



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

OFFICE OF CHEMICAL SAFETY
AND POLLUTION PREVENTION

APR - 9 2013

MEMORANDUM

SUBJECT: Proposal to Amend Corrective Action Plan for Report No. 12-P-0600: "Review of Hotline Complaint Concerning EPA's Lead-Based Paint Rule."

FROM: Charlotte Bertrand *[Signature]*
Acting Principal Deputy Assistant Administrator

TO: Arthur A. Elkins
Inspector General

This memorandum formally proposes the following new amended corrective action to implement the recommendations of the OIG's July 25, 2012 Final Report entitled, "Review of Hotline Complaint Concerning EPA's Lead-Based Paint Rule." OCSPP is optimistic that this proposal will give the Agency a path forward to resolving the late corrective action currently in Audit Dispute Resolution.

OIG's Recommendation:

Consistent with a retrospective and flexible EPA regulatory culture, [EPA should] re-examine the estimated costs and benefits of the 2008 Lead [Renovation, Repair and Painting (RRP)] Rule and the 2010 amendment to determine whether the rule should be modified, streamlined, expanded, or repealed.

Proposed New Corrective Action:

Pursuant to Section 610 of the Regulatory Flexibility Act (5 USC 610), EPA will review the Lead RRP Rule¹ to determine whether the provisions should be continued without change, or should be rescinded or amended, consistent with the stated objectives of applicable statutes.

In its Section 610 Analysis, EPA will reexamine the Lead RRP Rule in the context of the five statutory factors set forth in Section 610. These five factors are:

1. Continued need for the rule
2. Nature of complaints or comments received concerning the rule
3. Complexity of the rule
4. Extent to which the rule overlaps, duplicates, or conflicts with other federal, state or local government rules, and
5. Relevant changes to technology, economic conditions, or other factors.

¹ The original RRP rule, plus actions taken to amend it in 2010 and 2011, as well as comments received regarding lead test kits in 2015 and 2016.

EPA will consider the evidence presented by public commenters and utilize existing available data to reexamine the 2008 Lead RRP Rule and the 2010 Amendment. In the context of the Economic Analysis, EPA will recalculate the cost of the rule and amendment using the current test kit² false positive³ rate,⁴ which is higher than was assumed in the original analyses.

In addition, the reexamination of the benefits of the Lead RRP Rule is an important part of the above analysis, beginning with #1, the consideration of the continued need for the rule. The adverse health effects of lead dust are well documented, and the Section 610 review will also consider that these adverse effects have since been demonstrated to occur at even lower blood lead levels than when the rule was first promulgated.

Similarly, the analysis of the public comments in #2 weighs the merits of each comment against the benefits of the rule in reducing health effects. The analysis in #4 assesses the extent to which the RRP program is distinct from other government programs; because a duplicative program would provide less benefit.

The analysis in #5 is an overview of possible changes in technology that could supercede the need for the rule, which requires an assessment of potential changes that could mitigate lead health effects and/or change the costs for compliance with the rule.

At the conclusion of the Section 610 Analysis, EPA will determine whether the rule should be modified, streamlined, expanded, or repealed (consistent with the statutory objectives).

EPA will complete this retrospective review by April 30, 2018.

² Test kits are used to check for the presence of lead-based paint.

³ A “false positive” is when the test kit incorrectly indicates that a paint sample has lead above the regulatory standard, even though the sample actually contains lead at levels below the regulatory standard. The term “the current test kit false positive rate” refers to the false positive rate for lead test kits that are currently on the market.

⁴ During the public comment period for the Section 610 Analysis, several commenters mentioned the false positive rate as an important issue for EPA to consider in reevaluating the costs of the rule.