

ENVIRONMENTAL PROTECTION AGENCY

[EPA-R10-OPPT-2010-0549; FRL-9173-8]

Lead-Based Paint Renovation, Repair and Painting, and Pre-Renovation Education Activities in Target Housing and Child Occupied Facilities; State of Oregon. Notice of Self-Certification Program Authorization, Request for Public Comment, Opportunity for Public Hearing**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice; program authorization, request for comments and opportunity for public hearing.

SUMMARY: This notice announces that on May 3, 2010, the State of Oregon was deemed authorized under section 404(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2684(a), to administer and enforce requirements for a renovation, repair and painting program in accordance with section 402(c)(3) of TSCA, 15 U.S.C. 2682(c)(3), and a lead-based paint pre-renovation education program in accordance with section 406(b) of TSCA, 15 U.S.C. 2686(b). This notice also announces that EPA is seeking comment during a 45-day public comment period, and is providing an opportunity to request a public hearing within the first 15 days of this comment period, on whether these Oregon programs are at least as protective as the Federal programs and provide for adequate enforcement. This notice also announces that the authorization of the Oregon 402(c)(3) and 406(b) programs, which were deemed authorized by regulation and statute on May 3, 2010, will continue without further notice unless EPA, based on its own review and/or comments received during the comment period, disapproves one or both of these Oregon program applications on or before October 31, 2010.

DATES: Comments, identified by docket control number EPA-R10-OPPT-2010-0549, must be received on or before August 23, 2010. In addition, a public hearing request must be submitted on or before July 26, 2010.

ADDRESSES: Comments and requests for a public hearing may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Section I of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is important that you identify docket control number EPA-R10-OPPT-2010-0549 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT:

Barbara Ross, Technical Contact, OAWT, Solid Waste & Toxics, AWT-128, United States Environmental Protection Agency, 1200 Sixth Avenue, Suite 900, Seattle, WA 98101, telephone number: (206) 553-1985; e-mail address: ross.barbara@epa.gov.

SUPPLEMENTARY INFORMATION:**I. General Information***A. Does this action apply to me?*

This action is directed to the public in general, to entities offering Lead Safe Renovation courses, and to firms and individuals engaged in renovation and remodeling activities of pre-1978 housing and child-occupied facilities in the State of Oregon. Individuals and firms falling under the North American Industrial Classification System (NAICS) codes 231118, 238210, 238220, 238320, 531120, 531210, 53131, e.g., General Building Contractors/Operative Builders, Renovation Firms, Individual Contractors, and Special Trade Contractors like Carpenters, Painters, Drywall workers and Plumbers, "Home Improvement" Contractors, as well as Property Management Firms and some Landlords are also affected by these rules. This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed here could also be affected. The NAICS codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get additional information, including copies of this document or other related documents?

1. *Electronically:* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at <http://www.epa.gov/>. To access this document select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "Federal Register-Environmental Documents." You can also go directly to the **Federal Register** listings at <http://www.epa.gov/fedrgstr/>.

2. *In person:* You may read this document, and certain other related documents, by visiting the Oregon Public Health Division, 800 NE Oregon St., Suite 608, Portland, OR 97232, contact person, Richard Leiker, Manager Lead Programs, telephone number: (971)

673-0434. You may also read this document, and certain other related documents, by visiting the United States Environmental Protection Agency (EPA), Oregon Operations Office, 805 SW. Broadway, Suite 500, Portland, Oregon 97205. You should arrange your visit to the EPA office by contacting the technical person listed under **FOR FURTHER INFORMATION CONTACT**. Also, EPA has established an official record for this action under docket control number EPA-R10-OPPT-2010-0549. The official record consists of the documents specifically referenced in this action, this notice, the State of Oregon 402(c)(3) and 406(b) program authorization applications, any public comments received during an applicable comment period, and other information related to this action.

C. How and to whom do I submit comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is important that you identify docket control number EPA-R10-OPPT-2010-0549 in the subject line on the first page of your response.

Submit your comments, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.

2. *By mail:* Submit your comments and hearing requests to: Barbara Ross, Technical Contact, OAWT, Solid Waste & Toxics, AWT-128, U.S. Environmental Protection Agency, 1200 Sixth Avenue, Suite 900, Seattle, WA 98101.

3. *By person or courier:* Deliver your comments and hearing requests to: United States Environmental Protection Agency (EPA), Oregon Operations Office, 805 SW. Broadway, Suite 500, Portland, Oregon 97205 or U.S. Environmental Protection Agency, OAWT, Solid Waste & Toxics, AWT-128, 1200 Sixth Avenue, Seattle, WA 98101. The Regional offices are open from 8 a.m. to 5 p.m., Monday through Friday, excluding legal holidays. The phone numbers for the offices are (503) 326-3250 and (206) 553-1985.

4. *Electronically:* You may submit your comments and hearing requests electronically by e-mail to: ross.barbara@epa.gov, or mail your computer disk to the address identified above. Do not submit any information electronically that you consider Confidential Business Information (CBI). Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will

also be accepted on standard disks in Microsoft Word or ASCII file format.

Instructions: Direct your comments to Docket ID Number EPA-R10-OPPT-2010-0549. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov> including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters or any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy.

D. How should I handle CBI information that I want to submit to the agency?

Do not submit this information to EPA through [regulations.gov](http://www.regulations.gov) or e-mail. Clearly mark on each page the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM that

you mail to EPA as CBI, and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person identified under **FOR FURTHER INFORMATION CONTACT**.

E. What should I consider as I prepare my comments for EPA?

You may find the following suggestions helpful for preparing your comments.

1. Explain your views as clearly as possible.
2. Describe any assumptions that you use.
3. Provide copies of any technical information and/or data you use that support your views.
4. If you estimate potential burden or costs, explain how you arrive at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice or collection activity.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

A. What action is the agency taking?

EPA is announcing that on May 3, 2010, the State of Oregon was deemed authorized under section 404(a) of TSCA, and 40 CFR 745.324(d)(2), to administer and enforce requirements for a renovation, repair and painting program in accordance with section 402(c)(3) of TSCA, and a lead-based paint pre-renovation education program in accordance with section 406(b) of TSCA. This notice also announces that EPA is seeking comment and providing an opportunity to request a public hearing on whether the State programs are at least as protective as the Federal programs and provide for adequate enforcement. The 402(c)(3) program ensures that training providers are accredited to teach renovation classes,

that individuals performing renovation activities are properly trained and certified as renovators, that firms are certified as renovation firms, and that specific work practices are followed during renovation activities. The 406(b) program ensures that owners and occupants of target housing are provided information concerning potential hazards of lead-based paint exposure before certain renovations are begun. On May 3, 2010, Oregon submitted an application under section 404 of TSCA requesting authorization to administer and enforce requirements for a renovation, repair and painting program in accordance with section 402(c)(3) of TSCA, and a pre-renovation education program in accordance with section 406(b) of TSCA, and submitted a self-certification that these programs are at least as protective as the Federal programs and provides for adequate enforcement. Therefore, pursuant to section 404(a) of TSCA, and 40 CFR 745.324(d)(2), the Oregon renovation program and pre-renovation education program are deemed authorized as of the date of submission and until such time as the Agency disapproves the program application or withdraws program authorization. Pursuant to section 404(b) of TSCA and 40 CFR 745.324(e)(2), EPA is providing notice, opportunity for public comment and opportunity for a public hearing on whether the State program application is at least as protective as the Federal programs and provides for adequate enforcement. If a hearing is requested and granted, EPA will issue a **Federal Register** notice announcing the date, time and place of the hearing. The authorization of the Oregon 402(c)(3) and 406(b) programs, which were deemed authorized by regulation and statute on May 3, 2010, will continue without further notice unless EPA, based on its own review and/or comments received during the comment period, disapproves one or both of these Oregon program applications on or before October 31, 2010.

B. What is the agency's authority for taking this action?

On October 28, 1992, the Housing and Community Development Act of 1992, Public Law 102-550, became law. Title X of that statute was the Residential Lead-Based Paint Hazard Reduction Act of 1992. That Act amended TSCA (15 U.S.C. 2601 *et seq.*) by adding Title IV (15 U.S.C. 2681-2692), entitled Lead Exposure Reduction. In the **Federal Register** dated April 22, 2008, (73 FR 21692), EPA promulgated final TSCA section 402(c)(3) regulations governing renovation activities. The regulations

require that in order to do renovation activities for compensation, renovators must first be properly trained and certified, must be associated with a certified renovation firm, and must follow specific work practice standards, including recordkeeping requirements. In addition, the rule prescribes requirements for the training and certification of dust sampling technicians. In the **Federal Register** of June 1, 1998, (63 FR 29908), EPA promulgated final TSCA section 406(b) regulations governing pre-renovation education requirements in target housing. This program ensures that owners and occupants of target housing are provided information concerning potential hazards of lead-based paint exposure before certain renovations are begun on that housing. In addition to providing general information on the health hazards associated with exposure to lead, the lead hazard information pamphlet advises owners and occupants to take appropriate precautions to avoid exposure to lead-contaminated dust and debris that are sometimes generated during renovations. EPA believes that regulation of renovation activities and the distribution of the pamphlet will help to reduce the exposures that cause serious lead poisonings, especially in children under age 6, who are particularly susceptible to the hazards of lead.

Under section 404 of TSCA, a State may seek authorization from EPA to administer and enforce its own pre-renovation education program or renovation, repair and painting program in lieu of the Federal program. The regulations governing the authorization of a State program under both sections 402 and 406 of TSCA are codified at 40 CFR part 745, subpart Q. States that choose to apply for program authorization must submit a complete application to the appropriate regional EPA office for review. Those applications will be reviewed by EPA within 180 days of receipt of the complete application. To receive EPA approval, a State must demonstrate that its program is at least as protective of human health and the environment as the Federal program, and provides for adequate enforcement, as required by Section 404(b) of TSCA. EPA's regulations at 40 CFR part 745, subpart Q, provide the detailed requirements a State program must meet in order to obtain EPA approval. A State may choose to certify that its own pre-renovation education program or renovation, repair and painting program meets the requirements for EPA approval, by submitting a letter signed

by the Governor or Attorney General stating that the program is at least as protective of human health and the environment as the Federal program and provides for adequate enforcement. Upon submission of such a certification letter, the program is deemed authorized pursuant to TSCA section 404(a) and 40 CFR 745.324(d)(2) and [15 U.S.C. 2864(b)]. This authorization becomes ineffective, however, if EPA disapproves the application or withdraws the program authorization.

III. State Program Description Summary

The following program summary is from Oregon's self-certification application:

Scope of Rules

Oregon State laws, called Oregon Revised Statutes (ORS), gives the Department of Human Services (DHS), Public Health Division, and the Construction Contractors Board joint authority to implement and administer the Federal Lead Renovation, Repair and Painting Rule in Oregon to ensure that persons who perform lead-based paint activities do so safely to prevent exposure of building occupants, especially children, to hazardous levels of lead. The Oregon Administrative Rules (OARs) adopted by the State of Oregon to implement the statutes and the Lead Renovation, Repair and Painting Rule Program can be found in OAR 333-070 and OAR 812-007. The Department of Human Services, Public Health Division OARs governing Lead-Based Paint Renovation including the standards of Practice and RRP training can be found in OAR 333-070 effective April 26, 2010. The Construction Contractors Board OARs governing the "Certified Lead-Based Paint Renovation Contractors License" (LBPR) can be found in OAR 812-007-0020 (definitions) and OAR 812-007-0300 through 0372 effective April 27, 2010. The rule requires a person to be certified before performing, supervising, or offering to perform a lead-based paint activity involving target housing or a child-occupied facility built before 1978. Work practice standards are also prescribed, as well as reporting and recordkeeping requirements. In addition, no person may offer or conduct a lead training course represented as qualifying a person for certification unless the course is accredited by the Department and uses approved instructors.

OAR 333 Division 70 has been promulgated to incorporate the pre-renovation education distribution (PRE) and renovation, repair and painting

(RRP) requirements for programs under the Environmental Protection Agency's regulations at 40 CFR part 745, subparts E and L. The DHS's lead program regulates the following lead-based paint activities in target housing and child-occupied facilities built before 1978:

- Pre-renovation information distribution and renovation activities conducted for compensation.
- Lead hazard reduction, including abatement and ordered lead remediation.
- Lead investigation, including dust, paint, soil sampling and onsite testing; clearance, inspection, hazard screen, risk assessment and elevated blood lead investigation activities.

Applicability to Renovations

The PRE and RRP provisions are described in detail at OAR 333-070, OAR 812-007-0020, and OAR 812-007-0300 through 0374. These rules apply to renovations performed for compensation in target housing and child-occupied facilities, except when:

- The paint involved in the renovation is determined to be lead-free by a certified lead inspector, risk assessor or hazard investigator or by a certified renovator using an Oregon-recognized test kit.
- The work is minor repair or maintenance.
- The work is renovation not performed for compensation and no other conditions requiring certification exist.
- The work is renovation performed by the homeowner in the owner's owner-occupied unit.

Emergency renovations are exempt from certain provisions, including the PRE requirements, but not from cleaning and post renovation cleaning verification.

Accreditation of Training Courses

Training course accreditation is described in detail at OAR 333.070.0125-0160. A person wishing to offer a course leading to certification, including lead-safe renovation and lead sampling initial or refresher courses, must submit a complete application with course materials and fee to the Department. The course must cover all curriculum requirements identified in Division 70. Courses deemed to meet all requirements are granted full approval and may renew their accreditations at 4-year intervals.

Pre-Renovation Education Requirements

The PRE requirements are described in detail at OAR 333.070.0095. Renovation companies must:

- Provide the pamphlet, *Renovate Right*, to owners and occupants of target

housing and to owners, operators and parents or guardians in child-occupied facilities before beginning renovation work.

- Obtain signature acknowledging receipt of pamphlet, or other proof of delivery.
- Post information in child-occupied facilities and multi-family housing.

Renovation, Repair and Painting Requirements

Certified Company Requirements

OAR 333-070-0105 through 333-070-0110 describe requirements for certification for firms that are not licensed by the Construction Contractors Board (CCB). Requirements for companies licensed by CCB are described in OAR 812-007-0300 through 812-007-0360. Companies must submit an application and pay a fee for certification. Companies must:

- Assign a certified lead-safe renovator to oversee each renovation project.
- Use only a certified renovator and certified renovator-trained workers to perform renovations.
- Ensure the use of lead-safe work practices and that prohibited practices are not used.
- Meet the pre-renovation education requirements.
- Create and maintain required records.

Certified Renovator Requirements

Certified renovator responsibilities are described at OAR 333.070.0100. To be certified as a lead-safe renovator, an individual must complete a one-day lead-safe renovation course taught by an accredited training provider. Certified renovators must:

- Provide training to untrained workers on the lead-safe work practices to be used.
- Be onsite to conduct or oversee posting of signs, containment setup, and final cleaning.
- Be onsite regularly to direct and ensure ongoing maintenance of containment barriers and use of lead-safe work practices.
- Be available onsite during work or by telephone to return immediately to the worksite.
- Be in possession of a valid, unexpired certification card when at the jobsite.
- Personally conduct the post-renovation cleaning verification.
- Prepare required renovation records.

Certified Lead Sampling Technician Requirements

Lead sampling technician activities and responsibilities are described at OAR 333.070.0100. Lead sampling technicians may conduct clearance after renovation, but not lead abatement. A lead sampling technician must complete a one-day lead sampling course taught by an accredited training provider. Sampling technicians must:

- Complete clearance requirements, including collecting and sending dust-wipe samples to a recognized lab.
- Interpret laboratory results and prepare a clearance report for the contractor and owner.
- Be in possession of a valid, unexpired certification card when conducting regulated work.

Renovation Work Practice Requirements

Renovation work practices are described at OAR 333.070.0090. Workers must follow documented methodologies to protect occupants from lead hazards created during renovations, including:

- Posting warning signs, containing work areas, protecting furnishings and cleaning.
- Prohibitions on using certain dangerous work practices, including: Open-flame burning or torching, operating a heat gun over 750 °F, using a high speed machine to remove paint without a HEPA-filtered exhaust system, using an improperly operating HEPA vacuum, and dry sweeping in the work area.
- Proper handling and transporting of waste.
- Final visual inspection and post renovation cleaning verification using prescribed protocol.

Renovation Recordkeeping Requirements

Recordkeeping requirements for renovations are described in detail at OAR 333.070.0110. The renovation company must maintain records of its regulated activities for 3 years, including:

- Any paint testing results.
- Copies of signed pamphlet acknowledgements forms or other documentation of delivery.
- Documentation and certification that renovation requirements were followed.
- Individual worker training records.

IV. Federal Overfiling

Section 404(b) of TSCA makes it unlawful for any person to violate, or fail or refuse to comply with, any requirement of an approved State program. Therefore, EPA reserves the

right to exercise its enforcement authority under TSCA against a violation of, or a failure or refusal to comply with, any requirement of an authorized State program.

V. Withdrawal of Authorization

Pursuant to section 404(c) of TSCA, the EPA Administrator may withdraw authorization of a State or Indian Tribal renovation, repair and painting program, and/or a lead-based paint pre-renovation education program, after notice and opportunity for corrective action, if the program is not being administered or enforced in compliance with standards, regulations, and other requirements established under the authorization. The procedures U.S. EPA will follow for the withdrawal of an authorization are found at 40 CFR 745.324(i).

Dated: June 24, 2010.

Michelle Pirzadeh,

Acting Regional Administrator, Region 10.

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ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-8991-3]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564-1399 or <http://www.epa.gov/compliance/nepa/>. Weekly receipt of Environmental Impact Statements filed 06/28/2010 through 07/02/2010 pursuant to 40 CFR 1506.9.

Notice: In accordance with section 309(a) of the Clean Air Act, EPA is required to make its comments on EISs issued by other Federal agencies public. Historically, EPA has met this mandate by publishing weekly notices of availability of EPA comments, which includes a brief summary of EPA's comment letters, in the **Federal Register**. Since February 2008, EPA has been including its comment letters on EISs on its Web site at: <http://www.epa.gov/compliance/nepa/eisdata.html>. Including the entire EIS comment letters on the Web site satisfies the section 309(a) requirement to make EPA's comments on EISs available to the public. Accordingly, on March 31, 2010, EPA discontinued the publication of the notice of availability of EPA comments in the **Federal Register**.

EIS No. 20100244, Final EIS, USFS, CO, North San Juan Sheep and Goat Allotments, Proposal to Permit