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United States Government Accountability Office
Washington, DC 20548

B-316360

May 5, 2008

The Honorable Barbara Boxer
Chairman
The Honorable James M. Inhofe
Ranking Minority Member
Committee on Environment and Public Works
United States Senate

The Honorable John D. Dingell
Chairman
The Honorable Joe Barton
Ranking Minority Member
Committee on Energy and Commerce
House of Representatives

Subject: *Environmental Protection Agency: Lead; Renovation, Repair, and Painting Program*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Environmental Protection Agency (EPA), entitled “Lead; Renovation, Repair, and Painting Program” (RIN: 2070-AC83). We received the rule on April 11, 2008. It was published in the *Federal Register* as a final rule on April 22, 2008. 73 Fed. Reg. 21,692.

The final rule addresses lead-based paint hazards created by renovation, repair, and painting activities that disturb lead-based paint in “target” housing, as defined in the Toxic Substances Control Act, and child-occupied facilities. The final rule establishes requirements for training renovators, other renovation workers, and dust sampling technicians and for certifying renovators, dust sampling technicians, and renovation firms. The final rule also establishes requirements for accrediting providers of renovation and dust sampling technician training, for renovation work practices, and for recordkeeping. Finally, the rule allows interested states, territories and Indian tribes to apply for and receive authorization to administer and enforce all of the elements of these new renovation requirements.

Enclosed is our assessment of the EPA’s compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review indicates that EPA complied with the applicable requirements.

If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Michael R. Volpe, Assistant General Counsel, at (202) 512-8236.

signed

Robert J. Cramer
Associate General Counsel

Enclosure

cc: Nicole Owens
Director, Regulatory
Management Division
Environmental Protection Agency

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
ENVIRONMENTAL PROTECTION AGENCY
ENTITLED
"LEAD; RENOVATION, REPAIR, AND PAINTING PROGRAM"
(RIN: 2070-AC83)

(i) Cost-benefit analysis

The final rule will result in quantified benefits of approximately \$700 million to \$1,700 million in the first year, in addition to unquantified benefits, such as avoiding other health effects in children and adults. EPA estimates that the costs of the final rule will be \$800 million in the first year, dropping to \$400 million in the second year when improved test kits are assumed to be made available. The cost of prohibiting certain paint preparation and removal practices is estimated to be less than \$10 million per year.

EPA concluded that the 50-year annualized net benefits for the rule based on children's health benefits are estimated to be \$300 million to \$1,300 million per year using either a 3-percent or 7-percent discount rate. The net benefits of prohibiting certain paint preparation and removal practices are estimated to be approximately \$400 million to \$900 million per year using either a 3-percent or 7-percent discount rate.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603-605, 607, and 609

EPA prepared an initial regulatory flexibility analysis for the proposed rule and convened a Small Business Advocacy Review Panel, pursuant to the Regulatory Flexibility Act (RFA). As required by the RFA, EPA prepared a final regulatory flexibility analysis. EPA estimates that this final rule will affect approximately 189,000 small entities including small businesses, such as contractors and property owners and managers, small nonprofits, such as day care centers and private schools, and small governments, such as school districts. EPA estimates that each renovation would cost approximately \$35, and that these costs would have an average impact, calculated by the average annual compliance costs as a percentage of average annual revenues, of between 0.004 percent and 0.7 percent on small entities. EPA determined that this rule will fit within the existing framework of other federal regulations that address lead-based paint.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

EPA determined that this final rule will not result in expenditures that in aggregate exceed \$100 million by state, local, and tribal governments. EPA determined that this final rule will result in expenditures in excess of \$100 million by the private sector. As a result, EPA performed a cost-benefit analysis, met with state, local, and tribal government officials, and selected the least burdensome option that achieved the primary objectives of the rule.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

EPA issued a notice of proposed rulemaking on January 10, 2006, covering renovation performed for compensation in target housing. 71 Fed. Reg. 1588. EPA received approximately 250 comments in response to the proposed rulemaking, many of which suggested that EPA include child-occupied facilities within the scope of the rule. As a result, EPA issued a Supplemental Notice of Proposed Rulemaking on June 5, 2007, to add child-occupied facilities to the universe of buildings covered by the 2006 Proposed Rulemaking. 72 Fed. Reg. 31,022. EPA received comments in response to the supplemental notice, and responded to those comments in the final rule. 73 Fed. Reg. 21,692. The final rule will become effective on June 23, 2008, and has a phased in implementation, so the rule will not be fully implemented until April 22, 2010.

Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520

The final rule includes information collection requirements under the Paperwork Reduction Act. EPA has submitted the information collection requirements to the Office of Management and Budget (OMB), and the requirements are not enforceable until OMB approves them. EPA estimates that the total burden on all respondents will be approximately 1,382,000 hours per year.

Statutory authorization for the rule

The final rule is authorized by sections 402(c)(3), 404, 406, and 407 of the Toxic Substances Control Act and sections 2682(c)(3), 2684, 2686, and 2687 of title 15 of the United States Code.

Executive Order No. 12,866

EPA determined that this rule is a significant regulatory action under the Order because it will have an annual effect on the economy of \$100 million or more. The rule was reviewed by OMB under the Order and EPA prepared a cost benefit analysis.

Executive Order No. 13,132 (Federalism)

EPA has determined that this rule does not have federal implications under the Order, because it will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.