



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OCT 22 2012

OFFICE OF CHEMICAL SAFETY
AND POLLUTION PREVENTION

MEMORANDUM

SUBJECT: Response to OIG Final Report on Hotline Complaint Concerning EPA's Lead Based Paint Rule, Report No. 12-P-0600

FROM: James J. Jones, Acting Assistant Administrator
Office of Chemical Safety and Pollution Prevention

James J. Jones
For

TO: Arthur A. Elkins, Jr.
Inspector General

This memorandum is in response to the Office of Inspector General's (OIG) July 25, 2012, Final Report entitled "Review of Hotline Complaint Concerning EPA's Lead-Based Paint Rule." That Report made two recommendations: (1) that EPA re-examine the costs and benefits of the 2008 Lead Rule and the 2010 amendment to determine whether the rule should be modified, streamlined, expanded, or repealed and (2) that EPA add a disclaimer to its training program materials to communicate the differences between required and recommended work practices.

As you know, OCSPP strongly disagrees with Recommendation 1, and as a result on September 28, 2012, my office initiated the EPA Audit Resolution Process to help resolve the differences between OIG and OCSPP's positions on this issue.¹ As for Recommendation 2, in our March 26, 2012, response to the OIG's Draft Report, we indicated that we agreed with the intent of the recommendation, and had made revisions to the training materials to clarify the difference between required and recommended work practices. Specifically, EPA revised the *Lead Safety for Renovation, Repair and Painting* instructor manual in October 2011.

In the Final Report, and in a subsequent email on October 10, 2012, however, the OIG designated Recommendation 2 as "unresolved with resolution efforts in progress." The OIG requested that EPA's response to the Final Report describe the revisions that were made to the instructor manual to clarify the difference between required and recommended work practices, so as to permit the OIG to assess whether the revisions fully meet the intent of the recommendation.

Accordingly, I have attached a link to the revised instructor manual, which may be found at http://www.epa.gov/lead/pubs/initial_renovator-instructor_oct2011.pdf. In response to the OIG's recommendations, the revised manual includes changes to the slides and text (e.g. section headings, word changes) to better differentiate between work practices that are required by the regulations and those that are only recommended.

Please note that while EPA has made these changes, OCSPP has not added a disclaimer to the training materials as recommended by the OIG. As we stated in our March 26, 2012 response, the instructor manual is designed to present training providers with tools to communicate to students the necessity of performing required work practices to fully comply with the regulations. In our view, adding information related to the economic analysis supporting the rulemaking would not further clarify the course material, and could actually confuse students. We ask that the OIG reconsider this aspect of Recommendation 2 upon review of the instructor manual in its entirety.

If you have questions, please feel free to contact me, or Janet Weiner of my staff at (202) 564-2309.

ⁱ See Attachment A (EPA Audit Resolution Form, dated 9/10/12, transmitted to OCFO 9/28/12).

EPA Audit Resolution Submission Form		
Action Office: Office of Chemical Safety and Pollution Prevention	Report #: 12-P-0600	Date: 09/10/12
Audit Title: Review of Hotline Complaint Concerning Cost and Benefit Estimates for EPA's Lead-Based Paint Rule.		
Current Status of Audit: GAO issued its report on July 25, 2012.		
Brief Description of Audit: The Office of the Inspector General received a hotline complaint concerning EPA's 2008 Lead; Renovation, Repair, and Painting Rule (Lead Rule) and conducted a review to evaluate how EPA determined the costs and benefits of the Lead Rule.		
Issue(s) Under Dispute		
Recommendation: OIG recommends that EPA reexamine the economic analysis of costs and benefits of the 2008 Lead Rule and the 2010 amendment to determine whether the rule should be modified, streamlined, expanded, or repealed.		
Detailed Description of Dispute		
OIG Position:	Agency Position:	
<p>Although EPA stated that its economic analysis underwent extensive intra-Agency review and was approved by the Office of Management and Budget prior to publication, EPA used limited data to develop its cost and benefits estimates for the Lead Rule. The data limitations in EPA's analysis limit the reliability of the Lead Rule's stated cost and benefits. EPA's analysis concluded that work practice costs for businesses to comply with the Lead Rule were relatively low. This decision influenced other discretionary EPA actions to exclude potential additional costs of the rule. Sound data on the rule's benefits were also not available at the time of the rulemaking, and this limitation was known to EPA and its scientific advisory committee. However, EPA went forward with the rule because its benefit-cost analysis indicated that the rule generated substantial benefits, and because EPA was legally obligated to issue the rule.</p>	<p>The economic analysis supporting the Lead Rule was appropriate to support decisions made by Agency officials responsible for the Lead-Based Paint Rulemaking. OIG's Final Report acknowledges that the analysis "was conducted according to Agency guidelines, was subject to public comment, and was cleared by the Office of Management and Budget as complying with the requirements of EO 12866," but nevertheless concluded that the analysis was insufficient to support the rulemaking. EPA disagrees. The Agency performed a sensitivity analysis in the 2008 Economic Analysis, estimating benefits if work practices required by the rule were used in the baseline with 50 percent greater or lesser frequency than indicated by the survey of 9 renovators. Because a decrease in the assumed baseline level of work practice use increases benefits and costs by about the same amount, the net benefits estimate changed by only 5 percent and was still approximately \$1.2 billion per year. This argues against the OIG proposition that a larger survey would have changed the conclusion that the benefits of the rule significantly outweigh the costs. As a result, the Office of Chemical Safety and Pollution Prevention strongly disagrees with the recommendation that the Office re-examine the costs and benefits of the 2008 rule and 2010 amendments.</p>	
Proposed Agency Alternative:		
OCSPP does not have an alternative recommendation or corrective action to propose.		