
	Lead-based Paint (Appendix E, §IV.C)

D. Program Priorities

EPA announces national priorities for the TSCA compliance monitoring program through a variety of communications, including:

- The NPMG, which states *annual* program priorities;
- The National Enforcement Initiatives priority-setting process. OECA sets national enforcement initiatives every three years to focus resources toward the most significant environmental problems and human health challenges identified by EPA staff, states, tribes, and the public. Establishing focus areas helps OECA address high priority environmental and human health problems in a timely manner through inspections, compliance assistance, and enforcement actions over a three year time period. For each of the national priority areas, EPA develops a strategy to achieve specific goals.
- The CMS, which discusses overarching, long-term priorities for each TSCA program area⁵²; and
- Other communiqués which OECA may use from time-to-time to announce TSCA efforts to address environmental problems that warrant national response, direction, or involvement.

Additional, program-specific guidance is provided as follows:			
TSCA NEC (Appendix B, §V)	PCBs (Appendix C, §V)	Asbestos (Appendix D, §V)	Lead-based Paint (Appendix E, §V)

E. Program Planning

⁵¹ On rare occasions, individual random inspections might be appropriate, such as to fill minor schedule gaps in an inspection campaign at a distant location where there are unplanned gaps in a schedule set up for criteria-based or for-cause inspections, and using those gaps for a random inspection maximizes the Region’s use of its travel resources.

⁵² See the program-specific appendices: Appendices B-E, TSCA NEC, PCBs, AHERA, and LBP, respectively.

1. Overview

Program planning covers the processes and mechanisms Regions use in setting regional (and State) priorities and expectations. (In turn, Regions conduct program oversight to confirm the State's *fulfillment* of those expectations.)

Effective program planning requires collaboration at multiple levels to ensure that expectations reflect a shared vision for the TSCA compliance monitoring program. Therefore, there should be regular communication about program objectives, activities, and anticipated outcomes between and among:

- OECA, OCSPP, and the Regions;
- The various TSCA program areas within the Region (even if these programs reside in different offices within the same Region⁵³); and
- The Region and its respective States.

The nature of such planning varies depending upon whether EPA, versus the State, has responsibility for direct implementation compliance monitoring, and upon the legal authority under which the State is empowered to conduct monitoring.⁵⁴

2. Federal Implementation

Regions should use the NPM guidance as a starting point in the planning process. The Regional TSCA enforcement program should work collaboratively with other relevant offices within the Region, and with its States to identify both the most significant TSCA-regulated problems to be addressed over the year, and new and emerging issues that may need attention in the near future.

3. State Implementation

The Region is responsible for ensuring that EPA and States make joint progress toward attaining compliance, so the Region should work with authorized or waiver states to plan compliance monitoring. The scope and details of planning will vary depending upon the particular TSCA focus area.⁵⁵ All program planning, however, should focus on both inspection *outputs* and on obtaining strategic results, such as the violator's prompt return to compliance, pollution prevention, and process/behavioral changes to avoid future violations.

For states receiving grants, the Region should ensure that State priorities are consistent with applicable grant guidance. Also, since much of the Region's planning with States occurs in connection with the TSCA State-Tribal Assistance Grant (STAG) funding program, Regions

⁵³ For example, where a Region's TSCA compliance monitoring resources are located in the Region's RCRA office.

⁵⁴ See Section II.C, TSCA Challenge; and Section III.C, Regional versus State Roles, above.

⁵⁵ For example, regional planning with a State that has its own inspection and enforcement authority (e.g., AHERA "waiver" or LBP "authorization" status) will differ from that with a State that only has federally-credentialed inspectors to inspect on EPA's behalf (i.e., AHERA non-waiver, or PCB inspection-only authority).

should revisit State planning annually as part of grant negotiations, and periodically throughout the year, to monitor performance.

Regions should use available mechanisms to plan (and memorialize) expectations for the State, including:

- **Oversight Inspections:** Coordinate any oversight inspections the Region elects to conduct with the State. (EPA, however, is authorized to unilaterally inspect any regulated operation at any time; and to use such unilateral inspections for oversight purposes.)
- **Inspection Commitments:** Plan the appropriate mix of federal and State compliance monitoring activities with the State, such as the number of regional direct implementation and oversight inspections, including those conducted in response to Tips. Note that EPA alone is responsible for inspections in Indian country (see Section H, Indian Country, below).
- **Training and Credentials:** Ensure that agreements which authorize State employees to conduct inspections on EPA's behalf are in place with the State and specify the minimum training requirements for State inspectors *in accordance with*⁵⁶ (or *comparable to*⁵⁷) EPA *Order 3500.1 Inspector Training* and any other applicable policies governing the issuance of federal credentials to State inspectors.⁵⁸
- **Targeting:** Determine high-priority geographical areas, industry sectors, and/or vulnerable populations that should be the focus of the State's efforts. Regional and State targeting regimes should be complementary to ensure adequate coverage of the regulated universe through the combination of State direct implementation and any regional oversight inspections.⁵⁹
- **Reporting:** Reach and memorialize agreements with State grantees for mid-year and end-of-year reporting.

Additional program-specific guidance is provided as follows:

	Asbestos (Appendix D §VI)	Lead-based Paint (Appendix E §VI)
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F. Program Oversight

⁵⁶ Training for any inspector using federal credentials must *comply* with Order 3500.1, without regard to whether EPA provides funding for the inspector's compliance monitoring activities. See <http://intranet.epa.gov/oeca/oc/campd/inspector/training/3500.html>.

⁵⁷ Training for any inspector *not* using federal credentials (but implementing a TSCA-equivalent program) must be *comparable* to the requirements of Order 3500.1, since EPA views Order 3500.1 as setting the minimum *qualitative* standards for inspector training (although the form of State training may differ from EPA's).

⁵⁸ EPA Memorandum by Michael M. Stahl, "Guidance For Issuing Federal EPA Inspector Credentials to Authorize Employees of State Governments to Conduct Inspections on Behalf of EPA" (Sept. 30, 2004)(*Guidance on Inspector Credentials*), <http://intranet.epa.gov/oeca/oc/campd/inspector/referenc/statetribalcredentials.pdf>. See also EPA Memorandum, *Process for Requesting EPA Credentials for State Inspectors Conducting Inspections on EPA's Behalf* (Aug. 5, 2005).

⁵⁹ See also Section V.B.1, Targeting, Overview, above.

Program oversight applies only in authorized or waiver States and states that receive TSCA grants. One of EPA's goals is to ensure that EPA and States deliver on our joint commitment to a clean and healthy environment. Effective program oversight advances this goal since it helps Regions ensure that States maintain the capacity for, and actually implement, effective TSCA compliance monitoring programs. Also, program oversight verifies and reinforces the Region's expectations, and State's commitments, as determined through the collaborative program planning process (see Section V.E, above). Similarly, OECA's oversight of regional programs helps ensure national consistency and quality across the Regions.

Regions are expected to communicate regularly with States regarding overall performance and progress toward meeting commitments; and to identify and resolve obstacles to program implementation. Thus, Regions need to evaluate the quality of State compliance monitoring by, for example, reviewing inspection reports, conducting oversight inspections as appropriate, and using other means (see below), particularly where a State receives grant funds to conduct TSCA compliance monitoring. Where States are not meeting expectations, Regions should take action to address serious violations; focus oversight resources on the most pressing program performance problems; and work with the State to demonstrably improve program performance. Also, Regions need to take action when necessary to communicate with the State what things need attention to achieve the federal program goals and ensure a level playing-field across the regulated community in the State.

Specifically, Regional oversight should ensure that each State's program maintains:

- Adequate inspector program knowledge, training and credentialing, consistent with (or comparable to, as appropriate) Order 3500.1 and State performance agreements;
- Adequate coverage (identification of violations) of the regulated universe;
- Sufficient resources to operate effectively⁶⁰;
- Appropriate documentation and reporting;
- General program accountability, as required by applicable grant guidance, necessary for reliable program audits from within and beyond the Agency; and
- Appropriate and timely enforcement responses by States with AHERA waiver status or TSCA LBP authorization; and in such enforcement actions, include penalties that properly consider gravity and economic benefit.

Furthermore, since EPA seeks to quickly address violations that pose the greatest risk to human health or the environment, Regions are expected to consider the following in assessing a State's program:

- The number of inspections the State conducts;

⁶⁰ Generally, when a State applies to EPA for approval to administer a TSCA-equivalent own program (AHERA waiver or TSCA LBP authorization), it must identify the resources (personnel, monies) it will commit to its program. Over time, the actual State resources may change. The Region should be aware of whether such changes occur and, if so, whether the changes are contrary to the State's resource commitment and detrimental to its ability to conduct an effective program. If so, then the Region should discuss these matters with the State, and OECA, to determine how best to help the State maintain an effective program.

- The number of Tips to which the State responds, and the appropriateness of those responses;
- The number and type of regulated operations inspected, and the percent of the regulated universe these operations comprise (i.e., the extent of “coverage” the State provides); and
- The number of violations, and percent of the universe, addressed and resolved in a timely and appropriate manner; and for AHERA waiver and LBP-authorized States, the enforcement actions taken.

EPA also will consider the types of outcomes the State is obtaining from its compliance assurance program if this information is available, such as whether as a result of inspections (and any enforcement) violators promptly and completely return to compliance, or make process or behavioral changes to avoid future violations.

The Region should use a variety of available mechanisms to ensure adequate oversight, including:

- Regular meetings, consultations, and training opportunities with States.
- Reviews of State inspection reports.
- Reviews of data and trends of State activities.
- Mid-year and end-of-year grant reviews.
- Oversight inspections, alone or in collaboration with State inspectors.⁶¹

The Region may elect to conduct oversight inspections. These inspections help the Region assess the quality and effectiveness of a State’s compliance monitoring program and its inspection capability⁶²; allow the Region to acquire first-hand knowledge regarding compliance issues in-the-field; and provide a federal presence and general deterrent effect among the regulated community.

Additional program-specific guidance is provided as follows:			
	PCBs (Appendix C §VII)	Asbestos (Appendix D §VII)	Lead-based Paint (Appendix E §VII)

G. National Reporting⁶³

⁶¹ The Region’s role in States is not limited to oversight, since the Agency is authorized to inspect any regulated operation in any State and in Indian country, at any time.

⁶² For example, the Region should not be the first regulator to identify obvious and longstanding (or widespread) non-compliance in areas where the State has already conducted compliance monitoring. If, through oversight inspections, the Region finds the State should have already found, but did not find, such non-compliance, then the Region should work with the State to analyze the non-compliance and the State’s inspection capabilities. The Region also should increase training and support to the State program. See also Section V.B.1, Targeting, above.

⁶³ Regional compliance assurance reporting obligations vary. Depending upon the Region, reporting may include hard copy reporting (e.g., inspection reports, case documents, compliance assistance documentation) and/or entry into regional data systems for tracking purposes.

1. Overview

Increased transparency to the public and affected communities is one of EPA's goals and, thus, an important program element for all four TSCA programs areas. Furthermore, the 1993 Government Performance and Results Act (GPRA) holds federal agencies accountable for using resources prudently and achieving program results. In relevant part, GPRA requires agencies to communicate information about their performance to Congress and the public. Therefore, appropriate, accurate, and timely reporting of EPA's objectives, activities, and accomplishments is instrumental to ensuring that EPA has data readily-available to meet its goal of increased transparency and comply with GPRA.

2. Reporting Systems

Regions are expected to enter information concerning all federal TSCA inspections (and enforcement actions) into the Integrated Compliance Information System (ICIS), using the information from the:

- *Compliance Assistance Conclusion Data Sheets (CACDSs)*, for information on environmental benefits derived from compliance assistance; and
- *Case Conclusion Data Sheets (CCDSs)*, concerning the results derived from concluded enforcement cases.

Since OECA uses ICIS data-pulls to monitor regional implementation of TSCA compliance monitoring activities and fulfillment of ACS commitments, accurate and timely data entry into ICIS is important.

Also, Regions are to do the following through routine (ACS) reporting processes:

- Document their oversight, and the adequacy of State programs, in mid-year and end-of-year reports;
- Submit mid-year and end-of-year evaluation reports to OECA's Office of Compliance for each TSCA compliance monitoring grant awarded to a State; and
- Report to OECA in accordance with applicable guidance for the issuance of federal inspector credentials.⁶⁴

Regions also must manually report in the ACS data system for each state the number of State inspections and enforcement actions. The Region has discretion in determining the mechanism for tracking this information, as long as the information is available when needed.

3. Public Information

⁶⁴ See *Guidance for Issuing Federal EPA Inspector Credentials to Authorize Employees of State Governments to Conduct Inspections on Behalf of EPA* (2004).
<http://www.epa.gov/compliance/resources/policies/monitoring/inspection/statetribalcredentials.pdf>.

To make information more meaningful and available to the public, Regions are expected to:

- Enter all federal inspection and enforcement case data into ICIS (discussed above).
- Work with States using EPA inspector credentials to ensure that data on inspections they conduct on EPA's behalf is entered into national databases.
- Distinguish compliance information pertaining to a state from that concerning Indian country.
- Make information available to communities that lack Internet access (including Tribes).

<u>Additional program-specific guidance is provided as follows:</u>			
	PCBs (Appendix C §VIII)	Asbestos (Appendix D §VIII)	Lead-based Paint (Appendix E §VIII)

H. Indian Country

1. Overview

EPA has direct implementation responsibility in Indian country. (States generally do not inspect in Indian country even if the State otherwise has TSCA inspection authority.) A Tribe, however, might receive a grant to conduct inspections on EPA's behalf or obtain waiver status or authorization⁶⁵).⁶⁶ Regional compliance monitoring should complement tribal environmental programs implemented under tribal laws.

2. Federal Implementation

In Indian country, the Region should provide inspection coverage comparable to that which the Region provides outside of Indian country, to ensure that the level of protectiveness on tribal land is no less robust than elsewhere in a State. To do this, the Region may elect to conduct an *identical* number of inspections in each Indian jurisdiction as it does in the State, if practicable. Generally, however, since the size of the regulated universe in Indian country is substantially smaller than that in a State as a whole, the Region may be able to provide *comparable* coverage and protectiveness without necessarily providing *identical* coverage to that provided in the

⁶⁵ Several Tribes have TSCA LBP authorization; and this program area has the largest number of Tribal Implementation Jurisdictions.

⁶⁶ Also, a Tribe may be subject to EPA inspection and enforcement where the Tribe itself is the regulated entity. When this is the case, the Region should follow established Agency policy concerning inspections and enforcement. *EPA Policy for the Administration of Environmental Programs on Indian Reservations*, <http://www.epa.gov/superfund/community/relocation/policy.htm>, and *Guidance on the Enforcement Principles Outlined in the 1984 Indian Policy*, <http://www.epa.gov/compliance/resources/policies/state/84indianpolicy.pdf>.

State.⁶⁷ The Region is expected to use an appropriate method to determine how best to provide equivalent protectiveness in Indian country.

3. Tribal Implementation Jurisdictions

The Region should work collaboratively with a Tribe that is authorized or has waiver status on program planning and oversight similarly to how the Region would work with a State. See Section V.E., Program Planning, and Section V.F., Program Oversight, above.

<u>Additional program-specific guidance is provided as follows:</u>		
	PCBs (Appendix C §IX)	Asbestos (Appendix D §IX)

End

⁶⁷ For example, the Region may determine the appropriate number of inspections by counting multiple small Indian land jurisdictions in a State (or other geographical region) as a single tribal area.

Appendix A. Acronyms and Generic Terms

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I. Acronyms Used in the CMS

Abatement Rule	TSCA §402(a) Lead-Based Paint Activities, Certification, and Training Rule
ACS	Annual Commitment System
ACM	Asbestos-containing Material
AHERA	Asbestos Hazard Emergency Response Act
ASHARA	Asbestos School Hazard Abatement Reauthorization Act of 1990
BIA	Bureau of Indian Affairs, U.S. Department of the Interior
BIE	Bureau of Indian Education, U.S. Department of the Interior
CACDS	Compliance Assistance Conclusion Data Sheet
CBI	Confidential Business Information
CCDS	Case Conclusion Data Sheet
CDC	U.S. Centers for Disease Control and Prevention
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act (known also as the Superfund act)
CID	Criminal Investigation Division
CMS	Compliance Monitoring Strategy
COF	Child-occupied Facility (TSCA Lead-based Paint program)
CPSC	U.S. Consumer Product Safety Commission
CTEP	Core TSCA Enforcement Program (TSCA New and Existing Chemicals program)
DOE	U.S. Department of Energy
DOI	U.S. Department of the Interior
EJ	Environmental Justice
EJSEAT	Environmental Justice Strategic Enforcement Assessment Tool
EPA	U.S. Environmental Protection Agency (or Agency)
GPRA	Government Performance and Results Act
HIPAA	Health Insurance Portability and Accountability Act
HUD	U.S. Department of Housing and Urban Development
ICDS	Inspection Conclusion Data Sheet
IRL	Information Request Letter
IUR	Inventory Update Rule (TSCA New and Existing Chemicals program)
LBP	Lead-based Paint
LDR	Lead Disclosure Rule (formally, the Title X § 1018 Lead-based Paint Real Estate Notification and Disclosure Rule)
LEA	Local Education Agency (Asbestos program)
MAMPD	Monitoring, Assistance and Media Programs Division (within OCEA OC)
MAP	Asbestos Model Accreditation Program (distinguished from “model accreditation plan”)
MOU	Memorandum of Understanding
NAIS	Neutral Administrative Inspection Scheme
NESHAP	National Emission Standard for Hazardous Air Pollutants (Clean Air Act standard for asbestos: Asbestos NESHAP)
NPCD	National Program Chemicals Division (within OCSPP)
NPMG	OECA’s National Program Managers Guidance
OC	Office of Compliance (within OECA)
OCSPP	Office of Chemical Safety and Pollution Prevention
OCE	Office of Civil Enforcement (within OECA)
OECA	Office of Enforcement and Compliance Assurance
OPPTS	Office of Pollution Prevention and Toxics (within OCSPP)

Office of Enforcement and Compliance Assurance
Toxic Substances Control Act (TSCA) Compliance Monitoring Strategy
Appendix A. Acronyms and Generic Terms

OSHA	U.S. Office of Safety and Health Administration
PCBs	Polychlorinated Biphenyls
PMN	Pre-manufacture Notification (TSCA New and Existing Chemicals program)
PRE Rule	TSCA § 406(b) Pre-renovation Education Rule
RCRA	Resource Conservation and Recovery Act
RLBPHRA	Residential Lead-based Paint Hazard Reduction Act of 1992 (also known as Title X of the Housing and Community Development Act of 1992)
RRP Rule	TSCA § 402(c)(3) Renovation, Repair, and Painting Rule
SEE	Senior Environmental Employee
SEP	Supplemental Environmental Project
SNUR	Significant New Use Rule (TSCA New and Existing Chemicals program)
STAG	State and Tribal Assistance Grant
Title X	Title X of the Housing and Community Development Act of 1992 (also known as the Residential Lead-based Paint Hazard Reduction Act of 1992, or RLBPHRA).
TPO	Tribal Program Officer
TSCA	Toxic Substances Control Act
TSCA Inventory	TSCA Chemical Substances Inventory (TSCA New and Existing Chemicals program)
TSCA NEC	TSCA New and Existing Chemicals program (formerly known as the “Core TSCA” program)
TSDF	Transfer, Storage or Disposal Facility (RCRA hazardous waste facility)
WCED	Waste and Chemical Enforcement Division (within OECA OCE)
WPR	Asbestos Worker Protection Rule

II. Generic Terms

The CMS covers four diverse TSCA program areas. Therefore, the CMS uses certain generic terms to convey *broad, cross-cutting concepts* that apply to multiple TSCA program areas. The generic terms below are *not* legally defined terms or official Agency nomenclature. The meaning of these terms is explained below (unless noted otherwise in the text).

- **“Compliance assurance”** includes “compliance monitoring,” compliance assistance, compliance incentives (e.g., special settlement initiatives), and enforcement.
- **“Compliance monitoring”** means the various methods EPA uses to determine the compliance status of a regulated “operation” and gather evidence for potential enforcement, including but not limited to field inspections, information request letters (IRLs) and so-called “desk inspections,” subpoenas, self-certifications and audits, partnerships with state/local entities to perform audits, and other measures.
- **“Compliance monitoring program”** encompasses the various program elements (activities) necessary to plan, implement and assess a regional (or national) compliance monitoring

effort, such as targeting; performing inspections and other forms of “compliance monitoring”; program planning and priorities; oversight of State programs; and reporting.

- “**Core program**” means *ongoing* compliance monitoring activities for any TSCA program area, distinguished from periodic “national areas of focus” (below) that may or may not include a TSCA program area. The “core” compliance monitoring program also is distinguished from the Core TSCA Program under Title I of TSCA, which is now called the TSCA New and Existing Chemicals program.
- “**Coverage**” means the extent to which the “regulated universe” is subject to inspection and other forms of compliance monitoring (e.g., the frequency of inspections, the percent of the “universe” inspected).
- “**Direct Implementation**” refers to compliance monitoring performed *primarily* to provide adequate inspection “coverage” of the “regulated universe” and determine the compliance status of individual “operations.” Direct implementation inspections are distinguished from “oversight” inspections that EPA may conduct *primarily* to assess the adequacy of a “State” compliance monitoring program.
- “**Federal Implementation Jurisdiction**” means a State (or Indian country) in which EPA has responsibility for “direct implementation” compliance monitoring for a particular TSCA program area. Certain TSCA program areas include both Federal Implementation Jurisdictions and “State Implementation Jurisdictions.” See CMS Section III.C.
- “**Federal-only Program**” and “**Non-delegable Program**” mean a TSCA program area for which only EPA conducts compliance monitoring, i.e., the TSCA New and Existing Chemicals (TSCA NEC) program, and the Title X Lead Disclosure Rule (LDR).
- “**Focus area**” means the same as (and is used as an alternative to) “program area.”
- “**Lead Hot Spot**” (LBP program) means any geographic area (or population sector) with widespread and/or severe childhood lead poisoning. Lead Hot Spot generally means the same as “target area.”
- “**License**” means an EPA- or State-issued authorization to conduct a regulated activity. TSCA Title II (MAP and AHERA), uses the term “accreditation” for licensed asbestos *individuals*, whereas TSCA Title IV (LBP) uses the same term for licensed *training providers*, and uses the term “certification” for licensed individuals and firms. (Some States use the term “license” in their approved TSCA-equivalent programs.)

- “**Micro Enterprise**” or “**Micro Business**” (LBP program) means a very small regulated “operation,” such as a sole proprietorship, or a business that has fewer than five employees and a very limited business portfolio (e.g., owns/controls as few as ten dwellings; or has as few as ten regulated projects valued at no more than \$100,000 collectively per year).
- “**National area of focus**” or “**national focus area**” means any issue that EPA designates for national compliance monitoring attention for a finite period of time (distinguished from ongoing “core” compliance monitoring). National focus areas include OECA National Enforcement Initiatives; Federal Facility Integrated Strategies; and any other issue that OECA identifies as having national significance and in need of nationwide (or multi-regional) EPA response, direction, or involvement. A national area of focus may or may not include a TSCA program area.
- “**Operation**” means anything that is subject to TSCA compliance monitoring, i.e., any regulated activity, property (facility, plant, dwelling, etc.), or entity (person, company, enterprise, etc.).
- “**Oversight**” or “**Program Oversight**” means the various activities EPA may conduct to determine and ensure the adequacy and effectiveness of State (or Tribal) compliance monitoring and enforcement activities and programs.
- “**Program area**” means one of the four TSCA compliance monitoring programs examined in the CMS, i.e.: the New and Existing Chemicals (TSCA NEC) program; PCB program; Asbestos program; or Lead-based Paint (LBP) program.
- “**Regulated Universe**” or “**Universe**” means the regulated community (i.e., the “operations”) subject to TSCA compliance monitoring.
- “**State (or Tribal) Implementation Jurisdiction**” means a State (or Indian country) in which the State (or Tribe) has responsibility for direct implementation compliance monitoring for a particular TSCA program area under some sort of construct. (CMS Section III.C describes the various constructs.) Certain TSCA program areas include both State Implementation Jurisdictions and “Federal Implementation Jurisdictions.”
- “**State**” means a State, District of Columbia, Tribe, or U.S. Territory in which the government of that jurisdiction is *empowered to conduct compliance monitoring* for a particular TSCA “program area” under some sort of construct, such as LBP authorization, AHERA waiver status, or an agreement to inspect for EPA. The term “state” (uncapitalized) means the term in its normal sense, i.e., any state in the nation, regardless whether that jurisdiction conducts TSCA compliance monitoring. (A particular “State” may be

empowered to conduct PCB compliance monitoring whereas every “state” in the nation faces environmental challenges.) (CMS Section III.C describes the various constructs.)

- **“Tip”** means any information that EPA may receive from an external source which indicates potential non-compliance, including any citizen tip or complaint, lead (which may result in a criminal investigation), or informal “referral” from a State or other regulator (e.g., a local health, housing, or building department).
- **“Toxic Dwelling”** (in the LBP program) means a regulated dwelling (target housing) that is associated with multiple and/or successive cases of childhood lead poisoning, or that has significant or longstanding LBP hazards.
- **“Tribe”** means a federally-recognized Tribe in which the Tribal government is empowered to conduct compliance monitoring for a particular TSCA “program area” under some sort of construct. (CMS Section III.C describes the various constructs.)

Appendix B. New and Existing Chemicals

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I. Introduction

Jurisdictional Framework for Compliance Monitoring¹

The TSCA New and Existing Chemicals (TSCA NEC^{2,3}) program is a federal-only program, i.e., all states (and Indian country) are Federal Implementation Jurisdictions.

The Core TSCA Enforcement Program (CTEP), based in OECA's Office of Civil Enforcement (OCE),⁴ and participating Regions⁵ conduct compliance monitoring and enforcement for the TSCA NEC program.

Title I of TSCA covers the TSCA New and Existing Chemicals program. See Legal Background, Section II, below. Title I empowers EPA to regulate the manufacture (which includes importation), processing, distribution in commerce, use, disposal, and export of thousands of chemicals. Also, Title I authorizes EPA to test chemicals for potential health and/or environmental effects prior to introduction into commerce; collect, analyze, and review data concerning chemicals prior to and after release to the environment; and regulate these substances if they pose an unreasonable risk of harm to human health and/or the environment. The objective of the TSCA NEC program is to reduce risks posed by the highest priority chemicals, and eliminate voids in EPA's understanding of the safety of large volume chemicals (i.e., those in amounts exceeding 25,000 pounds per year in commerce).

CTEP and Regions 2, 4 and 5 collaborate on TSCA NEC compliance monitoring; and work with EPA's Office of Chemical Safety and Pollution Prevention (OCSPP) to identify program priorities and target potential entities for inspection. Other Regions may elect to conduct TSCA NEC compliance monitoring and enforcement. Regions that neither participate with CTEP nor elect to implement their own TSCA NEC programs may make referrals to CTEP.

II. Legal Background

The TSCA New and Existing Chemicals program -- comprised of Sections 4, 5, 6, 8, 12 and 13 of Title I⁶ -- governs "chemical substances" and "mixtures."⁷

¹ See CMS Sections II.C and III.C regarding EPA versus State implementation.

² The New and Existing Chemicals program is also known as the "Core TSCA" program (distinguished from the "core program" for TSCA compliance monitoring discussed in CMS Section III.A).

³ See Appendix A for acronyms and generic terms used in the CMS.

⁴ OCE's Waste and Chemical Enforcement Division (WCED) operates CTEP, and is responsible for TSCA NEC activities in the seven Regions that do not participate with CTEP (Regions 1, 3, 6-10).

⁵ As of FY2011, Regions 2, 4 and 5 have active TSCA NEC programs and participate with CTEP.

⁶ 15 U.S.C. §§ 2603-2605, 2607, 2612-2613, respectively.

Section 4 - Testing of Chemical Substances and Mixtures – Section 4 authorizes EPA to require testing by rule or consent agreement to determine whether a chemical “may present an unreasonable risk of injury to health or the environment”; or “will be produced in substantial quantities” such that there may be significant human or environmental exposure. EPA also may require testing where there is insufficient data and experience to determine the effects of a chemical.

Section 5 - Manufacturing and Processing Notices - Section 5 establishes the Premanufacture Notification (PMN) requirement for new chemical substances, under which a manufacturer must submit a PMN to EPA no later than 90 days prior to commencing manufacture of a new chemical. This 90-day period enables EPA to determine the safety of the new chemical prior to its introduction into commerce. Section 5 also empowers EPA to issue Significant New Use Rules (SNURs) to regulate significant new uses of existing chemicals.

Section 6 - Regulation of Hazardous Chemical Substances and Mixtures - Section 6 directs EPA to promulgate rules to prohibit or limit production, or impose labeling or other requirements on a chemical when the manufacture, processing, use, distribution in commerce, or disposal of an existing chemical presents an unreasonable risk of injury to human health or the environment. EPA also may impose recordkeeping and testing requirements; restrict the commercial use and disposal of the chemical; and require the notification of potential hazards to distributors, users and the public. Section 6 also specifically governs polychlorinated biphenyls (PCBs) and asbestos.⁸

Section 8 - Reporting and Retention of Information – Section 8 establishes reporting and recordkeeping requirements for chemical manufacturers, importers, processors and, in certain cases, distributors.

- Section 8(a) sets forth reporting requirements, including the quadrennial Inventory Update Rule (IUR).
- Section 8(b) requires that EPA maintain records and update the TSCA Chemical Substances Inventory (TSCA Inventory), which is EPA’s list of over 84,000 existing chemicals.
- Section 8(c) compels regulated operations to maintain records of significant adverse reactions to human health and/or the environment.
- Under Section 8(d), EPA may require regulated operations to submit lists and/or copies of ongoing and completed health and safety studies.
- Section 8(e) requires that a person must immediately inform EPA if the person obtains information which reasonably supports the conclusion that a chemical presents a substantial risk of injury to human health or the environment.

⁷ The act broadly defines these terms; however several exclusions apply (e.g., pesticides, tobacco products, foods, drugs). See 15 U.S.C. §2602 (definitions).

⁸ See Appendix C, PCBs; and Appendix D, Asbestos.

Section 12 - Exports -- Section 12(a)(1) exempts from certain Section 5 requirements (e.g., PMN or SNUR) any chemical intended only for export. TSCA Section 12(b) requires that exporters notify EPA if the chemical has been subject to an EPA action that indicates the chemical may present an unreasonable risk to human health or the environment, such as a Section 4 or 5(b) testing requirement or a Section 5 order.

Section 13 – Imports – Since TSCA defines “manufacture” to include “import,” chemical importers must comply with the same reporting and testing requirements as domestic manufacturers. Therefore, prospective importers must certify to the U.S. Customs Service that all chemicals in their shipment either comply with, or are exempt from, TSCA. The Customs Service will refuse entry to chemicals that, according to the importer’s certification, do not comply with TSCA.

III. Regulated Universe

The TSCA NEC regulated universe consists of operations that manufacture, import, export, distribute, use, process, and/or dispose of chemicals. Currently, there are more than 84,000 chemicals on the TSCA Inventory, more than 13,000 domestic chemical manufacturers, and literally millions of pounds of chemicals crossing U.S. borders each year through import/export firms and trading houses. Neither TSCA nor the regulations governing its implementation require companies to notify EPA that they are in the business of manufacturing, importing, or using chemicals. By introducing a new chemical into commerce, however, any facility may become regulated.

IV. Targeting

The CMS states targeting principles generally applicable to all TSCA programs. See CMS Section V.B. The following additional guidance also applies to the TSCA NEC program for any Region that implements this program (whether in connection with CTEP or otherwise).

To optimize EPA’s capacity to mitigate hazards to human health and the environment, the Region’s program should focus limited resources on significant, potentially enforceable, and nationally important pollution problems. Traditionally, EPA has identified operations for inspections based on their potential for violating specific TSCA requirements. Therefore, since reducing risk is a fundamental targeting principle for this program, Regions should target primarily for the following:

- Failure to submit a Section 5 PMN. Non-compliance with Section 5 presents a significant risk because there may be unknown, but potentially significant risks, to human health and the environment from chemicals introduced into commerce without a prior OCSPP safety review.

- Failure to notify the Agency of substantial risk information under TSCA 8(e). Prompt submission of 8(e) information allows EPA to review chemical risks and implement appropriate safety measures.
- Non-compliance with requirements for OCSPP Action Plan chemicals, so that EPA can implement an effective compliance/enforcement response concerning chemicals for which OCSPP has identified human health and/or environmental concerns.

V. Program Priorities

The CMS states program priority principles generally applicable to all TSCA programs. See CMS Section V.D. The following additional guidance also applies to the TSCA NEC program for any Region that implements this program (whether in connection with CTEP or otherwise).

Regions are expected to:

- Focus on chemical manufacturing, distribution, processing, use, or disposal in emerging technologies, and/or use of new chemicals, including imports and exports.
- Focus on ensuring compliance with requirements for new chemicals (e.g., PMN, SNUR), for Section 8(e), and for other priority or OCSPP Action Plan chemicals. See also Section IV, Targeting, above.
- Track and prioritize Tips, and respond as appropriate (see CMS Section V.C.7); and follow-up on all referrals received from Headquarters, States, and the public.

Regions that do not implement TSCA NEC compliance monitoring programs are expected to refer Tips to CTEP for follow-up and respond to questions from the regulated community.

VI. Program Planning

The CMS states program planning principles generally applicable to all TSCA programs. Regions that implement TSCA NEC programs (in connection with CTEP or otherwise) should follow the general CMS guidance applicable to Federal Implementation Jurisdictions. See CMS Section V.E.

VII. Program Oversight

Since the TSCA NEC program is a federal-only program, there are no State Implementation Jurisdictions and, thus, no oversight of State programs.

VIII. Reporting

The CMS states reporting principles generally applicable to all TSCA programs. Regions that implement TSCA NEC programs (in connection with CTEP or otherwise) should follow the general CMS guidance applicable to Federal Implementation Jurisdictions. All Federal actions are reportable into ICIS. See CMS Section V.G.

IX. Indian Country

The CMS states principles for compliance monitoring in Indian country that are generally applicable to all TSCA programs. Regions that implement TSCA NEC programs (in connection with CTEP or otherwise) should follow the general CMS guidance applicable to Federal Implementation Jurisdictions. See CMS Section V.H.

End

Appendix C. PCBs

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I. Introduction

Jurisdictional Framework for Compliance Monitoring¹

The PCB² compliance monitoring (and enforcement) program is a federal-only program. EPA, however, may enter into an agreement with a state (generally under a federal grant) whereby state inspectors using federal credentials conduct PCB *inspections* on EPA's behalf. Any such state is, thus, a *State Implementation Jurisdiction* for PCB inspections; and EPA conducts any enforcement arising from state inspections. All remaining jurisdictions, including all Indian country, are *Federal Implementation Jurisdictions* for PCB compliance monitoring (and enforcement).

Polychlorinated biphenyls (PCBs) are synthetic organic chemical compounds (aromatic hydrocarbons). PCBs are one of the most stable synthetic compounds known, are inflammable and resistant to breakdown, exhibit low electrical conductivity, extend the temperature range of operating fluids, and can provide long-lasting heat at a consistent temperature. Since their properties made them ideal dielectric and heat transfer fluids, the majority of PCBs manufactured in the U.S. were used in electrical equipment.

PCBs are persistent bio-accumulative toxins (PBTs). Extensive research has linked PCBs to various human health effects, including the formation of malignant and benign tumors, fetal deaths, reproductive abnormalities, mutations, liver damage, and skin irritation. Also, experiments have shown that PCBs attack the immunological system and affect the production of enzymes. PCBs are pervasive throughout the environment. Measurable amounts of PCBs have been found in soils, water, fish, milk of nursing mothers, and human tissue. Also, PCBs present a serious threat to the environment. They are absorbed by organic matter and sediments, and have been found in significant concentrations in waterways and sediments throughout the world. PCBs have been identified in caulk and light ballasts, including caulk and light ballasts used in schools, which raise concerns over potential exposure to school building occupants and others. Furthermore, PCB exports for disposal are of international concern.

The objective of the national PCB compliance monitoring program is to ensure compliance with federal requirements for PCB use, marking, storage, and disposal; and to promote decommissioning of PCB-containing equipment.

¹ See CMS Sections II.C and III.C regarding EPA versus State implementation.

² See Appendix A for acronyms and generic terms used in the CMS.

II. Legal Background

TSCA and EPA's implementing regulations aim to minimize risks posed by the storage, handling, and disposal of PCBs and PCB-containing items. Therefore, these laws generally ban the manufacture, processing, distribution in commerce and use of PCBs. The rules, however, authorize certain *uses* of PCBs and PCB-containing items (e.g., transformers/capacitors) under specified conditions to ensure that PCBs do not pose an unreasonable risk to human health or the environment.

Section 6(e)³ governs PCBs under TSCA.⁴ Section 6 requires that if EPA finds there is a reasonable basis to conclude that a TSCA chemical presents an unreasonable risk, then EPA may promulgate a rule concerning that chemical to:

- Prohibit or limit the manufacture, processing, or distribution in commerce of the chemical;
- Require adequate warnings and instructions with respect to use, distribution, or disposal;
- Require manufacturers or processors to make and retain records;
- Prohibit or regulate any manner of commercial use, or disposal; and/or
- Require manufacturers or processors to give notice of the unreasonable risk of injury, and recall products if required.

Although EPA has promulgated several Section 6 rules, PCBs are unique in that they are specifically identified by statute as requiring regulatory controls.⁵

III. Regulated Universe

TSCA Section 6 applies to operations that have or use equipment or other items contaminated with PCBs. While industrial facilities and utilities were primary users of PCBs, any type of operation may have PCBs. For example, PCBs were used widely in transformers, transformer bushings, capacitors, voltage regulators, hydraulic systems, small capacitors in fluorescent light ballasts, and heat transfer systems. Also, PCBs were sometimes used in electrical cable, switches, breakers, natural gas pipelines, carbonless copy paper, paints, adhesives, caulking compounds, and investment casting wax. Furthermore, other types of equipment such as electric motors, vacuum pumps, and gas turbines have been contaminated with PCBs; and many oil storage tanks (both above-ground and underground) have been found to be contaminated with PCBs.

³ 15 U.S.C. § 2605(e).

⁴ Other statutes also directly or indirectly control or apply to the use, disposal or remediation of PCBs including, but not limited to, the Clean Water Act, Clean Air Act, RCRA, CERCLA (Superfund), and OSHA laws. See Appendix A for acronyms.

⁵ See 40 C.F.R. 761 Subparts A through T.

In addition, PCB requirements apply to commercial facilities that transfer, store, and/or dispose of PCBs. Some of these facilities also are Treatment, Storage and Disposal Facilities (TSDFs) subject to the Resource Conservation and Recovery Act (RCRA).

IV. Targeting

The CMS discusses general targeting principles applicable to all TSCA programs. See CMS Section V.B. The following additional guidance also applies to PCB compliance monitoring.

Regions should use targeting tools to identify the most important sources of PCB pollution and the most serious violations, including screening tools such as EPA's Environmental Justice Strategic Enforcement Assessment Tool (EJSEAT) and community input. Also, regional targeting strategies should take the following situations and operations into account:

- **Commercial PCB Storage/Disposal Facilities** – Regions are encouraged to target for commercial storage and disposal facilities that accept PCBs. See Section VI, below regarding inspecting such facilities at least once every three years. It is important that EPA maintain a presence in this sector to ensure: (a) compliance with PCB marking, manifesting, storage, disposal, and reporting rules; (b) proper handling and disposal of PCB waste, since generators often rely on such facilities for these activities; and (c) proper handling of unidentified (unmanifested) PCB waste, since proper testing by these facilities may be the last chance to catch PCB waste before it is diluted or disposed in an unauthorized manner.
- **Unmanifested Waste** - Follow-up on unmanifested waste reports from commercial storage/disposal facilities.
- **Recycling Facilities** - Recycling facilities that handle electrical transformers, capacitors, etc.
- **Older Industries and Facilities** - Older industries with an identified history of heavy electrical use, particularly with a focus on older facilities within those industries.
- **Self Disclosures** - Self-disclosures and audit policy disclosures.
- **Other Facilities** - Sites receiving TSCA disposal or remediation approvals, and other permitted facilities, to determine compliance with the applicable approval conditions, including certain spill sites operating under 40 C.F.R. §.761.30(p).
- **Repeat Violators.**
- **Tips** - Operations that are the subject of a Tip.

V. Program Priorities

The CMS discusses general program priority principles applicable to all TSCA programs. See CMS Section V.D. The following additional principles also apply to PCB compliance monitoring:

- **Tips** – The Region is expected to follow-up on Tips concerning potential environmental and public health risks, including spills. The appropriate response may mean that the Region implements a compliance monitoring option, or refers the Tip to the appropriate State for follow-up.⁶
- **Inspection Coverage** – Regions should conduct inspections in every Federal Implementation Jurisdiction (including Indian country) to ensure equitable protection. The appropriate State Implementation Jurisdiction may provide coverage in lieu of the Region (except in Indian country). Also, Regions should ensure that all PCB commercial storage and disposal facilities are inspected at least once every three years (see Section IV, Targeting, above), and may conduct these inspections in conjunction with RCRA TSDf inspections provided the inspector comprehensively evaluates compliance with both programs. Regions also may inspect facilities other than commercial storage and disposal facilities, such as PCB waste generator sites with on-site storage – and, if so, should report those numbers separately.
- **Caulk and Light Ballasts in Schools** – Regions should address PCBs in caulk and in light ballasts in schools by providing information to school systems (including but not limited to Local Education Agencies [LEAs] as defined by AHERA⁷) and to individual schools, and responding to Tips.
- **Inspection Technology** – Regions should continue to implement use of electronic technology in the field, such as PCB Tablets and inspection software.

EPA promotes the phase-out of PCBs, wherever possible. Therefore, Regions should use inspections to identify current users of equipment containing PCBs, with the goal of promoting disposal of such equipment through compliance monitoring, or Supplemental Environmental Projects (SEPs) in any enforcement actions, as appropriate.

VI. Program Planning

The CMS discusses general program planning principles applicable to all TSCA programs. See CMS Section V.E. There are no additional principles for PCB compliance monitoring.

VII. Program Oversight

The CMS discusses general program oversight principles applicable to all TSCA programs. See CMS Section V.F. In addition, Regions are expected to ensure that States implement an adequate PCB inspection program, provide a rationale where programs are not adequate, and specify adequate corrective actions, since these jurisdictions conduct inspections on EPA's behalf.

⁶ See CMS Section V.C.7, Targeting, regarding compliance response options for Tips.

⁷ The Region is encouraged to conduct combined (or coordinated) PCB-asbestos compliance monitoring for schools subject to AHERA.

VIII. Reporting

The CMS discusses reporting principles applicable to all TSCA programs. See CMS Section V.G. In addition, for State Implementation Jurisdictions, Regions may consider the State's compliance monitoring efforts when reporting on Annual Commitment System commitments.

IX. Indian Country

The CMS discusses general principles for compliance monitoring in Indian country that are applicable to all TSCA programs. See CMS Section V.H. The following additional guidance also applies to PCB compliance monitoring.

Although Tribes generally are not major users of equipment containing PCBs, some Tribes own PCB-containing equipment for use in electrical distribution systems or large buildings (e.g. schools, hospitals, office buildings). Also, some non-tribal electric utility companies may own PCB-containing equipment that is located on tribal land. The larger the Tribe, the more likely it is that the Tribe owns the electrical equipment on its land and, thus, is subject to compliance monitoring.

Regions are encouraged to use compliance assistance, as well as monitoring, to promote environmental compliance in Indian country. For example, the Region could:

- Include language in tribal environmental agreements requesting that Tribes inventory their oil-filled electrical equipment, which helps Tribes ensure proper handling of PCB-containing equipment for spill response, storage, and disposal;
- Offer compliance assistance to help Tribes identify and properly handle such equipment; and
- When inspecting or working with an electric utility company that owns equipment on tribal land, inquire about and encourage any programs the company may have to inspect and/or remove PCB-containing equipment on that land.

End

Appendix D. ASBESTOS

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I. Introduction

EPA's TSCA asbestos compliance monitoring program includes the:

- Title II Asbestos Hazard Emergency Response Act (AHERA¹) program;
- Section 6 Worker Protection Rule (WPR); and
- Section 6 Model Accreditation Program (MAP²).

The majority of TSCA asbestos compliance monitoring activity concerns AHERA.³

Jurisdictional Framework for Compliance Monitoring⁴

The asbestos compliance monitoring program encompasses both *Federal Implementation Jurisdictions* and *State Implementation Jurisdictions*.

AHERA

AHERA compliance monitoring includes both Federal Implementation Jurisdictions, and two types of State Implementation Jurisdictions: "waiver" and "non-waiver" States.

- "Waiver" States -- A State with its own AHERA-equivalent law may apply to EPA for a "waiver" from the federal requirements. If approved, the State is an AHERA "waiver" State, and a State Implementation Jurisdiction for AHERA compliance monitoring and enforcement. EPA conducts oversight of the State program.
- "Non-waiver" States -- EPA may enter into an agreement with a State whereby EPA will issue federal inspection credentials to State inspectors to perform inspections on EPA's behalf. The jurisdiction is then an AHERA "non-waiver" State, and a State Implementation Jurisdiction for AHERA compliance monitoring. EPA handles any enforcement actions arising from State inspections, and conducts oversight of the State program.

States that have neither waiver nor non-waiver status are Federal Implementation Jurisdictions for AHERA compliance monitoring (and enforcement), i.e., EPA has responsibility for direct implementation compliance monitoring in such jurisdictions.

WPR

As of FY2011, every jurisdiction *that is subject to* WPR (about half of the states as of FY2011) is a Federal Implementation Jurisdiction (i.e., no state subject to WPR has yet obtained EPA-approval to operate its own worker asbestos worker protection program). See Section I.B, below.

MAP

States that have elected to operate EPA-approved asbestos accreditation programs (about half of the states as of FY2011) are State Implementation Jurisdictions. There is no federal direct implementation; and EPA's activity is limited to oversight of State programs.

¹See Appendix A for acronyms and generic terms used in the CMS.

²In the CMS, "MAP" refers to the Model Accreditation compliance monitoring *program*, rather than to the "model accreditation *plan*" which establishes specific accreditation requirements. See Appendix A for acronyms and generic terms.

³The TSCA asbestos program also includes the TSCA Section 6 asbestos Ban/Phase-out Rule, which is *not* examined in the CMS.

⁴See CMS Sections II.C and III.C regarding EPA versus State implementation.

A. AHERA

AHERA governs the management of asbestos in Kindergarten through Grade 12 (K-12) schools. Asbestos-containing material (ACM) may be present in schools and, if disturbed and released into the air, poses a potential health risk to students and other school building occupants. There are no immediate symptoms of exposure; health effects may manifest 15 or more years after exposure. The objective of AHERA compliance monitoring is to ensure regulatory compliance and, thereby, minimize the risk of exposure to asbestos in schools.

AHERA requires “local education agencies” (LEAs) to inspect for asbestos and take certain actions when asbestos is found. See Section II, Legal Background, below. The AHERA program is founded on the principle of “in-place” management of ACM. This principle aims to prevent asbestos exposure by educating people to recognize ACM, actively monitor it, and manage it in place. Usually, ACM removal is not necessary, unless the material is severely damaged or will be disturbed, such as by a building demolition or renovation project.

B. Worker Protection Rule

State and local employees involved in asbestos-related activities (e.g., construction, certain custodial jobs, or jobs associated with asbestos-containing brakes and clutch plates) perform work that poses an increased risk of asbestos exposure.⁵ WPR extends the federal asbestos standard of the U.S. Occupational Health and Safety Administration (OSHA) to state and local employees who perform asbestos work but are *not* protected by either the federal OSHA standard, or by an EPA-approved state asbestos protection plan (which would exempt the state from WPR⁶).

WPR requires that state and local government employers ensure that their employees comply with the federal OSHA asbestos standard. As of FY2011, approximately half of the states have OSHA-approved state asbestos standards; there is no EPA program oversight. The remaining half are subject to WPR (i.e., none of the states subject to WPR have received an EPA exemption to operate its own program).

C. Model Accreditation Program⁷

MAP sets minimum requirements for training personnel (e.g., contractors) who work on asbestos activities in schools, and public and commercial buildings. Participating states obtain approval from EPA to implement their own asbestos accreditation programs.⁸ EPA does not operate

⁵ In FY2010, there were approximately 8,274,000 state and local government workers across the 50 states. See www.bls.gov/oco/cg/cgs042.htm. Some of these workers are involved in asbestos-related activities.

⁶ A state without an OSHA-approved program - and, thus, subject to WPR - may apply to EPA (OCSPP) for an exemption from WPR, to implement its own EPA-approved program. See 40 C.F.R. §763.123.

⁷ See www.epa.gov/region4/air/asbestos/inform.htm.

⁸ As of FY2011, approximately half of the states have obtained MAP approval.

accreditation programs; or directly approve or audit training courses.⁹ Therefore, the Region's compliance role is limited to oversight of EPA-approved State accreditation programs.

II. Legal Background¹⁰

A. AHERA

AHERA, which became law in 1986, requires "local education agencies"¹¹ to take specific actions with respect to ACM. The regulations¹² require LEAs to:

- Perform an original inspection, and re-inspection, of ACM every three years;
- Develop, maintain, and update an asbestos management plan and keep a copy at the school;
- Provide yearly notification to parent, teacher, and employee organizations regarding the availability of the school's asbestos management plan and any asbestos abatement actions taken or planned in the school;
- Designate a contact person to ensure that LEA responsibilities are properly implemented;
- Perform surveillance of known or suspected ACM every six months;
- Ensure that properly-trained ("accredited") professionals perform inspections and response actions, and prepare management plans (see Section II.C, MAP, below); and
- Provide custodial staff with asbestos awareness training.

The Asbestos School Hazard Abatement Reauthorization Act of 1990 (ASHARA) amended AHERA to stipulate that contractors working on asbestos abatement activities in schools, public or commercial buildings need to have received proper accreditation.¹³ See Section II.C, MAP, below.

B. Worker Protection Rule

EPA promulgated WPR to protect state and local government employees who are not protected by the federal OSHA asbestos standard. The WPR regulations cross-reference the OSHA asbestos standard to ensure that any future amendments to the OSHA standard will apply under WPR. Also, WPR parallels the federal OSHA asbestos requirements, and covers medical examinations, air monitoring and reporting, protective equipment, work practices, and record keeping.¹⁴

⁹ EPA, however, may pursue de-accreditation of individuals without reliance on State de-accreditation authority or actions. See 40 C.F.R. Part 763, Subpart E, Appendix C, §G(1)(d)

¹⁰ See www.epa.gov/asbestos/pubs/asbestos_in_schools.html.

¹¹ See 40 C.F.R. § 763.83 (LEA definition).

¹² 40 C.F.R. Part 763, Subpart E.

¹³ 15 U.S.C. 2646a (TSCA Title II AHERA)

¹⁴ 40 C.F.R. Part 763, Subpart G.

WPR requires state and local government employers to:

- Comply with OSHA standards in 29 C.F.R. §1926.1101 if their employees perform construction activities as defined in 29 C.F.R. §1926.1101(a).¹⁵
- Submit notifications required for alternative control methods to OCSPP's National Program Chemicals Division (NPCD) if employees perform construction activities.
- Comply with OSHA standards in 29 C.F.R. §1910.1001¹⁶ for employees who perform custodial activities not associated with construction.
- Comply with OSHA standards in 29 C.F.R. §1910.1001 for employees who repair, clean, or replace certain asbestos-containing vehicle parts (e.g., clutch plates, brake pads, shoes and linings), or remove asbestos containing residue from brake drums or clutch housings.

C. Model Accreditation Program

AHERA requires training for asbestos abatement professionals. Therefore, EPA issued the asbestos model accreditation plan.¹⁷ See Section II.A, above.

The model plan establishes five required training disciplines (worker, contractor/supervisor, inspector, management planner, project designer) and one recommended discipline (project monitor). MAP also outlines minimum requirements for initial training, examinations, and recordkeeping for training providers; and de-accreditation provisions for States to use in their accreditation programs.¹⁸ State training programs must be at least as stringent as the model plan.

The Asbestos School Hazard Abatement Reauthorization Act (ASHARA) amended AHERA cover public and commercial buildings, and increased the amount of training hours required in the various MAP course disciplines. ASHARA regulations¹⁹ require all workers, inspectors, supervisors and project designers that conduct asbestos activities in public or commercial buildings to take an EPA-approved training course. See also Section II.B, above.

MAP regulations require:

- States to authorize training providers to conduct initial and refresher training classes for five disciplines²⁰:
 - Inspector.
 - Management Planner (An accredited management planner is required for LEA activities, but optional for public or commercial building activities.)
 - Project Designer.
 - Contractor/Supervisor.
 - Worker.

¹⁵ See http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=STANDARDS&p_id=10862.

¹⁶ See http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=standards&p_id=9995.

¹⁷ 40 C.F.R. Part 763, Appendix C to Subpart E.

¹⁸ See www.law.cornell.edu/uscode/uscode15/usc_sup_01_15_10_53_20_II.html.

¹⁹ 40 C.F.R. Part 763, Appendix C to Subpart E Model Accreditation Plan.

²⁰ 40 C.F.R. Part 763, Appendix C to Subpart E Section B, Initial Training.

- States (or authorized state training providers) to administer examinations which adequately cover the topics included in the training course for each discipline.²¹
- States to either directly issue, or authorize state-approved training providers to issue, “accreditation”²² certificates to persons that successfully complete each discipline.
- Accredited persons to obtain their initial and current accreditations in the state where they are conducting work.
- Annual refresher training for all disciplines.
- States to develop criteria to de-accredit persons in all disciplines.
- States to include the requirements for electronic reporting²³ if electronic documents are received.

III. Regulated Universe

A. AHERA

AHERA covers elementary and secondary (K-12) public and private non-profit LEAs, including LEAs for charter schools and schools affiliated with religious institutions. This universe encompasses approximately 30,000 LEAs, which include an estimated 105,000 schools nationwide. Typically, a *public* LEA equates to a school district. For private, non-profit schools, the LEA is the building owner. Charter schools generally are considered to be LEAs, but this may vary in accordance with state law. Also, some jurisdictions have defined elementary education to include pre-school and/or pre-kindergarten, so that institutions providing early education may be LEAs for AHERA purposes.

Identifying the LEA for tribal schools can pose a challenge. For example, tribal schools operated by the U.S. Department of the Interior’s (DOI’s) Bureau of Indian Affairs/Bureau of Indian Education (BIA/BIE) constitute federal facilities. Thus, the LEA is the corresponding BIE Line Office. For non-BIA/BIE tribal schools, the tribal governing authority generally is the LEA. In some instances, however, these schools derive state funding which may affect the LEA determination. See also Section IX, Indian Country, below.

AHERA’s regulated universe also includes asbestos abatement contractors that work in “public” and “commercial” buildings. EPA is authorized to inspect such buildings to determine if the contractors are properly accredited.²⁴ In brief, public and commercial buildings are defined as the “interior space” of all non-school buildings (not including single-family homes and residential apartment buildings of fewer than 10 units).²⁵

²¹ 40 C.F.R. Part 763, Appendix C to Subpart E Section C, Examinations.

²² Note that MAP and the TSCA LBP programs use different nomenclature for their licensing schemes. MAP uses the term “accredited” for licensed *individuals*, whereas the LBP program uses the term for licensed *training providers* and uses the term “certified” for licensed individuals and firms.

²³ 40 C.F.R. Part 3.

²⁴ See 15 USC § 2646(a)(accreditation) and § 2610(a)(inspection authority).

²⁵ Public and commercial buildings include, but are not limited to, industrial and office buildings, residential apartment buildings and condominiums of 10 or more dwelling units, government-owned buildings, colleges,

B. Worker Protection Rule

WPR's regulated universe is comprised of state and local government employers that (a) are *not* subject to the federal OSHA asbestos standard (or an EPA-approved state asbestos worker protection program), and (b) *have* employees who work with or near ACM.

C. Model Accreditation Program

MAP's regulated universe is comprised of States that have obtained EPA authorization to operate an asbestos accreditation program (i.e., about half of the states in the nation as of FY2011).

IV. Targeting

The CMS states targeting principles generally applicable to all TSCA programs. See CMS Section V.B. The additional guidance below also applies to the AHERA and WPR programs, and MAP. For all three asbestos programs, Regions should use inspections to identify and document non-compliance with TSCA asbestos requirements, and strive for equitable protection from state-to-state.

A. AHERA

The Region should incorporate the following criteria in formulating its AHERA targeting regime:

- **Age and Condition of LEA Building Stock** – The Region should target LEAs based on whether the LEA's building stock is of an age likely to contain asbestos, particularly where buildings are undergoing renovation or upgrades that may disturb asbestos (e.g., drilling for energy-efficiency or communications/technology upgrades). Older buildings are more likely to contain asbestos and present risks as aging floor tiles, ceiling tiles, or masking may be more likely to become friable. Furthermore, older buildings that are being converted to schools (e.g., charter schools in urban areas) may pose a likelihood of exposure if not properly managed during renovations/upgrades. Thus, older schools are likely to present significant rates of non-compliance depending on the work or maintenance the schools have received over time.
- **Inspection Frequency** – The Region should target LEAs that have never been inspected, or not inspected within the past ten (10) years. Conversely, where the Region has had an active and robust inspection program, the Region may re-inspect LEAs on a regular schedule to ensure continued compliance, as resources allow.

museums, airports, hospitals, churches, preschools, stores, warehouses and factories. "Interior space" includes exterior hallways connecting buildings, porticos, and mechanical systems used to condition interior space. 40 C.F.R. Part 763 Appendix C to Subpart E Part A6.

- **LEA Compliance History** – The Region may focus on LEAs that have had significant prior non-compliance, and/or that have been subject to enforcement to ensure that the LEA has completely addressed previous issues and that no new compliance problems have arisen.
- **LEA Size** – In targeting LEAs, the Region may need to weigh the competing objectives of (a) obtaining widespread positive impact versus (b) addressing the most significant potential risk. LEA size may be an important factor in the Region’s analysis. Larger LEAs control more school buildings, so that inspections (and any subsequent enforcement) are likely to ensure protection to a large number of children. Also, larger LEAs tend to have more resources and, thus, fewer compliance problems than smaller LEAs. Conversely, smaller LEAs, including charter schools, tend to have significant non-compliance and limited resources, which tends to result in greater risk of harm, although to a smaller number of children.
- **Economic Targeting** – Regions should target poorer LEAs, including those in urban and rural areas, and in Indian country. These LEAs tend to have older buildings and less of the resources ordinarily necessary to achieve and maintain full AHERA compliance. Consequently, poorer LEAs may have greater rates of non-compliance and risk of exposure, compared to other LEAs.
- **Non-Public Schools** – The Region should target for private, religious, and charter schools. Generally, these schools do not have the resources typically available to larger, public LEAs to support full AHERA compliance. Consequently, these LEAs may have significant non-compliance and risk of exposure.
- **Public and Commercial Buildings** - To target ongoing and upcoming asbestos projects at commercial and public buildings that are subject to AHERA (e.g., where renovation or demolition projects may be removing ACM), the Region can review pertinent regulatory notifications and permits such as Clean Air Act asbestos NESHAP²⁶ notifications, and renovation/demolition permits granted by local building departments.

B. Worker Protection Rule

To target ongoing and upcoming asbestos projects subject to WPR (e.g., where state or local employees may be removing ACM), the Region can review pertinent regulatory notifications and permits, such as Clean Air Act asbestos NESHAP notifications, and renovation/demolition permits granted by local building departments.

²⁶ National Emission Standard for Hazardous Air Pollutant.

C. Model Accreditation Program

EPA has no direct implementation role for MAP. See Section I.C, above. Thus, the Region typically would not perform targeting.²⁷

V. Program Priorities

The CMS states program priority principles generally applicable to all TSCA programs. See CMS Section V.D. The additional guidance below also applies to AHERA and WPR. (There is no additional guidance for MAP.)

A. AHERA

Regions are expected to:

- Conduct inspections in each Federal Implementation Jurisdiction, including Indian country, to ensure equitable protection;
- Respond appropriately to Tips within a reasonable period of time, which may involve referring the Tip to the appropriate State Implementation Jurisdiction, or taking other appropriate action (which may or may not be an inspection²⁸); and
- Ensure that each State Implementation Jurisdiction conducts effective compliance monitoring – and that waiver jurisdictions also conduct effective enforcement.

Also, Regions should:

- Ensure that inspectors in non-waiver jurisdictions are trained and properly credentialed to perform inspections on EPA's behalf;
- Review and provide feedback on the quality of State inspections and reports;
- Provide feedback to non-waiver States on any enforcement actions the Region undertakes in response to the State's inspections; and
- Report inspection commitments by State, and consider State compliance monitoring efforts undertaken by waiver jurisdictions.

In addition, Regions should consider the following principles in developing and implementing AHERA compliance monitoring programs:

- **Community-based Monitoring** (Integrated Strategies) - Coordinate across all of EPA's TSCA compliance monitoring programs (PCBs, LBP, and New and Existing Chemicals), and with the Agency's Clean Air Act asbestos NESHAP program to provide community-based monitoring and enforcement.

²⁷ Regions rarely conduct MAP oversight inspections. A Region that elects to do so, however, should review CMS Section V.B.1 concerning targeting for oversight inspections.

²⁸ See CMS Section V.C.7, Targeting, regarding options in responding to Tips.

- **Catastrophic Events** - If new schools are being set up in response to catastrophic events, then the Region should conduct both outreach and inspections to ensure that the LEA/schools inspect for asbestos, and develop appropriate asbestos operation and management plans.
- **Work with Impacted Communities** - Regional AHERA compliance offices should partner with their regional non-compliance/enforcement counterparts (TSCA “program” office) to promote outreach and education to school advocacy organizations, such as Parent-Teacher Associations. These efforts should inform organizations about AHERA requirements (including management plans and abatement), and encourage organizations to ensure that inspections have been conducted, plans put in place, and training provided.
- **Scope of School Inspections** - Inspection of a school includes both review of the asbestos management plan(s), and physical inspection of the school building. If there is material that appears to be friable, then the Region should take samples (unless the school/LEA has documentation which attests to when samples of the material were taken and a determination made regarding whether the material contained asbestos).
- **Follow-up in an LEA** - Where the Region has determined that there is non-compliance within an LEA, the Region’s follow-up should include verification that all schools within the LEA have come into compliance. If the LEA does not document this fact, then the Region should inspect the remaining schools.

B. Worker Protection Rule

For jurisdictions that are subject to WPR, Regions are encouraged to inspect at state and local government operations to monitor WPR compliance as an alternative to LEA inspections, as appropriate and consistent with the Region’s One-TSCA approach to address the most significant environmental challenges.²⁹

VI. Program Planning

The CMS states program planning principles generally applicable to all TSCA programs. See CMS Section V.E. There is no additional guidance for the asbestos program.

VII. Program Oversight

The CMS states program oversight principles generally applicable to all TSCA programs. See CMS Section V.F. The additional guidance below also applies to oversight for the AHERA and

²⁹ See CMS Section II, Strategic Approach for TSCA Compliance Monitoring.

MAP programs. (As of FY2011, there is no WPR program oversight since no state operates an EPA-approved asbestos worker protection program.)

A. AHERA

Regions are expected to perform the following activities:

- Ensure inspection coverage in each State by either EPA inspectors (in Federal Implementation Jurisdictions) or State inspectors (in State Implementation Jurisdictions).
- Ensure that non-waiver States implement an adequate asbestos inspection program, provide a rationale where programs are not adequate, and specify adequate corrective action, since these jurisdictions conduct inspections on EPA's behalf.
- Encourage States that are not waiver jurisdictions (i.e., non-waiver States, and Federal Implementation Jurisdictions) to develop their own regulations and apply for waiver status.

B. Model Accreditation Program

The Region should follow the general guidance in the CMS regarding program oversight to assess a State's asbestos accreditation program. See CMS Section V.F. The Region may use EPA's database to identify which states have programs pursuant to MAP.³⁰

VIII. Reporting

The CMS states reporting principles applicable to all TSCA programs. See CMS Section V.G. The additional guidance below also applies to AHERA. (There is no additional guidance for WPR or MAP.)

For AHERA, Regions are expected to report inspection commitments by State for both waiver and non-waiver jurisdictions. Regions may consider compliance monitoring efforts that States perform when reporting on Annual Commitment System (ACS) commitments. Also, when reporting outcome measures, the Region should include documentation of bringing LEAs into compliance, and focus on documenting that the Region (or State) has considered and actually achieved compliance across all the schools within the LEA.

³⁰ E.g., EPA's National Directory of Accredited AHERA Courses (NDAAC).
www.epa.gov/asbestos/pubs/location.html

IX. Indian Country

The CMS states principles for compliance monitoring in Indian country that are generally applicable to all TSCA program areas. See CMS Section V.H. The additional guidance below also applies to AHERA. (Regions should follow the general guidance in the CMS for WPR and MAP.)

BIA often serves as the LEA for tribal schools. See also Section III, Regulated Universe, above. Typically, DOI and BIA/BIE are responsible for regulatory compliance for construction and environmental programs at tribal schools; and fund and oversee operational and educational functions at such schools. Therefore, Regions should coordinate with the appropriate BIA/BIE Line Office on compliance monitoring in tribal schools. These offices can be extremely helpful in understanding a tribal school's operations, identifying facilities (building types, ages, etc.), and in establishing communication with tribal school officials.

Some Tribes have their own school districts which may operate as the LEA. (Even in these instances, however, it still may be beneficial to coordinate with the appropriate BIA/BIE Line Office.) The Region should coordinate with the affected Tribe; and consult with the regional Tribal Program Office (TPO). Regional TPOs often have longstanding relationships with BIA and Tribes, and can provide assistance in working with tribal schools and developing appropriate targeting for compliance visits.

The Region also should consider compliance assistance approaches to promote tribal school compliance with AHERA. Typically, the operating budgets for BIA tribal schools are very limited, which may impact compliance with regulatory programs such as AHERA that are dependent on having sufficient staff and facilities management resources for successful operation. Also, since tribal schools often are in remote areas and significantly smaller than the average public school, the Region should consider giving BIA and tribal school staff early advance notice of compliance visits, to give the school an opportunity to coordinate with BIA (if BIA is the LEA), and ensure appropriate staff are available for consultation.

End

Appendix E. Lead-based Paint

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I. Introduction

Jurisdictional Framework for Compliance Monitoring¹

Implementation authority for EPA's Lead-based Paint (LBP)² compliance monitoring program stems from two statutes: TSCA and Title X. See Section II, Legal Background, below.

- TSCA allows a State (or Tribe*) to obtain "authorization" to implement a TSCA-equivalent program for one or more of TSCA's three LBP programs, and be a *State (or Tribal) Implementation Jurisdiction* for the particular program(s) for which it has authorization.
- Title X does not provide for State (or Tribal) authorization. Hence, the Title X §1018 lead disclosure rule (LDR) is a federal-only program; and every State (and Tribal area) is a *Federal Implementation Jurisdiction*.

*TSCA Title IV specifically provides for tribal authorization.³ The CMS uses the term "State" to include an authorized Tribe.⁴

Lead poisoning, or Elevated Blood-Lead Levels (EBLLs), can cause severe neurological damage to young children.⁵ EPA is committed to eliminating and preventing childhood lead poisoning⁶ in accordance with the national Presidential Task Force Goals to eliminate EBLLs, and LBP hazards in housing with young children.⁷ Accordingly, EPA's Strategic Goals for lead poisoned children (up to age six) charges the Agency to:

- Reduce to "zero" the number of children with EBLLs at 10 ug/dL or higher⁸; and
- Reduce to 28 percent (from 37 percent) the difference in the geometric mean BLL in low-income children versus that in non-low-income children.⁹

OECA contributes to these national goals by leading compliance assurance activities to ensure adherence to federal requirements that govern lead in paint (and other environmental media).¹⁰

¹ See CMS Sections II.C and III.C regarding EPA versus State implementation.

² See Appendix A for acronyms and generic terms used in the CMS.

³ As of FY2011, several Tribes operate EPA-authorized TSCA-equivalent LBP programs.

⁴ See Appendix A.

⁵ See e.g., www.epa.gov/lead/pubs/leadinfo.htm#health.

⁶ The protection of vulnerable populations, particularly children, is one of EPA's top priorities. See <http://blog.epa.gov/administrator/2010/01/12/seven-priorities-for-epas-future/>.

⁷ The Presidential Task Force Goals are also known as the "2010 Goals." See President's Task Force on

Environmental Health Risks and Safety Risks to Children, www.cdc.gov/nceh/lead/about/fedstrategy2000.pdf.

⁸ See EPA 2006-2011 *Strategic Plan*, Objective 4.1.1, http://www.epa.gov/ocfo/plan/2006/goal_4.pdf. The 1992-2002 baseline is 310,000 cases. The national goal is based on a model that extrapolates data from a very small sample. Even if "zero" EBLLs at 10ug/dL were achieved nationally, EBLLs (above and below 10 ug/dL) would still be present in many communities (so-called "Lead Hot Spots," see § III.A, below). Furthermore, because LBP will continue to age in place in millions of dwellings, continuing effort will be required to maintain "zero" EBLLs at 10 ug/dL nationwide, and to achieve "zero" EBLLs at concentrations *less than* 10 ug/dL.

⁹ Id. As of FY2011, the Strategic Goal to reduce the *disparity* in EBLLs between communities has largely been achieved.

Furthermore, since LBP hazards are the single greatest cause of EBLLs,¹¹ OECA is specifically committed to advancing the Presidential Goal to eliminate LBP hazards which, in turn, also advances the Presidential Goal of eliminating (and preventing) EBLLs.¹²

II. Legal Background

A. Overview

EPA's LBP program operates under two statutes and four regulations¹³:

- Title X of the Housing and Community Development Act of 1992,¹⁴ and the Section 1018 Lead-based Paint Real Estate Notification and Disclosure Rule (LDR) there-under.¹⁵ LDR compliance monitoring is federal-only; every State (and Indian country) is a Federal Implementation Jurisdiction.
- Title IV of TSCA and its three *operative* rules:¹⁶
 - The TSCA Section 402(a) Lead-Based Paint Activities, Certification, and Training Rule (Abatement Rule);
 - The TSCA Section 402(c)(3) Renovation, Repair, and Painting Rule (RRP Rule), and
 - The TSCA Section 406(b) Pre-renovation Education Rule (PRE Rule).¹⁷ The PRE Rule pre-dated, but is now a subset of, the RRP Rule.

States (and Tribes) may obtain “authorization” to administer EPA-approved TSCA-equivalent programs for *one or more* of these rules. TSCA authorization is rule-specific, so that a state is a State Implementation Jurisdiction *for the particular program(s)* for which it has received authorization. An authorized State must provide adequate compliance monitoring *and* enforcement. Non-authorized jurisdictions are Federal Implementation Jurisdictions for the particular TSCA LBP program(s) for which the State is *not* authorized.

¹⁰ OECA's Strategic Goal is to maximize compliance to protect human health and the environment through vigorous and targeted civil and criminal enforcement and to assure compliance with environmental laws. *FY 2011-2015 EPA Strategic Plan*, Objective 5. <http://epa.gov/planandbudget/strategicplan.html>.

¹¹ See generally, e.g., National Center for Healthy Housing (pub.), S. Brown, *Federal Lead-based Paint Enforcement Benchbook (2009)(Federal LBP Enforcement Benchbook)*, at Chapter I, Section A.1, www.cdc.gov/nceh/lead/Legislation%20&%20Policy/Legislation.htm.

¹² Lead poisoning risks related to violation of federal LBP requirements range from potential risk (e.g., children unknowingly being exposed to potential LBP hazards due to the landlord violation of disclosure requirements), to actual exposure to, and poisoning from, LBP due to a contractors' failure to comply with lead-safe work practices during renovations.

¹³ None of these authorities impose an affirmative obligation to undertake LBP risk reduction work. Therefore, EPA uses voluntary measures such as Supplemental Environmental Projects (SEPs) and penalty remittances to promote risk reduction projects.

¹⁴ Title X also is known as the Residential Lead-Based Paint Hazard Reduction Act (RLBPHRA) of 1992.

¹⁵ 40 C.F.R. § 745 Subpart F.

¹⁶ In the CMS, “operative” Title IV rules are those that impose obligations on a *regulated community* and, thus, necessitate compliance monitoring. These rules are distinguished from the Title IV Lead Hazard Standard and State/Tribal LBP program rule, 40 C.F.R. § 745 Subparts D (Hazard Standard) and Q (State/Tribal programs), respectively.

¹⁷ 40 C.F.R. § 745 Subparts E (RRP) and L (Abatement Rule), respectively

Together, LDR and TSCA create a “checkerboard” jurisdictional framework for LBP compliance monitoring. That is, every State constitutes both a Federal Implementation Jurisdiction (for LDR and any TSCA program for which the state lacks authorization) and a State Implementation Jurisdiction (for any authorized TSCA LBP programs). Accordingly, in every jurisdiction, the Region has responsibility for both *direct implementation* compliance monitoring (for LDR and any non-authorized TSCA programs), and *oversight* for any authorized TSCA programs. See Figure 1, below.

Fig. 1. Whether a State (or Tribe) May Be a State Implementation Jurisdiction for LBP Compliance Monitoring and Enforcement*			
TSCA			Title X
Abatement Rule § 402(a)	RRP Rule § 402(c)(3)	PRE Rule § 406(b)	LDR § 1018
Yes	Yes	Yes	No
* Authorized TSCA LBP programs must include enforcement.			

B. Regulatory Requirements

1. LDR

LDR requires that *before* a buyer or tenant is obligated under a contract to buy or lease “target housing” (most pre-1978 housing), the seller, landlord, or agent¹⁸ must provide the buyer/tenant information about the presence of LBP and/or LBP hazards; and retain records to confirm compliance. Compliance monitoring involves reviewing records that sellers/landlords are required to maintain. There are no LDR inspections of the subject housing; and LDR does not require the *submission* of records to EPA. (The Region, however, may issue an Information Request Letter [IRL] requesting voluntary submittal of required records, or use its subpoena authority under TSCA Section 11 to compel submission of records.¹⁹

2. TSCA LBP Rules

a. Abatement Rule

The Abatement Rule governs “lead-based paint activities,” i.e.: “inspections,” “risk assessments,” and “abatement”²⁰ in target housing and “child-occupied facilities” (COFs). The rule establishes:

- Work practice standards;
- Notification requirements under which operations must alert EPA to pending work projects;
- Recordkeeping obligations; and

¹⁸ In the CMS, reference to landlords includes agents.

¹⁹ See CMS Section V.C.4, regarding the use of IRLs generally.

²⁰ 40 C.F.R. § 745.223 (definitions).

- Licensing requirements, i.e., “accreditation” for training programs, and “certification” for firms and individuals (inspectors, risk assessors, supervisors, abatement workers, and project designers).²¹

Compliance monitoring involves work-site inspections, auditing training courses, and reviewing licenses and records.

b. PRE Rule

The PRE Rule, which is a component of the RRP Rule, requires that a person who performs a “renovation” for compensation in target housing or a COF distribute a lead hazard information pamphlet to the property owner and occupant no more than 60 days prior to commencing the renovation. Compliance monitoring involves inspecting records that renovators must retain to confirm compliance, such as the owner/occupant’s receipt of the pamphlet. There are no PRE inspections of the subject housing or COF; and the rule does not require the *submission* of records to EPA. (Similar to LDR compliance monitoring, the Region may use IRLs or subpoenas, as well as inspections, to acquire records.)

c. RRP Rule

The RRP Rule applies to “all *renovations performed for compensation*” in target housing and COFs. The rule requires:

- Compliance with the PRE Rule (discussed above);
- Proper training of all persons performing renovations;
- Lead-safe work practices;
- Licensing requirements, i.e., *certification* of renovation firms, renovators, and dust sampling technicians; and *accreditation* of training programs; and
- Recordkeeping by renovation firms, certified renovators, and training providers.

Like the Abatement Rule, RRP compliance monitoring involves work-site inspections, auditing training courses, and reviewing licenses and records that firms and training providers must maintain. Unlike the Abatement Rule, however, there is no RRP requirement to notify EPA of forthcoming projects.

As of FY2011, most States (and several Tribes) have authorization to operate one or more TSCA-equivalent LBP programs.²² Of these State Implementation Jurisdictions, most administer Abatement Rule programs; and a smaller number administer PRE and/or RRP programs.

²¹ “Licensing” is authorization to perform a regulated activity. See Appendix A. The terms “certification” and “accreditation” are the particular nomenclature for TSCA Title IV, whereas TSCA Title II uses the term “accreditation” for individuals. Also, some states use the term “license” for their LBP programs.

²² For the current roster, contact the regional Lead Coordinator, or <http://www.epa.gov/lead/pubs/leadoffl.htm>.

III. Regulated Universe

A. Overview

Nationally, LDR and the TSCA LBP regulations govern millions of *activities* that occur annually, i.e.: residential real estate sale and lease transactions; and abatements, renovations, and other “lead-based paint activities.”²³ The RRP Rule alone governs millions of renovation projects yearly.²⁴

Also, thousands of regulated operations are subject to inspection. The RRP Rule alone covers approximately 200,000 small businesses.²⁵ Furthermore, since this universe includes many individuals and very small businesses (so-called “micro enterprises” or “micro businesses”),²⁶ it is not necessarily a stable universe, which makes identifying regulated operations a continuing challenge.

Since the regulated universe for the LBP program is vast and transitory, knowledge of this universe is most relevant in the context of a so-called “Lead Hot Spot.” Regions are encouraged to concentrate their efforts in Lead Hot Spots,²⁷ many of which are also Environmental Justice (EJ) communities.

“Lead Hot Spot”

Lead Hot Spot is a general concept that refers to:

- Any *geographic area* (known also as a “**target area**”) with widespread and/or severe childhood lead poisoning which the Region identifies based on *evidence* of lead poisoning (e.g., EBLL testing data), or *indicators* of lead poisoning risks (e.g., housing stock predominated by older, low-income rental dwellings in disrepair).
- Alternatively, a “**target population**,” which is a particular vulnerable population among which EBLLs are prevalent (such as among certain new immigrant groups).

²³ See Section II.B.2, above.

²⁴ When EPA promulgated the RRP Rule, the Agency estimated that the rule would apply to approximately 4.4 million projects annually. 73 Fed. Reg. 21692, 21750 (4/22/2008). Since then, EPA eliminated the “owner/occupant” exemption and, thereby, significantly expanded the reach of the rule. 75 Fed. Reg. 24802 (May 6, 2010)

²⁵ 73 Fed. Reg. 21692, 21753 (4/22/2008).

²⁶ “Micro enterprise” is a general concept that refers to a very small business, such as a sole proprietorship, or a company with fewer than five employees, that has a very limited portfolio (e.g., as few as ten properties; or as few as ten regulated renovation projects with a collective value of no more than \$100,000 per year). See also Appendix A.

²⁷ See also Section IV, Targeting, below.

B. Lead Disclosure Rule

LDR's regulated universe is comprised of target housing sellers, landlords, property managers, and "agents" (construed broadly).

C. TSCA LBP Rules

The Abatement Rule's regulated universe is comprised of training providers, firms conducting abatements, and individuals (inspectors, risk assessors, supervisors, abatement workers, and project designers) that are involved in "lead-based paint activities" (abatements, etc.) in target housing and COFs.

The PRE Rule's regulated universe is comprised of "renovators," i.e., persons who perform renovations *for compensation* in target housing and COFs. This universe is the same as the universe of renovators now subject to the RRP Rule (although enforcement of the PRE Rule predated promulgation of the RRP Rule).

The RRP Rule's regulated universe is very broad and comprised of training providers, renovation firms, and individuals (renovators, and dust sampling technicians) involved in renovations of target housing and COFs. This universe includes home improvement contractors, property owners and managers, school districts, non-profit organizations, and others that perform renovations, certain property maintenance, and other regulated work, such as:

- Builders, building inspection services;
- Painters; plumbers; electricians; and contractors for heating/air conditioning, drywall, carpentry, tile, window replacement, and similar services;
- Property managers, maintenance workers, and landlords;
- Retailers that promote or contract for home improvement services;
- Child-care centers, schools with kindergarten or pre-school classrooms, hospitals with neonatal or pediatric departments; and
- Technical and trade schools, and other training providers.

IV. Targeting

The CMS articulates targeting principles generally applicable to all TSCA programs. See CMS Section V.B. The additional guidance below also applies to the LBP program.

A. Target Areas and Target Populations

The purpose of targeting for the LBP program is to locate operations that are potentially in violation where such non-compliance may cause, or pose a risk of, childhood lead poisoning. Therefore, the Region's targeting should concentrate on one or more Lead Hot Spots, since these

areas tend to have the highest concentrations of lead poisoned children and, thus, are in greatest need of intervention and prevention.

1. Target Areas and Environmental Justice Areas

A Lead Hot Spot (target area) is any city, neighborhood, rural locale, Indian country or other geographical area for which the Region has either *evidence* or *indicators* of widespread and/or severe childhood lead poisoning. See Section III.A, above. Typically, *evidence* comes from EBLL surveillance testing data. Generally, EBLL testing data is available from local health departments and other grantees of the U.S. Centers for Disease Control and Prevention (CDC). Where evidence is not available (e.g., because BLL testing is not performed or data is unreliable or unobtainable), the Region may define a target area based on *indicators* of likely lead poisoning, such as the prevalence of LBP hazards. LBP hazards are common in communities predominated by older, low-income housing in disrepair. So, the Region may use criteria such as the age, condition and/or value of local housing stock to identify a target area.

Within the selected target area, the Region's targeting priority should be older (e.g., pre-1950²⁸), low-income, multi-family rental housing in disrepair; and particularly landlords that own and/or control several such properties. Furthermore, the Region's highest priority within this sector of the target area should be to address "toxic dwellings," possibly the single greatest source of childhood lead poisoning in many communities.

"Toxic Dwelling"²⁹

Toxic dwelling refers to target housing that is associated with multiple and/or successive EBLLs, or that has significant or longstanding LBP hazards (which typically present as excessive violations of state/local health and/or housing codes³⁰).

Lead Hot Spots tend to be EJ areas since the same type of housing stock is predominant in both locales. Inasmuch as the Region's targeting protocol should focus on landlords with toxic dwellings and multiple housing properties, the Region probably will find that a significant percentage of such landlords' housing inventories are located in EJ areas.³¹

2. Target Populations

Risks to children younger than 6 years old (and to pregnant women) are of particular concern to the LBP program. Also, EBLLs are especially prevalent among particular demographic sectors, such as recent immigrants from certain countries. Therefore, the Region may select a target

²⁸ Generally, pre-1950 properties contain paint with higher concentrations of lead than do homes constructed, and thus painted, after 1950.

²⁹ See Appendix A.

³⁰ Where such violations appear to exist, the Region should consider partnering with state and local authorities on inspections, and joint or parallel enforcement actions.

³¹ Note that a landlord's office where *business records* are kept and EPA ordinarily conducts record review inspections may not be located in the Lead Hot Spot or EJ area where the subject target housing is located.

population of young children with a high incidence of EBLs, in lieu of (or in addition to) selecting a Lead Hot Spot geographical area. A Lead Hot Spot may include one or more target *populations*. Conversely, a target population may be geographically dispersed across the Region, or may reside largely within a particular Lead Hot Spot in the Region.

Figure 2 summarizes the distinctions, and interface, between Lead Hot Spot target *areas* and target *populations*.

Fig. 2. Lead Hot Spots: Target Areas and Target Populations		
Target Area	Or	Target Population
Any <i>geographic area</i> with widespread and/or severe EBLs, as shown by: <ul style="list-style-type: none"> • <i>Evidence</i> (e.g., BLL testing data), or • <i>Indicators</i> (e.g., housing inventory). May include one or more target <i>populations</i> .	↗ ↘	Any <i>demographic sector</i> comprised of young children with widespread/severe EBLs. May be located in one or more target <i>areas</i> .

B. Targeting Considerations

1. Baselines

The Region should obtain baseline information about its target area or population, if practicable.³² Baseline information may be especially useful for a narrowly-defined target area or population. For example, the Region may try to ascertain generally the prevalence and severity of EBLs among a target population based on health department data; or estimate the number or percent of known toxic dwellings in a target area based on housing department information. The Region may use available objective data (e.g., EBL statistics). When objective data is not available, reasonably current or reliable, the Region may use anecdotal information from experts at the state/local health or housing department, or the local office of the U.S. Department of Housing and Urban Development (HUD).³³

Even if it is not feasible to establish a baseline, the Region should proceed with compliance monitoring since the Region can later measure the outcomes from its efforts even if the Region cannot compare those outcomes to a baseline.³⁴

2. “Gross” versus “Subject-specific” Targeting

Regions typically need a two-stage LBP targeting strategy which includes both “gross” and “subject-specific” targeting.³⁵

³² See CMS Section V.B.2, Targeting.

³³ Also, HUD’s biennial American Housing Survey also may provide relevant information concerning the condition of housing in major metropolitan areas across the nation. See www.huduser.org/portal/datasets/ahs/ahsdata09/html.

³⁴ For instance, even without the baseline number of properties with LBP hazards, the Region can measure the number of properties at which LBP hazards were abated under SEPs pursuant to regional action.

Gross targeting, the first stage, aims to identify and prioritize the *universe* of potential Lead Hot Spots within the Region. The Region may obtain information for this targeting from a variety of sources, including:

- The Region’s own first-hand knowledge about its communities based upon information already known to the LBP, EJ, children’s health, tribal, and other relevant offices.
- Consultations with State programs – and with other relevant federal, state, tribal, and local agencies (e.g., health, housing, immigrant services).
- EBLL test surveillance data.
- Housing courts and prosecutors.
- Local lead poisoning prevention advocacy groups.
- “Data-mining” on-line databases.³⁶

Subject-specific targeting aims to locate particular operations for potential compliance monitoring.

- For LDR, this stage is to identify specific target housing (particularly toxic dwellings) and the owners/landlords of such properties. Typically, the Region will need to collaborate with relevant agencies (e.g., health and housing agencies) to obtain this information. CDC has advised state and local health departments that EPA is authorized under federal law to receive information necessary to enforce federal LBP laws.³⁷ Furthermore, CDC grantees (generally, state and local health departments) are obligated under the terms of their agreements with CDC to share such information with EPA. Nonetheless, the Region may need to enter into informal or formal information-exchange arrangements, such as Memoranda of Understanding (MOU), with agencies that possess this information.³⁸ To facilitate information exchanges with health agencies, Regions should use appropriate confidentiality and security measures.³⁹ Also, information on housing inventories and code violations may be available at little or no cost from the office of the county assessor and/or recorder of deeds.⁴⁰ Regions are encouraged to partner with other agencies to promote lead

³⁵ Similarly, the Region may employ a two-stage targeting process for the AHERA program, where the Region first uses gross targeting to identify potential LEAs, and then uses specific targeting to select individual schools (within the LEA) for inspection.

³⁶ See also www.cdc.gov/nceh/lead/data/state.htm.

³⁷ EPA and CDC have issued a joint letter to health departments stating EPA is a “public health authority” and authorized to receive information “essential for targeting efforts to address lead hazards.” See Joint Letter, CDC-EPA re: *Confidentiality of Childhood Lead Poisoning Data* (Mar. 2, 2005), www.cdc.gov/nceh/lead/Legislation%20&%20Policy/Legislation.htm.

³⁸ In 2005, OECA distributed a draft EPA-CDC information-sharing MOU that Regions may use with local health departments. See Appendix F, Lead-based Paint Resources.

³⁹ For example, Regions should obtain an online Health Insurance Portability and Accountability Act (HIPAA) certification; use a secure electronic storage site, such as their Criminal Investigation Division’s (CID) secure network server; and store all paper copies of personally-identifiable blood-lead data in their TSCA confidential business information (CBI) safe. See www.hhs.gov/ocr/privacy/hipaa/administrative/securityrule/securityrulepdf.pdf.

⁴⁰ The Region also may: (a) consult with the organizations it used for gross targeting information; (b) arrange for interns or staff to “data-mine” property title and business records; and (c) consult with HUD headquarters or its local affiliate.

safe housing and compliance but, if necessary, should exercise EPA's full legal authority to unilaterally obtain essential targeting information.

- For TSCA LBP, subject-specific targeting aims to locate particular regulated operations for potential inspection, such as individual renovators, renovation and abatement firms, and training providers.

C. Compliance Monitoring Approaches

Most LBP compliance monitoring conducted by EPA (and States) are record review inspections, with a lesser number of training course audits, and fewer work-site inspections.

Practice Note: Use a Variety of Compliance Monitoring Approaches

The Region's compliance monitoring regime should include a balanced mix of all of the tools appropriate for each rule:

- Work-site inspections (Abatement and RRP Rules).
- Training class audits (Abatement and RRP Rules).
- Record review inspections (all four rules).
- Information Request Letters and subpoenas (all four rules).

1. Lead Disclosure Rule

Since LDR imposes disclosure (but not work practice) requirements, compliance monitoring consists only of reviewing records and reports landlords/sellers are required to maintain. Regions should use IRLs, subpoenas, and other appropriate compliance monitoring methods, as well as field inspections.

2. TSCA LBP Rules

a. Abatement Rule

States conduct the majority of Abatement Rule inspections since most States (and several Tribes) have authorized programs. In the few Federal Implementation Jurisdictions, the Region should use the full array of compliance monitoring options: work-site visits; training class audits; record review inspections; and subpoenas and IRLs. Accredited training providers and certified firms must give EPA prior notice of training classes and abatement activities, respectively. Regions should use these notifications as the primary basis for targeting work-site and class audit inspections.

b. RRP and PRE Rules

The Region’s compliance strategy for the RRP and PRE Rules should aim to promote licensing (accreditation of training providers, and certification of firms and individuals); and compliance with all of the RRP requirements.

Since both the RRP and PRE Rules apply to renovations in target housing and COFs, and involve record review inspections, generally the Region should target for and conduct combined RRP-PRE record review inspections or information requests. In addition, since the RRP Rule provides the option for work-site inspections to determine actual (as opposed to renovator-documented) compliance, Regions should target for and conduct such inspections.

The RRP Rule presents significant targeting challenges because: (a) the rule does not require advance notification to EPA before commencing work; (b) many projects are of very short duration; and (c) the regulated universe is vast and transitory. Consequently, the Region may need to use innovative methods to target work-site inspections, and to identify operations that *are* subject to the RRP Rule but *not* yet licensed (certified or accredited, as applicable). Furthermore, the Region will need to determine how best to conduct inspections of “micro enterprises”⁴¹ and other operations where the business office at which records are maintained may be difficult to identify, mobile, or located in the owner’s private residence.⁴² Figure 3, below, provides examples of potential RRP work site targeting approaches.

⁴¹ See Section III.A, above. See also Appendix A.

⁴² Record review inspections may prove unproductive if a firm claims that it has never conducted any regulated renovations, and therefore has no RRP records. The Region may find it helpful to obtain evidence of regulated activity (e.g., from a Tip or inspector’s observation) *prior to* conducting any compliance monitoring, and then follow-up with an IRL, subpoena, or record review inspection.

Fig. 3: Potential Targeting Approaches for RRP Work-Site Inspections

Work-site Inspections

To identify *ongoing* renovation projects for potential work-site inspections:

- In any settlement agreement stemming from a *record review* inspection, require the respondent to notify EPA before conducting any new renovations projects for a specific duration (e.g., for six months following the settlement), and use these notifications to schedule work-site inspections of the respondent.
- Consult local building permit authorities to ascertain recently-issued permits and long-term (multi-day) jobs. Then schedule the Region’s work-site inspection to coincide with the building inspector’s visit to the project.
- Identify the largest local contactors in the target area (i.e., those likely to have projects underway every day), and show up at their offices to “ride-along” to work-sites for the day.
- To identify large apartment complexes and other multi-family dwellings where routine maintenance is probably conducted daily, target properties from among the local government’s residential rental licenses (e.g., municipal “Certificate of Occupancy” records).

Unlicensed Operations

To identify regulated, but *unlicensed*, operations (uncertified renovators and firms, unaccredited training programs):

- Compare the Region’s list of certified firms (and training providers), versus the names of operations that advertise to conduct RRP-regulated activities (or provide RRP training).
- Collaborate with home improvement retailers and other companies that engage or promote contractors to ensure that their contractors are RRP-certified, and follow required work practices.
- Coordinate with local building permit agencies to require that contractors present RRP credentials when they apply for a permit to conduct RRP-regulated projects; and to work with the Region to address contractors that perform renovations without proper credentials.

Conduct combined LDR/RRP/PRE inspections for operations that both lease, and perform maintenance, on target housing.

V. Program Priorities

The CMS states program priority principles generally applicable to all TSCA programs. See CMS Section V.D. The additional guidance below also applies to the LBP program.

A. Principles

The overarching priority of the LBP program is to eliminate LBP hazards and, thereby, support the elimination of EBLLs (see Section I, above). OECA’s NPMG states annual program priorities for LBP compliance monitoring. In addition, regional LBP programs are expected to reflect the following overarching principles:

- **National Strategies** - Participate in national compliance and enforcement strategies, such as the RRP enforcement strategy.⁴³
- **Focus** - Concentrate compliance monitoring in Lead Hot Spots (target areas/populations), as identified through EBLL data and other information. See Section IV, Targeting, above.
- **LBP Hazards and EBLL Risk** - Focus primarily on addressing non-compliance that poses the greatest risk of causing, exacerbating, or perpetuating EBLs and/or LBP hazards; and on obtaining environmental and human health benefits. Direct attention secondarily to non-compliance that may only pose an indirect risk of harm (e.g., *de minimis* technical paperwork violations).

B. Implementation

In implementing program priorities, regional programs should incorporate the following approaches:

- **Allocation of Effort / Resources** – In Federal Implementation Jurisdictions (including Indian country), appropriately allocate the Region’s direct implementation efforts between LDR versus non-authorized TSCA programs, in accordance with the NPMG and the Region’s One-TSCA approach. Place particular emphasis on ensuring compliance with new LBP requirements for which the Region has direct implementation responsibility (e.g., the RRP Rule in Federal Implementation Jurisdictions). Since the majority of States and several Tribes implement the Abatement Rule, most Regions should focus their TSCA direct implementation efforts on the remaining TSCA LBP rules (RRP and PRE Rules).
- **Program Planning and Oversight** – Conduct appropriate planning with States to ensure that State priorities are complementary to EPA’s; and provide appropriate oversight of State programs. See Sections VI and VII, Program Planning and Program Oversight, respectively, below.
- **RRP Rule** – Conduct targeted highly visible RRP inspections (and enforcement) to help ensure that the regulated workforce is trained, certified, and actually adhering to work practice standards. Coordinate compliance with non-compliance/enforcement (TSCA “program” office) activities to promote RRP training and certification. Encourage States (and Tribes) to seek authorization for the RRP Rule and other TSCA LBP programs.
- **Other Legal Authorities** - Maximize the use of RCRA Section 7003’s “imminent and substantial endangerment” authority, where appropriate.⁴⁴
- **Coordinate EPA Resources** - Coordinate Agency resources, such as OECA and OCSPP grant funds, to create incentives for States to seek TSCA authorization (particularly for the

⁴³ See the FY2012 NPMG and other OECA communiqués regarding national LBP enforcement strategies.

⁴⁴ 42 U.S.C. § 6973. EPA has used this authority to compel abatement of LBP hazards. See e.g., note 11 *supra*, *Federal LBP Enforcement Benchbook*, Chapter I,.

RRP Rule) and vigorously enforce LBP requirements (including to seek LBP abatement under state or local laws, where appropriate).

- **Integrated Strategies in Lead Hot Spots** – Use integrated strategies to address the various causes of EBLs in target areas, where appropriate. Generally, integrated strategies are about using multiple levels of coordination and collaboration to leverage resources with partners within and beyond the Agency.⁴⁵

For example, the Region’s LBP compliance/enforcement office should coordinate its direct implementation compliance monitoring across the four LBP programs, rather than follow a “stove-pipe,” regulation-specific approach. Thus, joint RRP-PRE inspections should be routine. Also, when planning LDR compliance monitoring, the inspector should determine whether any regulated renovation activities have been performed at the subject properties and, if so, conduct joint LDR/RRP/PRE record review compliance monitoring, as appropriate. Furthermore, when apparently illegal (non-lead-safe) renovations have been performed but did not directly involve the landlord, the inspector should identify the third party renovator as a potential subject for a future RRP/PRE inspection, as appropriate.

Also, the Region’s LBP compliance/enforcement office should work with the Region’s TSCA program office; the Region’s tribal, EJ, and children’s health program offices; and other regional offices that address lead in air, drinking water, and soil.

Furthermore, the Region should partner with other federal, state and local governments to promote compliance with both federal LBP requirements and any state/local laws aimed at eliminating and preventing EBLs. Such partnerships may involve training and capacity-building, joint compliance monitoring, and/or joint or parallel enforcement. Specifically, the Region is encouraged to partner with the following types of organizations:

- HUD - Particularly when focusing on low-income rental housing, Regions should collaborate with the headquarters and/or local HUD offices. Although EPA and HUD can unilaterally enforce LDR in any target housing, the agencies often cooperate on targeting, compliance monitoring, and/or enforcement.⁴⁶ When collaborating on compliance monitoring with any partnering agency, *before conducting any inspections*, EPA and the other agency should agree (or devise a criteria for later agreeing) on which agency will handle any enforcement actions that arise from the inspections.⁴⁷ Since

⁴⁵ See e.g., Appendix F, Item #2, Lead-based Paint Resources, for the Hypothetical “Region XV” LBP Integrated Strategy.

⁴⁶ Under a 1997 MOU and accompanying guidance, EPA and HUD envisioned that EPA would focus on non-HUD-affiliated target housing, whereas HUD would be primarily responsible for HUD-affiliated target housing. (Approximately 38 million pre-1978 dwellings have LBP, of which fewer than 5 million receive some form of government assistance.) These instruments, however, do not nullify the independent authority of either agency to enforce LDR. *Memorandum of Understanding Between The Environmental Protection Agency and the Department of Housing and Urban Development for the Enforcement of Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992* (Nov. 18, 1997); and *Guidance on Coordination Between EPA & HUD - Section 1018 Lead-Based Paint Disclosure Rule Investigations – Consistent with the HUD-EPA MOU* (Mar. 2, 1998).

⁴⁷ In any such collaboration, EPA does not abrogate its responsibility to enforce unilaterally if necessary under its own authority if EPA and the other agency cannot agree upon the enforcement approach in a case, even though the

EPA’s objective is to eliminate LBP hazards (and, thereby, support the elimination of EBLLs), the decision regarding which agency will enforce should take into account which organization has the more effective tools for obtaining LBP abatement or other risk reduction work.⁴⁸

- State/Local Health and Housing Agencies – Regions should work with state, tribal and local government agencies on enforcement of their respective lead, LBP, housing, and health/sanitation codes, particularly where such other agencies have authority to compel owners/landlords to eliminate or prevent LBP hazards.⁴⁹
- Other Federal Agencies – Regions may work with federal agencies that have authority to address other sources of lead exposure that contribute to lead poisoning. Examples include the Consumer Product Safety Commission (CPSC), which has purview for lead-contaminated toys, consumer goods, ethnic remedies and foods, and other products; the Occupational Safety and Health Administration (OSHA), which has responsibility for worker safety (since, some children are exposed to lead dust brought into the home on work uniforms or equipment); and the U.S. Department of Energy (DOE) and other organizations that support “Healthy Home,” weatherization and similar programs.

VI. Program Planning

The CMS states program planning principles generally applicable to all TSCA programs. See CMS Section V.E.

In addition, Regions should encourage States to participate in national compliance and enforcement strategies, focus on identified Lead Hot Spots (target areas/populations), and implement integrated strategies in those areas.

VII. Program Oversight

The CMS states program oversight principles generally applicable to all TSCA programs. See CMS Section V.F. The additional guidance below also applies to the LBP program.

partnering agency may have comparable legal authority. The Region, however, should attempt to recognize foreseeable conflicts; discuss them with the partnering agency; and resolve them prior to undertaking joint activity.⁴⁸ For example, some local health and housing departments are empowered to order abatement, whereas EPA uses voluntary measures, such as SEPs.

⁴⁹ Since neither TSCA nor LDR empower EPA to compel risk reduction measures, if the Region is unable to obtain voluntary commitments for risk reduction then, as appropriate, the Region should partner with other agencies that have authority to demand such work. Similarly, Regions should encourage States to promote voluntary risk reduction and, if necessary, partner with others or use their own non-TSCA authorities, to compel such work.

A. Federal Implementation Jurisdictions

Regions have no program oversight responsibility in Federal Implementation Jurisdictions, since EPA itself has direct implementation responsibility.

B. State Implementation Jurisdictions

In State (and Tribal) Implementation Jurisdictions for authorized TSCA LBP programs, the Region is expected to ensure national consistency in program oversight and specifically to:

- Conduct oversight activities, which may include oversight inspections in each State.⁵⁰
- Provide updates to OECA on State actions and outcomes at least quarterly, through discussions, reports, and other existing channels of communication.
- Focus on capacity-building to ensure that each State uses an array of compliance monitoring tools to promote compliance; and focuses on reducing LBP hazards (and EBLLs) in identified Lead Hot Spots.

VIII. Reporting

The CMS states reporting principles generally applicable to all TSCA programs. See CMS Section V.G. In addition, Regions are to manually report for each authorized State (and Tribe) the number of State (and Tribal) LBP inspections and enforcement actions.

IX. Indian Country

The CMS states principles for compliance monitoring in Indian country that are generally applicable to all TSCA program areas. See CMS Section V.H. Regions should follow the general CMS guidance.

End

⁵⁰ It may or may not be important to include oversight *inspections* as an oversight activity. For instance, the Region may obtain a good sense of the effectiveness of the State's monitoring of training providers by reviewing the State's inspection reports, as opposed to auditing training courses itself.

Appendix F. Lead-based Paint Program Resources

Contents

- #1 Sample Information-sharing Memorandum of Understanding
- #2 Hypothetical Region XV Integrated Strategy

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SAMPLE

**Memorandum of Understanding between
The ____ Department of Health,
Childhood Lead Poisoning Prevention Program
and
The United States Environmental Protection Agency,
Region __ Office of _____**

Introduction

This Agreement describes the responsibilities agreed to by the _____ Department of Health (__DOH), Childhood Lead Poisoning Prevention Program and the United States Environmental Protection Agency (USEPA), Region __ Office of _____ (O____) with respect to cooperative work projects to prevent childhood lead poisoning within the State/City of ____.

The purpose of this collaboration is to study the impact of the environment on children's health in _____. This Agreement will build on the working relationship that already exists between the agencies and increase effective communication and technology transfer between O____, __DOH, and the public health community in _____ (state/city). Participating organizations will offer each other technical expertise in areas such as computer mapping with geographic information systems (GIS), epidemiology, and statistics. [Note: Some CDC grantees understand that all Regions possess mapping capability & can provide maps to grantees – the Region should address this expectation if this is not accurate.]

DOH Responsibilities

1.1 DOH will have the primary responsibility for acquiring data for use by the agencies.

1.2 DOH will maintain the confidentiality of _____ residents by stripping all data of unique identifiers prior to providing it the EPA for analysis. DOH will fully retain all its rights and responsibilities regarding ownership of confidential data.

¹ This sample MOU was first provided to regional LBP enforcement personnel in/around 2005 for purposes of illustration. It is based on a sample provided by the U.S. Centers for Disease Control and Prevention (CDC), which OECA edited to include EPA information. Regions have the option to use this sample as a starting point in developing an information-sharing agreement with local health departments.

EPA Responsibilities

2.1 EPA agrees to keep confidential the identity of individuals and the contents of all data files that have been provided by the ____ DOH. EPA also understands that all information and data provided by the _____ DOH is confidential and should only be discussed with or released to individuals who have the right to access such information under the laws of the State of _____ and under ____ (city) DOH policy or as required by federal law.

2.2 EPA staff will contact city DOH staff to provide updates on work done based on the childhood lead information. EPA and DOH will discuss new offenders or problems that EPA can assist with. [EPA will provide such updates on a mutually agreed-upon frequency.](#)

2.3 EPA will use the child lead data to create maps for the DOH.

General Provisions

3.1 Timetables for activities and review will be agreed upon by both parties and will be subject to revision as needed.

3.2 This Agreement will be terminated upon written notice by either DOH or USEPA Region ____ O____.

3.3 Nothing in this Agreement is intended to diminish or otherwise affect the authority of either __DOH or USEPA to implement its respective statutory functions. This Agreement is effective upon signature of both parties.

The undersigned hereby agree to the foregoing Memorandum of Understanding:

Department of Health

U.S. Environmental Protection Agency

Title:

Title:

Date:

Date:

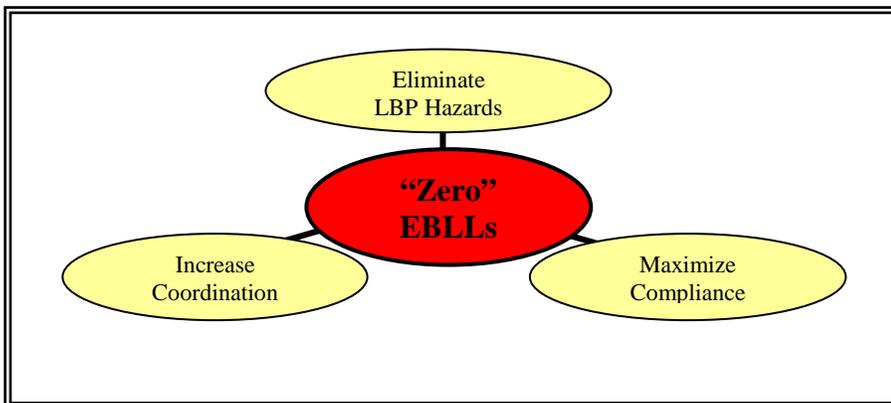
ILLUSTRATION: “REGION XV” INTEGRATED STRATEGY FOR LEAD

Table of Contents (to be conformed to final text)	
Purpose of this Illustration	
Phases of Region XV Integrated Strategy	
I.	Targeting
II.	Identifying Major Sources of Exposure, and Determining Baselines
III.	Conducting Activities to Address the Major Sources of Exposure
IV.	Measuring Outcomes

Purpose of this Illustration

This scenario describes how a hypothetical Regional Lead Program (Region XV) might go about formulating and implementing an Integrated Strategy (Strategy) to address childhood lead poisoning (EBLLs). This illustration discusses the major decisions and activities to optimize the Strategy. Although the entire scenario is hypothetical, it incorporates a variety of methodologies Regions have actually used. **It is unlikely that a single Region would necessarily need, or be able, to implement every approach described here.**

Fig. 1. Overarching Aims of Integrated Strategy



¹ This hypothetical LBP integrated strategy was drafted in 2009, for illustration purposes only, in connection with development of a LBP pilot that was contemplated at that time.

Region XV Integrated Strategy

Overview

Region XV devised its Strategy to address the root causes of lead poisoning (EBLLs) in a high-priority lead “hot spot.” The Strategy’s overarching aims – i.e., **reduce EBLLs to “zero” by eliminating LBP hazards, increasing coordination, and maximizing compliance** – aligned with EPA’s charge under its Strategic Plan and the 2010 Goals to:

- Reduce EBLLs (10ug/dL or higher) among young children to “zero”;
- Eliminate EBLLs through increased inter-governmental coordination;
- Eliminate LBP hazards in housing with young children through enforcement and other means;
- Maximize environmental compliance through compliance assurance activities²; and
- Reduce “to 28 percent” the EBLL disparity between low-income versus non-low-income children.³

Figure 1 illustrates how these overarching aims relate to the penultimate objective of eliminating EBLLs.

The Region designed its Strategy to fulfill its OECA and OCSP Annual Commitment System (ACS) requirements, and increase its enforcement accomplishments (e.g., value of cases and SEPs). Also, the Region elected to include residential contaminants in its Strategy.

Region XV’s Strategy encompassed four phases, as discussed below:

- I. Targeting.
- II. Identifying major sources of exposure, and determining baselines.
- III. Conducting activities to address the major sources of exposure.
- IV. Measuring outcomes.

² EPA Strategic Objectives 4.1.1 and 5.1, and Presidential 2010 Goals.

³ The Strategy did not focus on the EBLL disparities aspect of Objective 4.1.1 because the target population was almost exclusively low-income – and CDC reports indicate that the national benchmark (28%) may have been attained.

PHASE I. Targeting

“Gross” Targeting

First, Region XV identified the universe of lead “hot spots” in the Region. It preliminarily scoped out a dozen communities that presented indicators of having a sizeable population of children that were, or were at risk of becoming, lead poisoned. Those community-wide indicators included:

- Surveillance data showing a prevalence of EBLLs among children tested – and large numbers of children in need of BLL testing;
- A housing stock predominated by older, deteriorated dwellings, particularly “toxic dwellings” associated with multiple and/or successive lead poisonings and/or LBP hazards⁴;
- An array of environmental and non-environmental sources of lead; and
- Populations known for favoring imported lead-contaminated foods and other products.

For this initial targeting, the Regional Lead Program consulted its TSCA-authorized states, and used its own historical knowledge about communities throughout the Region. Also, it used information from the Region’s environmental justice, children’s health programs, tribal, compliance assistance, brownfields, air, drinking water, and solid waste (site remediation) offices – and worked with these offices in devising and implementing its activities. Furthermore, it consulted with state and local health, housing, and immigrant services agencies. The Region verified, updated, and expanded this largely anecdotal information with objective data available online and otherwise (e.g., updated BLL test data, national housing surveys⁵, census data). Consequently, the Region narrowed its focus to a few potential target areas.

Ultimately, Region XV selected a target city (Leadville, Toxylvania) based upon its judgment regarding where (a) the need was greatest, and (b) EPA could have the most far-reaching impact by leveraging its resources with those available to the city. The Region planned to duplicate the most effective approaches from the Strategy in other lead hot spots throughout the Region in the future.

Figure 2 summarizes Region XV’s research and analysis. In short, a significant portion of the city’s child population had, or was at-risk of, lead poisoning from a variety of sources – and the city had, or with EPA’s intervention could better access, many of the legal, financial, and community “building blocks” for addressing lead poisoning.⁶ Region XV determined that it

⁴ Typically, toxic dwellings have extensive histories of lead-related tenant complaints, health or housing code violations, enforcement actions, and repair or abatement orders.

⁵ HUD’s biennial American Housing Survey provides information about the housing stock in many cities. www.hud.gov/

⁶ The infrastructure for addressing lead poisoning include: (1) building awareness and public support; (2) building capacity for lead safety; (3) collaborations and incentives; (4) financing; (5) lead safety standards; (6) targeting high TSCA CMS – Appendix F. Lead-based Paint Program Resources

could address the environmental sources of lead directly through Compliance Assurance (inspections, enforcement, etc.) and Environmental Promotion - and through Partnerships address the non-environmental sources of lead, while also building the city's capacity for its own long-term response to lead.

Figure 2. Region XV Analysis of Target Area/Population

Next, Region XV focused on a specific city neighborhood (Burdened Heights), which was particularly susceptible to multiple sources of lead, and home to a large at-risk population (Atriskian immigrants). Region XV identified this at-risk population as the “bullseye” of its targeting. That is, although the Strategy included activities to address lead city-wide, the most resource-intense efforts were aimed at sources directly affecting this target population within the target area.

The Region obtained baseline information throughout the targeting process. (See below.)



MEMORANDUM

From: Lead Program, Region XV
To: Lead Manager
Re: Preliminary Analysis of Leadville, Toxylvania as Potential Target Area for Lead Integrated Strategy

The **City of Leadville** is located in **Leadbury County**, in the **State of Toxylvania**. Toxylvania is authorized to administer TSCA § 402 and § 406(b), but has not sought RRP Rule authorization.

Demographics: The city includes residents of all economic and educational backgrounds. Notably, relative to its total population (250,000), a substantial portion (%) of Leadville's population is under age 12. The city includes a substantial population of new immigrants (%), including a growing population of immigrants from **Atriskia** (estimated at #), many of whom favor a variety of imported “ethnic” products (e.g., foods, remedies) that typically contain lead. The city's population includes white- and blue-collar workers (renters and home owners) employed in light industry (including several lead smelters); and a significant number of semi-skilled workers and day-laborers (generally, renters) employed in construction, maintenance and other trades; and an influx of middle-income residents who are renovating older historic homes.

A relatively small portion (%) of the child population is Medicaid-eligible – and of these, many do not get tested. Of those tested, there is a moderate incidence of EBLLs (# or % @ 10 ug/dL). Notably, of the Atriskian children tested, EBLLs are more prevalent and higher (# or % @ 10 ug/dL) – and within their families, older children and adults also have EBLLs.

Childhood asthma rates are fairly high, as indicated by the number of pediatrician and emergency room visits for this condition (#). Anecdotal evidence indicates that asthma may be due, in part, to indoor air contaminants, such as formaldehyde and other toxic chemicals “off-gassed” by carpeting and other household goods; mold, mildew, and pest feces; and overuse of chemical pesticides. The mold, mildew and pest infestation may be related to inadequate home sanitation, and excessive moisture from insufficient ventilation. (The local housing code does not set ventilation standards, or require impervious kitchen and bathroom flooring.) Lung cancer rates are slightly higher than the national average; and EPA radon maps indicate emission levels in excess of recommended action levels.

Immigrant populations are dispersed across several low-income neighborhoods, but many reside in **Burdened Heights**, which abuts several industrial facilities. This area is home to a sizeable population of Atriskian immigrants, and to many workers employed at nearby industrial plants.

Address-specific Targeting

Region XV used an array of mechanisms to obtain address-specific targeting information. The Region:

- Executed an information-sharing MOU with the Department of Health (DOH) Childhood Lead Poison Prevention Program (CLPPP) to identify properties with EBLL children (which

risk homes; and (7) using code enforcement. CDC, *Building Blocks for Primary Prevention: Protecting Children from Lead-Based Paint Hazards* (Oct. 2005), www.afhh.org/buildingblocks/.

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Appendix F. Lead-based Paint Program Resources

required CDC assistance to answer DOH's questions about confidentiality⁷) – and a comparable MOU with the state's immigrant services agency to obtain data from the BLL testing it requires for entering and recent immigrants.

Fig. 1 (cont'd)

- Arranged for “data-mining” of property title and business records to identify owners, lessors and agents; and to determine their complete real estate portfolios. (The Region used a combination of contractors, student interns, and tenant advocate volunteers for this task.)
- Partnered with the local prosecutor and Local Housing Department (LHD) to identify toxic dwellings and their owners/lessors/agents. To facilitate this cooperation -- and to encourage more vigorous code enforcement -- the Region made presentations to LHD personnel, local elected officials, housing court

MEMORANDUM re: Leadville (page 2)

Potential Sources of Lead

- Housing Stock. Although the city has moderate- to middle-income housing, older low-income rental and owner-occupied dwellings predominate (#). The city has a sizable number of federally-subsidized rental dwellings (#), and two large federally-owned housing projects. A growing number of residents are renovating older, historic homes. Also, a small DOD installation, with housing for military personnel, is located near the city.
- Retailers. The city has outlets of most national retail super stores, including Lewe's Hardware, Waremart, and Dime General. Notably, Waremart features a vast inventory of imported goods (e.g., food, pottery, dishes, glasses, tableware, glazed goods, toys). Burdened Heights has several specialty shops and markets that feature imported, apparently lead-laden, ethnic products (e.g., foods, spices, remedies, candies, cosmetics).
- Community Facilities. Artificial turf is located on an athletic field on the border of Burdened Heights. The field is owned and operated by the local department of recreation; and used by neighborhood children, schools, and community groups.
- Industrial Sites and Public Works. Several small- to mid-size industrial facilities are scattered throughout the city. A few, including several smelters, are located in or near Burdened Heights – and many Burdened Heights residents work at these plants. Leadville has an aged public drinking water system.

State and Local Infrastructure and Potential Partners. There is a state lead disclosure law and general health code -- but no state, county or city lead abatement law. Also, the state has a lead abatement fund for low-income residents which has been underutilized, in part, because residents have difficulty navigating the application process, do not wish to relocate during abatement, and only a few authorized abatement contractors currently operate in Leadville. The state has departments of health, consumer affairs, immigrant services, and economic development. The immigrant services office requires BLL testing upon arrival, and six months thereafter. The state also has a University Cooperative Extension Service (CES), and School of Law school with a law clinic.

The city has a nuisance law, housing code, and housing court, but enforcement has been limited and not focused on lead (in part, because local leaders do not want to disrupt the availability of low-income housing). The Local Housing Department (LHD), however, is willing to enforce lead-related code violations. The city expects to receive federal stimulus funds for repairs to public works (e.g., water systems, roads), and housing rehabilitation projects. Also, the city has access to DOE home weatherization funding. Furthermore, the city has a health (sanitation) code, and the Department of Health (DOH) CLPPP wants to work with EPA, although DOH has questioned the legality of sharing its information. Several advocacy groups are active in the city, including ones focused on tenant's rights, immigrant services, and lead poisoning.

--- End ---

judges and prosecutors, and other community leaders on lead poisoning, the scope and limitations of federal law, and the importance of local code enforcement.

- Engaged a local community group to survey tenants to identify housing with LBP hazards.
- Consulted with the local HUD affiliate to identify dwellings with LBP hazards (some of which turned out to be subject to enforcement under HUD's Lead Safe Housing Rule and other authorities).

⁷ See also, e.g., [Overcoming Barriers to Data-Sharing Related to the HIPAA Privacy Rule: A Guide for State and Local Childhood Lead Poisoning Prevention Programs](http://www.cdc.gov/nceh/lead/policy.htm) (June 2004), www.cdc.gov/nceh/lead/policy.htm.

PHASE II. Identifying the Major Sources of Exposure, and Determining Baselines

During targeting, Region XV identified the major sources of lead (and several residential contaminants) that adversely affected children’s health in the target area and, specifically, among the target population.

Lead-based paint hazards included:

- “Ongoing” LBP hazards in paint, dust and soil in deteriorated housing, particularly in toxic dwellings.
- “Episodic” LBP hazards in otherwise lead-safe housing, created by unsafe work practices during repairs, remodeling and other activities. (Once created, these might also be considered an ongoing hazard).

Non-paint environmental sources of lead included:

- Air emissions from local smelters.
- Lead solder in drinking water pipes in certain areas of the town.
- Lead-contaminated soil at an abandoned industrial site to which neighborhood children have access – and fugitive dust emissions from that soil under windy conditions.

Non-environmental sources of lead included:

- Lead in imported foods, spices, candies, trinkets and other goods from several neighborhood markets and specialty stores.
- Lead in imported house wares, toys, and other goods from national super stores.
- Lead-contaminated artificial turf on a city-owned athletic field used by neighborhood children, local schools, and community groups.
- Lead dust brought into homes on work uniforms and tools.

Residential contaminants included:

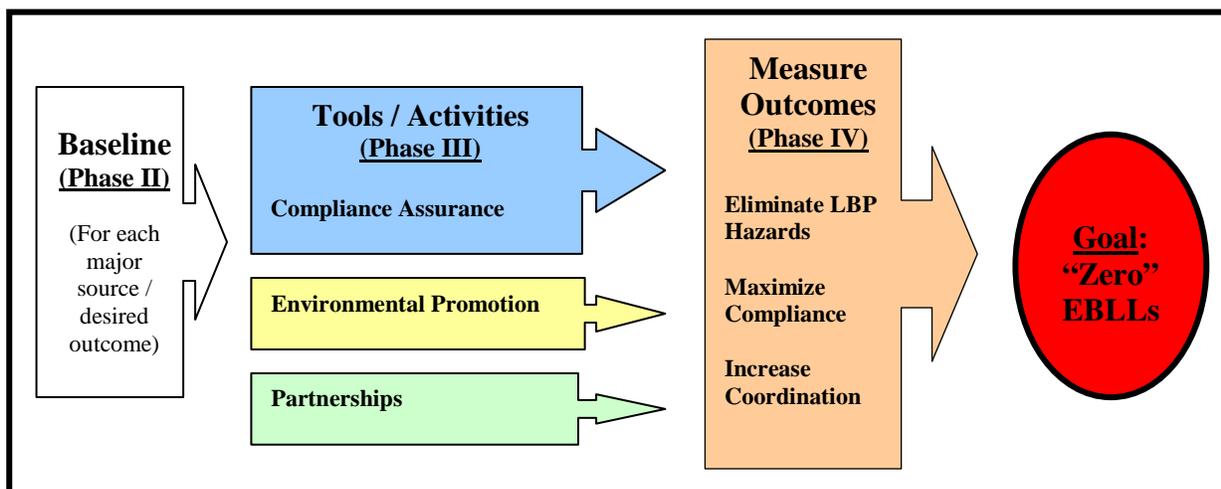
- Mold, mildew, and pest feces associated with inadequate home sanitation, and unregulated moisture levels.
- Overuse of chemical pesticides to address pest infestation.
- Formaldehyde and other chemicals off-gassed by carpeting and other household goods.
- Radon.

Establishing Baselines

Region XV established baselines for the sources of lead affecting the target area/population against which to later assess the impact of its Strategy (Phase IV, Measuring Outcomes). The Region used statistical data obtained during targeting. Where such data was not available, the Region used other means, such as informal surveys with knowledgeable officials and community leaders, to generate a reasonably accurate representation of current conditions. Even where the Region was unable to establish a baseline, it proceeded with those activities aimed directly at reaching its primary objectives, since the Region could later measure outcomes even if it could not compare those outcomes to a baseline.⁸

Figure 3 illustrates Region XV’s view of the relationship between the baseline for each major source of lead (Phase II), the tools/activities it would use to address each source (Phase III), and the desired outcomes relative to the Strategy aims (Phase IV).

Fig. 3. Relationship between Baseline, Activities, Outcomes, Aims



Specifically, the Region sought to characterize the current situation for lead sources (but not for residential contaminants)⁹ relevant to its overarching aims as follows:

- “Zero” EBLLs¹⁰ (Objective applies to all activities in the Strategy.)
The prevalence and severity of EBLLs among children tested - and the extent to which children (particularly those without Medicare) were in need of BLL testing.

⁸ For instance, even if the Region could not establish the baseline number of properties with LBP hazards, it nonetheless could measure the number of properties at which actual or potential LBP hazards were eliminated under abatement SEPs.

⁹ Although Region XV included residential contaminants in its Strategy, the Region did not establish a baseline (or measure outcomes), since it’s focus was limited to screening and making referrals to appropriate offices/organizations.

¹⁰ The Region sought a marked *reduction* in EBLLs among the target population, since absolute “zero” is unobtainable.

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- Eliminate LPB Hazards (relevant to LBP):
 The prevalence of LBP hazards where young children lived or visited (e.g., estimated number of dwellings with LBP hazards; number of high-priority toxic dwellings; overall age and condition of the housing stock).

- Maximize Environmental Compliance (relevant to LBP and non-paint environmental lead):
 The identity, and compliance status, of entities subject to § 1018, TSCA, CAA, SDWA, RCRA Subtitle C, and CERCLA.

- Eliminate EBLLS through Increased Coordination (relevant to all sources):
 For LBP, the current response of state and local agencies when a property is identified as having an EBLL child, LBP hazards, or lead-related code violation, e.g., how quickly and aggressively agencies investigate, order repairs or abatement, pursue enforcement, and ensure actual performance of required work – and the extent to which these agencies coordinate, if necessary, to obtain a timely and appropriate outcome. For non-environmental lead, the identity and apparent compliance status of sources of lead subject to other federal authorities, e.g., FDA, CPSC, USDA, OSHA.

Figure 4 summarizes how the Region’s baseline analyses aligned with its overarching aims and the various sources of lead.

Fig 4. Integrated Strategy: Strategy Aims and Baseline Analysis

Aims	Sources	Baseline (for Target Area/Population)	Activities	Outcomes
“Zero” EBLLs	All sources	Of children tested: % with EBLLs; Average BLL Of children in need of testing: # (or % of population)	See III (Activities)	See IV (Measuring Outcomes)
Eliminate LBP hazards	LBP	# or % dwellings with LBP hazards		
Maximize environmental compliance	LBP & non-paint enviro'l sources	Compliance status of sources subject to §1018, TSCA, CAA, SDWA, RCRA-C, CERCLA		
Eliminate EBLLs through increased coordination	All sources	<u>LBP:</u> (Data concerning other agencies) - # or % outstanding complaints about properties with EBLLs, LBP hazards, and/or lead-related code violations - # outstanding abatement/repair orders - Avg. # days between property identification -- investigation – enforcement – performance of abatement/repair <u>Non-environmental Lead:</u> (Data concerning other agencies) Apparent compliance status of sources subject to FDA, CPSC, USDA and other authorities		

PHASE III. Conducting Activities to Address Major Sources of Exposure

Region XV’s lead program used a variety of tools (activities) to achieve its overarching aims. The Region selected the activities for its Strategy from among the “menu” of tools available to address the major sources of lead affecting the target area/population. Figure 5 summarizes this menu.

Fig. 5. Menu of Tools for an Integrated Strategy

<u>Compliance Assurance</u> (Focus: Regulatory Compliance)	<u>Environmental Promotion</u> (Focus: Compliance, Prevention, Stewardship, Voluntary Risk-Reduction)	<u>Partnerships</u> (Focus: Capacity-building, and Enhancement of EPA’s Compliance Assurance and Environmental Promotion)
<ul style="list-style-type: none"> - Enforcement - Compliance Monitoring/Inspections - Compliance Incentives - Compliance Assistance 	<ul style="list-style-type: none"> - Education - Training to regulatees - Demonstration projects - Research - Voluntary Programs 	<ul style="list-style-type: none"> - Intra-agency partnerships - Interagency partnerships (Federal, state & local government; and non-governmental)

The Region’s selected activities are explained below. In selecting which activities to implement, the Region considered the outcome likely to be derived from each activity – and how each would advance the Strategy’s overarching aims, either directly or indirectly. Figure 6 illustrates how the activities to address LBP hazards aligned with the aim to **Eliminate LBP Hazards** as a means to eliminate EBLs. Figure 7 illustrates how activities for non-paint environmental lead (along with those for LBP hazards) advanced the aim to **Maximize Compliance** as a way of eliminating EBLs. Figure 8 summarizes all of the Region’s activities for all sources of lead, and residential contaminants.

1. Lead-based Paint Hazards

“Ongoing” LBP Hazards

The Region’s Strategy focused largely on eliminating “ongoing” LBP hazards in deteriorated housing, relying primarily on § 1018, and using RCRA § 7003 for the most significant toxic dwellings.

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compliance Assurance	<p>The Region:</p> <ol style="list-style-type: none">1. Conducted §1018 inspections, which helped fulfill its OECA ACS obligations; and coordinated those inspections with the DOH, LHD, and HUD.2. Pursued § 1018 enforcement actions and, in certain instances, joined HUD in referring appropriate cases to DOJ for judicial enforcement – and promoted inclusion of SEPs and Child Health Improvement Projects (CHIPs) for abatement and other risk-reduction measures.3. Issued RCRA § 7003 orders for the most significant toxic dwellings.4. Coordinated with the state to focus the state’s § 402/406(b) inspections and enforcement on contractors operating in the target area.
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Environmental Promotion	<p>The Region also:</p> <ol style="list-style-type: none">5. Performed all OCSPP-required environmental promotion activities to advance § 1018 compliance and promote landlords’ voluntary standards-of-care (e.g., inspection and auditing schedules, improved repair, maintenance and other measures to prevent, identify, and correct LBP hazards and the underlying conditions that create them).6. Coordinated with the state to focus the state’s § 402/406(b) education campaign on the target area/population.7. Issued a grant to a community-based Non-Governmental Organization (NGO) to provide in-home education to the local immigrant community on lead poison prevention. <u>This particular activity, as well as certain others, applied to addressing several sources of lead (and residential contaminants) affecting the target area/population.</u> (See e.g., Residential Contaminants – Activity #4.)8. Trained local emergency personnel (first responders) to spot obvious LBP hazards in the course of their normal work, and make referrals to the Region, DOH and/or LHD for further action. (See also Residential Contaminants – Activity #2.)
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Partnerships	<p>The Region:</p> <ol style="list-style-type: none">9. Collaborated with the state on parallel enforcement of § 1018 and the state’s lead disclosure law.10. Made compliance with outstanding DOH and LHD abatement/repair orders an obligation in settlements to resolve § 1018 (and RCRA § 7003) violations.11. Urged LHD to timely follow-through on its enforcement of lead-related violations of the local housing, health/sanitation, nuisance, building, emergency and other codes.12. Partnered with local property management firms to promote landlord’s voluntary standards-of-care.13. Partnered with an NGO to obtain LBP risk assessments (which would be subject to § 1018 disclosure requirements).14. Consulted with the University Law Clinic to help ensure that LBP hazards would be addressed when students represented tenants in housing court.
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“Episodic” LBP Hazards

Region XV relied on the RRP Rule to address “episodic” LBP hazards.

Compliance Assurance

The Region:

1. Conducted RRP Rule inspections (which helped fulfill its ACS obligations). The Region performed both recordkeeping inspections of certified firms and accredited trainers, and several renovation work site inspections to ensure an effective enforcement presence. To identify potential targets for work site inspections, the Region consulted the city’s building permit agency to identify large (multi-day) jobs scheduled to be performed in the target area. The Region also identified the largest local contactors (those likely to have projects underway every day), and showed up at their offices to “ride-along” to work sites for the day. Furthermore, the Region identified (for both RRP Rule and § 1018 inspections) high-risk multi-family apartment buildings via certificate of occupancy inspections, renovation and zoning permits, and other permits issued to the building owners/landlords/agents. The Region also responded to tips and complaints where appropriate.
2. Conducted an RRP Rule Compliance Incentive Project (CIP) initiative. The CIP allowed renovators to voluntarily disclose their non-compliance with RRP Rule recordkeeping requirements, and resolve their liability with a reduced penalty and change in operations.
3. Pursued enforcement in appropriate cases – and, for maximum deterrent effect, ensured those actions were widely publicized.

Environmental Promotion

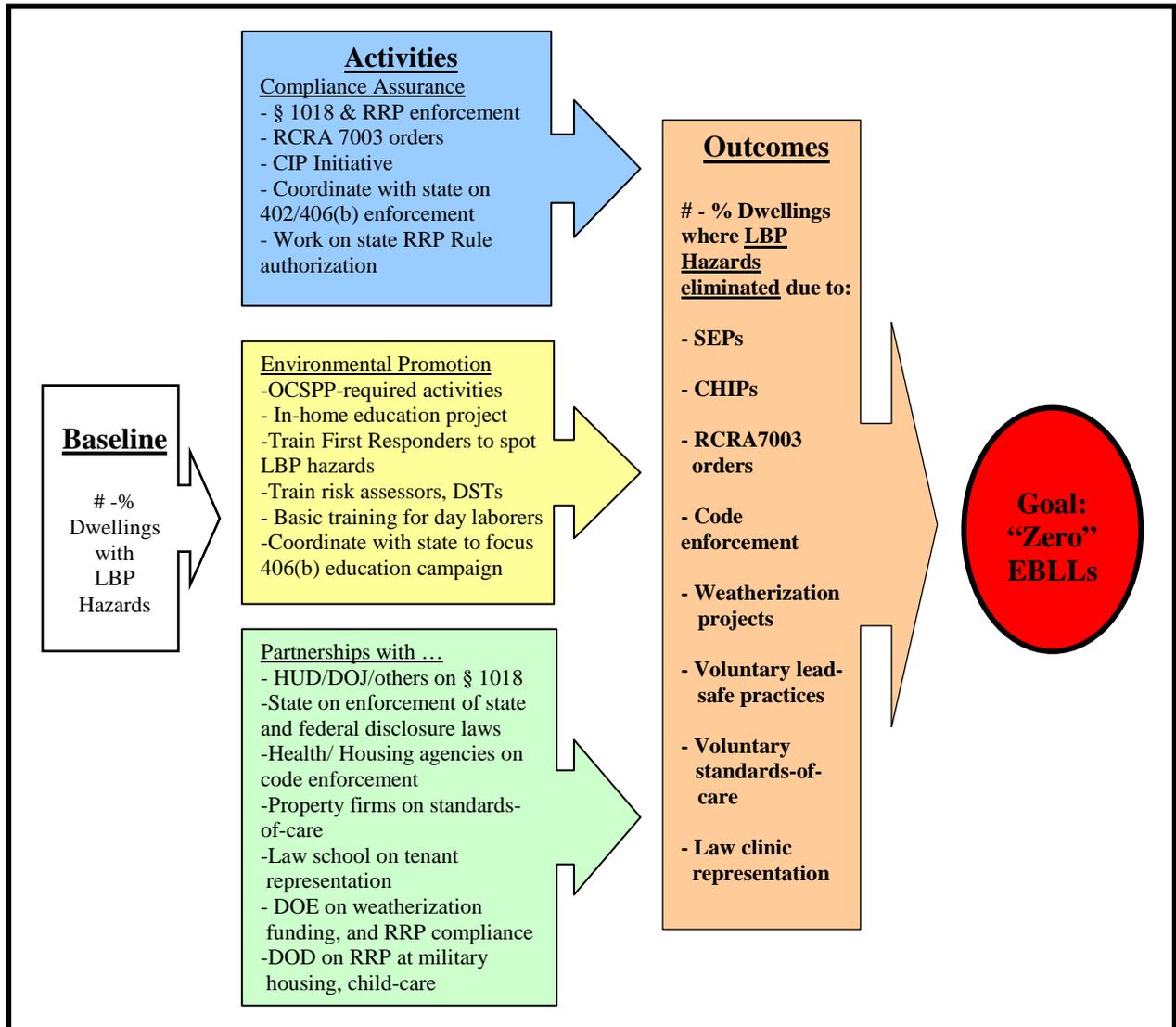
The Region also:

4. Worked with the state on obtaining RRP Rule authorization.
5. Conducted OCSPP-required activities for RRP Rule implementation
6. Issued a grant to a local NGO to support training of low-income residents to become certified risk assessors, renovators, or dust sampling technicians.
7. Issued a demonstration project grant to an NGO to educate day laborers on basic lead-safe work practices.

Partnerships	<p>The Region:</p> <ol style="list-style-type: none">8. Partnered with local outlets of the national hardware store to promote RRP Rule compliance, and voluntary lead-safe practices by Do-It-Yourselfers (DIYs).9. Collaborated with retailers and other companies that engage or promote contractors to ensure that contractors are RRP-certified and follow required practices.¹¹10. Coordinated with the city’s building permit agency to require that, for regulated projects, applicants show RRP Rule credentials to receive a building permit – and to encourage building inspectors to spot, and refer to the Region, obvious RRP Rule violations they may observe at work sites.11. Collaborated with the local DOE-affiliated agency to make replacement of LBP-coated windows and doors a priority for DOE-funded weatherization projects -- and to ensure that persons working such projects follow lead-safe work practices.12. Worked with officers for the nearby DOD installation to ensure RRP Rule compliance in military housing and child-care facilities.
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¹¹ Promoters include entities such as *Angies List*, *Servicemagic.com*, and the *Super Pages SuperGuarantee* program (www.superguarantee.com).

Fig. 6. LBP Hazards – Baseline – Activities – Outcomes



2. Environmental Lead – Non-Paint

Region XV’s Lead Program relied on Compliance Assurance, and Partnership with other Regional programs and agencies, to address non-paint sources of environmental lead. Those sources included lead from smelters, in drinking water pipes, and in soils at (and dust from) the abandoned industrial site.

Compliance Assurance

1. The Region referred sources subject to the Clean Air Act (CAA), Safe Drinking Water Act (SDWA), RCRA-Subtitle C (RCRA-C), and/or CERCLA to the appropriate Regional enforcement offices for potential inspections, enforcement and other compliance assurance measures.

Environmental Promotion

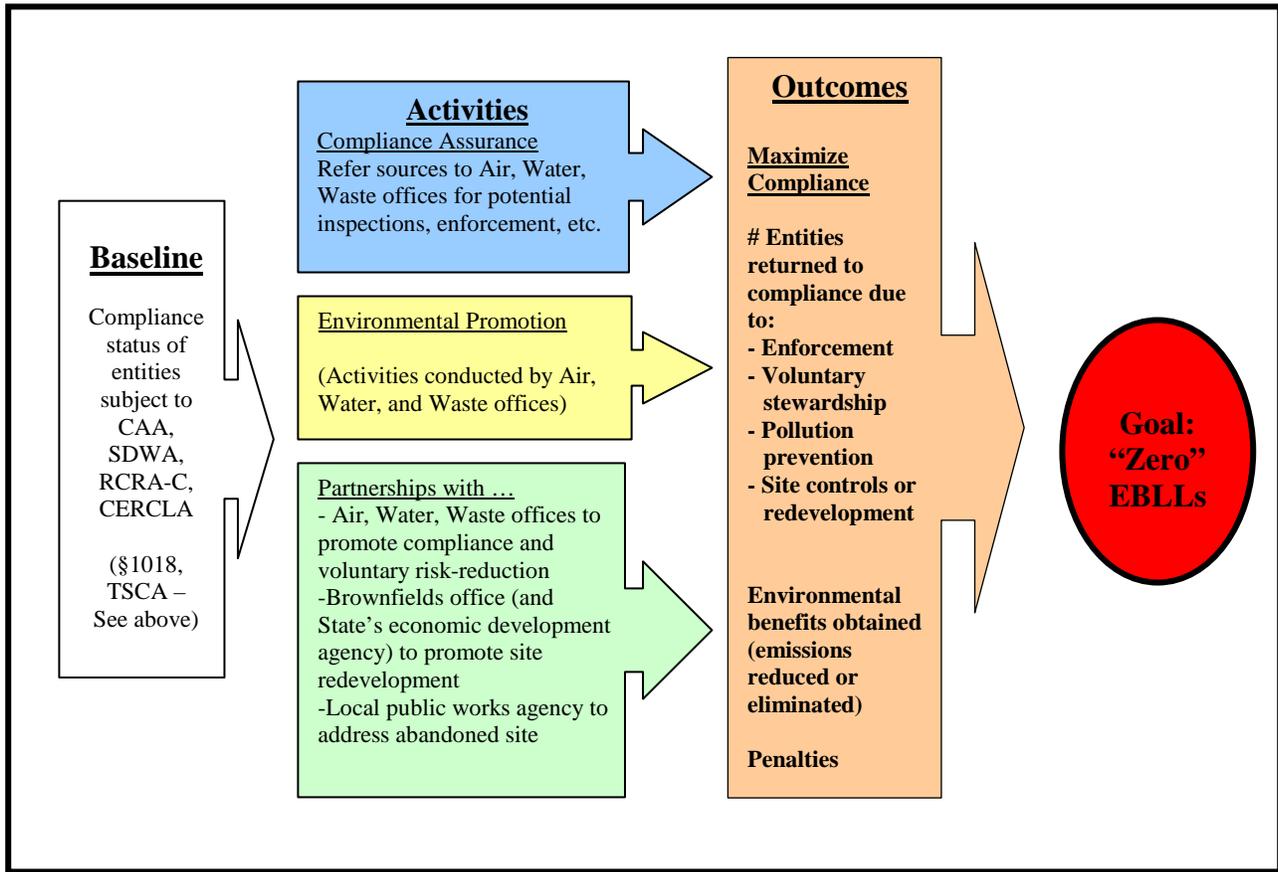
(Not applicable. The Regional Lead Program did not conduct activities for these sources. It worked with other Regional offices.)

Partnerships

Also, the Region:

2. Worked with the Region’s air, water and waste offices to support Environmental Promotion activities which those offices conducted to increase compliance, voluntary risk-reduction, and stewardship among these sources of lead.
3. Partnered with the Brownfields office to promote redevelopment of the abandoned site.
4. Urged the local department of public works to address the abandoned site by using its nuisance, zoning and other authorities to prevent unauthorized access, requiring that bare soils be removed or covered, and requiring any other risk-reduction measures within its authority.
5. Urged the state’s office of economic development to fund or promote redevelopment of the abandoned site.

Fig. 7. Non-Paint Environmental Lead – Baseline, Activities, Outcomes



3. Non-Environmental Lead

Generally, the non-environmental sources of lead -- artificial turf, imported foods and household goods, and dust on work uniforms and tools -- are beyond EPA's purview. Therefore, Region XV addressed these sources through Partnerships with appropriate federal, state and local agencies.

Partnerships	<p>The Region:</p> <ol style="list-style-type: none">1. Urged federal agencies (e.g., CPSC, FDA, USDA) and state and local agencies (e.g., DOH, consumer affairs, Attorney General) to exercise their stop-sale and product recall authorities against manufacturers, importers, distributors, and retailers – and to conduct consumer education campaigns to promote avoidance of lead-contaminated products.2. Urged the city’s departments of recreation, education and public works to replace artificial turf – and prevent children’s access to the athletic field as long as the lead-contaminated turf is in place.3. Urged OSHA and its state counterpart to take appropriate action to minimize risks from work-related lead, including employee education and potential employer sanctions.
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4. Residential Contaminants

Of the residential contaminants under EPA’s purview (mold, mildew, pesticides, radon, toxic chemicals), most are subject only to guidance or voluntary program -- whereas a few (pesticides, chemicals) are regulated. Many toxic chemicals in consumer goods are subject to regulation or guidance by other federal (or state) agencies. Underlying conditions that cause or exacerbate LBP hazards, such as excessive moisture and poor ventilation, may be subject to state or local health or housing standards.

Compliance Assurance	<ol style="list-style-type: none">1. The Region referred sources it believed to be in violation of EPA regulatory requirements to the appropriate Regional enforcement office for potential inspections, enforcement and other compliance assurance measures pursuant to CAA, FIFRA, TSCA, or other applicable laws.
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Environmental Promotion	<p>The Region:</p> <ol style="list-style-type: none">2. Trained local emergency personnel (first responders) to spot obvious residential contaminants in the course of their normal work, and make referrals to appropriate federal/state/local authorities for further action. (See also LBP Hazards – Activity #8.)3. Funded a demonstration project for an accredited RRP training provider to offer training to help renovators and others spot significant residential contaminants and make referrals to the appropriate federal/state/local authorities for further action.4. Issued a grant to an NGO to provide in-home education to the local immigrant community on residential contaminants (and lead poison prevention). (See also LBP Hazards – Activity #7.)
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Partnerships	<p>The Region:</p> <ol style="list-style-type: none">5. Worked with the appropriate Regional office to support Environmental Promotion activities which those offices conducted to increase compliance, voluntary risk-reduction, and stewardship among these sources of lead.6. Urged DOH and LHD to enforce applicable health and housing standards.7. Partnered with the University Cooperative Extension Service (CES) to promote consumer education on home sanitation , maintenance, and integrated pest management – including distribution of EPA information on lead poison prevention and residential contaminants.
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Fig. 8. Activities to Address Major Sources of Lead

Compliance Assurance	Environmental Promotion	Partnerships
Lead-based Paint (Sources subject to § 1018, TSCA § 402, 406(b), RRP Rule, or RCRA § 7003)		
• “Ongoing” LBP hazards (in toxic dwellings and other deteriorated housing)		
1. § 1018 inspections (ACS commitments) 2. § 1018 enforcement 3. RCRA § 7003 orders 4. Coordinate with state to focus § 402/406(b) inspections in target area	5. OCSPP-recommended activities for § 1018 7. NGO grant for in-home lead poison prevention education 8. Train First Responders to spot & refer LBP hazards 6. Coordinate with state to focus § 406(b) education campaign on target area/population	1. Coordinate §1018 inspections with DOH, LHD, HUD 2. Refer select § 1018 cases to DOJ (some jointly with HUD) 9. Parallel enforcement of § 1018 and state disclosure law 10. Required compliance with DOH/LHC abatement/repair orders in federal settlements 11. Urge LHD to enforce local codes 12. Partner with property management firms to promote landlords’ voluntary standards-of-care 13. Partner with NGO for LBP risk assessments 14. Work with University law clinic to address LBP hazards in housing court cases
• “Episodic” LBP hazards from unsafe work practices in repairs, remodeling, renovations (in otherwise lead-safe dwellings)		
1. RRP Rule record and work site inspections (ACS commitments) 2. RRP Rule CIP initiative 3. RRP Rule enforcement 4. Work with state on RRP Rule authorization	5. OCSPP-required activities for RRP Rule implementation 6. NGO grant to train risk assessors, renovators, and DSTs 7. NGO demo project to teach day laborers basic lead-safe work practices	8. Partner with hardware store to promote RRP Rule compliance, and voluntary lead-safe practices by DIY’ers 9. Collaborate with companies that engage/promote contractors to ensure RRP Rule compliance 10. Partner with local building permit agency to ensure permittees comply with RRP requirements 11. Work with DOE-affiliate to promote replacement of LBP-coated windows/doors in DOE-funded weatherization projects – and ensure workers follow RRP Rule requirements 12. Work with DOD ensure RRP Rule compliance in military housing and child-care facilities

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Fig. 8 (cont'd)

Compliance Assurance	Environmental Promotion	Partnerships
<p>Non-paint Environmental Lead (Sources subject to CAA, SDWA, RCRA Subtitle C, CERCLA)</p> <ul style="list-style-type: none"> • Air Emissions from smelter • Lead solder in drinking water pipes • Soil and dust at/from abandoned industrial site 		
<p>1. Refer sources to appropriate Regional office for potential compliance assurance under CAA, SDWA, RCRA-Subtitle C, CERCLA</p>	<p>(Activities conducted via Partnerships with appropriate offices and agencies)</p>	<p>2. Partner with appropriate Regional office to promote compliance, voluntary risk-reduction, and stewardship</p> <p>3. Partner with EPA Brownfields office to promote redevelopment of abandoned site</p> <p>4. Urge local public works agency to uses its nuisance, zoning or other authority to bar unauthorized site access, require bare soils be covered, or take measures</p> <p>5. Work with state economic development office to promote redevelopment of abandoned site</p>
<p>Non-Environmental Lead (Sources subject to purview of other federal – or state/local – agencies)</p> <ul style="list-style-type: none"> • Lead on imported goods from local specialty stores, markets, and national super store (candies, remedies, cosmetics, etc.) • Turf on local government athletic field • Lead brought into home on work clothing & equipment 		
<p>(Beyond EPA’s purview)</p>		<p>1. Urge federal and state authorities to exercise their stop-sale and product recall authorities – and conduct consumer education campaigns.</p> <p>2. Urge local departments of recreation, education and public works to prevent children’s access to the athletic field pending removal of contaminated turf.</p> <p>3. Urge federal/state OSHA to take action to minimize work-related lead exposure.</p>
<p>Residential Contaminants (Moisture, mold, mildew, formaldehyde, chemicals in carpeting and other home furnishings, radon, pesticides)</p>		
<p>1. Refer sources to appropriate Regional offices for potential compliance assurance under FIFRA, TSCA, CAA</p>	<p>2. Train First Responders to spot & refer residential contaminants</p> <p>3. Demonstration project to teach renovators et al. to spot & refer residential contaminants</p> <p>4. NGO grant for in-home environmental health education</p>	<p>5. Partner with appropriate Regional office to promote compliance, voluntary risk-reduction, and stewardship</p> <p>6. Urge LHD and DOH to enforce local codes</p> <p>7. Partner with University CES to promote home sanitation/maintenance education</p>

PHASE IV. Measuring Outcomes

Region XV assessed the impact of its Strategy holistically – and reported accomplishments through a variety of mechanisms. The Region accounted for its own outputs (activities) and those of its Strategy partners. Also, the Region assessed outcomes (environmental benefits) derived from its own Compliance Assurance (inspections, enforcement, compliance incentives, and compliance assistance), Environmental Promotion, and Partnership activities – and outcomes obtained from comparable activities performed by its Partners.

1. Lead Outputs

The Region compiled statistics on the number of inspections and enforcement actions conducted by the Lead Program, by other Regional offices based on referrals from the Lead Program, and by other agencies as a result of Strategy partnerships.

Region XV's Lead Program reported its output data to ICIS. The other Regional offices, and other agencies, reported their information to their respective data systems.

2. Lead Outcomes

Region XV sought quantitative and anecdotal outcome information to assess the Strategy's impact vis-à-vis its paramount objective: “zero” EBLLs. Since all Strategy outputs were directed at this objective, the Region sought to identify the relation between its outcomes and this objective where possible (although some outcomes, such as enforcement penalties, influence EBLLs only indirectly).

The Region reported its outcome information in periodic and annual Regional and Agency accomplishment reports. The Region assessed the following items.

- **“Zero” EBLLs.**
Region XV measured the prevalence and severity of EBLLs among the target population pre- and post-Strategy. The Region had arranged to obtain this information under its MOU with DOH/CLPPP and the state immigrant services department, and in settlement provisions whereby health care providers that performed BLL testing under third-party SEPs (or under Child Health Improvement Projects [CHIPs]) would share testing data.
- **Eliminate LBP hazards.**

Region XV measured the number of properties with LBP hazards (particularly toxic dwellings) in the target area, pre- versus post-Strategy, as a result of:

- Regional LBP inspections and enforcement actions (conducted with and without HUD and/or DOJ) that resulted in SEPs, CHIPs, injunctive relief, or RCRA § 7003 orders which required respondents to perform abatement.
- Regional LBP CAP initiative, and compliance assistance.
- Inspections and enforcement taken by partnering state and local agencies under their own housing, health/sanitation, building, emergency and other codes.
- Weatherization projects (funded by DOE or otherwise) associated with the Strategy that resulted in elimination of LBP-coated windows, doors, and other surfaces.
- Voluntary lead-safe practices by DIY'ers and other consumers; and property standards of care by landlords, resulting from the Strategy's Environmental Promotion and Partnership activities.

Also, the Region counted the number of projects and estimated monetary value of each project. The Region also counted the amount of penalties from enforcement actions by the Lead Program, and other Regional offices, for their general deterrent value (rather than the direct impact on EBLs).

- **Maximize Compliance.**

LBP - The Region attempted to assess increases in compliance among of the regulated community (and reductions in EBLs). To do so, the Region obtained quantitative data from its own inspections, enforcement, and CAP initiative; and anecdotal information from trade association surveys, surveys of renovation contract customers and promoters, and tenants; and other means. The Region focused specifically on measuring increased compliance with the RRP Rule.

Non-paint Environmental Lead - The Region assessed the Strategy's impact on non-paint sources (and EBLs) resulting from Compliance Assurance and Environmental Promotion conducted by other Regional Programs. For instance, the Region relied on the other programs to determine the extent to which sources had increased their level of regulatory compliance, reduced or eliminated pollutants due to enforcement or voluntary action, or made other changes to reduce lead exposure to the target area.

- **Eliminate EBLs through increased coordination.**

LBP - Region XV assessed whether coordination among federal, state and local regulatory agencies had increased – and whether such increase resulted in a more effective response to lead and reduced EBLs. For example, the Region used interviews with state/local officials, NGOs and tenants, and its own observations, to ascertain whether: (a) there was a decrease in the time it took for tenants' LBP-related complaints resulted in actual performance of abatement or repairs; (b) more children received BLL tests; (c) the use of available abatement funding increased; and (d) there was greater availability of certified renovators and abatement contractors.

Non-environmental Lead - Region XV assessed the Strategy's impact on non-environmental sources of lead resulting from actions taken by other federal, state and local agencies under their own authorities -- such as stop-sale orders, product recalls, and consumer education -- relying on information obtained from those agencies.

Figure 9 illustrates Region XV's output and outcome analysis vis-à-vis the overarching aims of its Strategy.

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Fig 9. Integrated Strategy - Aims, Baseline vis-a-vis Outcomes

Aims	Baselines	Activities	Outputs and Outcomes
“Zero” EBLs	<u>Baseline:</u> Of children tested: % with EBLs; avg. BLL Of children in need of testing: # (or % of population)	See Phase III (Activities)	<u>Outputs</u> – All activities focused on achieving this objective. <u>Outcomes</u> Of children tested: % with EBLs; avg. BLL Of children in need of testing: # tested (or % of population) as result of federal enforcement (SEPs/CHIPs for BLL testing), grants, partnerships, etc.
Eliminate LBP Hazards	<u>Baseline:</u> # or % dwellings with LBP hazards		<u>Outputs:</u> # LBP inspections; # LBP enforcement actions <u>Outcomes</u> # or % dwellings at which LBP hazards were eliminated as result of: - Federal enforcement (SEPs, CHIPs, RCRA § 7003 Orders) - State/local enforcement (abatement and repair orders) - DOE-sponsored weatherization projects - Voluntary lead-safe work practices by DIY’ers - Voluntary standards-of-care by landlords (# projects, and monetary value of each)
Maximize compliance	<u>LBP, Non-Paint Envir’l Lead - Baseline:</u> Compliance status of entities subject to §1018, TSCA, CAA, SDWA, RCRA-C, CERCLA		<u>Outputs:</u> # inspections; # enforcement action <u>Outcomes</u> - # entities returned to compliance - Penalties obtained - Environmental benefits (e.g., pollutants reduced, voluntary measures beyond compliance)
Eliminate EBLs through increased coordination	<u>LBP – Baseline:</u> # or % outstanding complaints about properties with EBLs or lead-related code violations # outstanding abatement/repair orders Avg. # days from EBL identification/code compliant to investigation – enforcement – abatement/repair		<u>Outputs (by Other Federal/State/Local Agencies)</u> - # property investigations, and enforcement actions, precipitated by EBL identification or code violation complaint - # or % routine inspections that also addressed potential LBP Hazards <u>Outcomes (Obtained by Other Fed/State/Local Agencies)</u> - # abatement/repair orders complied with - Avg. # days from EBL identification/code compliant to investigation – enforcement – abatement/repair
	<u>Non-environmental Lead - Baseline:</u> Apparent compliance status of entities subject to FDA, CPSC, USDA and other authorities		<u>Outputs (By Other Fed/State/Local Agencies)</u> Inspections, enforcement actions, consumer education campaigns, etc. <u>Outcomes (From Other Fed/State/Local Agencies)</u> - Penalties - Benefits (sales halted, products withdrawn from marketplace)

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