

Public Comment Responsiveness Summary
Lead Control Rule

A public hearing was held on July 7, 2020 in Burlington, Vermont, regarding the proposed Lead Control Rule. During both the public comment period as well as the hearing, the Vermont Department of Health (“Department”) received and reviewed written public comments submitted through July 14, 2020.

The following is summary of comments received from the public and the Department’s response to each comment. Comments of a similar or consistent nature have been consolidated and responded to accordingly.

- 1. Comment:** The proposed rule, however, is itself very long and complex. Substantial outreach to contractors, property owners, and related professionals will be needed to explain the requirements of the rule and foster compliance. In order to complete outreach, there should be a contractor registry

Response: The Department plans to do extensive outreach to stakeholders and the general public on the topics covered in this rule. However, a contractor registry is outside of the scope of this rule.

- 2. Comment: Licensing Requirements** – These rules seem to increase the work experience requirements for certain lead-based paint disciplines, such as risk assessors and supervisors, beyond the requirements of EPA CFR 745.226. Specifically, these rules require “certification in construction trades” to fulfill the experience requirement, while the EPA rule only requires a certain number of years working in construction. General contractors/carpenters/painters are not licensed or certified in Vermont, so requiring such certification to become a risk assessor or supervisor is not reasonable, leading to even fewer licensed professionals. Other means of demonstrating experience in the construction trades should be acceptable.

Response: The proposed requirements in 12.16 and 12.15 for a lead-based paint inspector and lead-based paint inspector risk assessor do not require applicants to possess a certification in construction trades; that is just one of the options for demonstrating experience.

Similarly, the proposed rule does not require any certification or licensure in construction trades for a Lead-safe RRPM Supervisor license.

- 3. Comment: Professional Training** – These rules take no measures to increase the availability of professional training for lead-based paint professionals in Vermont. Individuals must travel out of state to obtain required training in most cases. Eliminating or substantially reducing the fee for training providers who are already licensed by EPA would help to increase professional training and employment opportunities for Vermonters.

Response: The fees for training providers are set in the statute and are not controlled by this rule.

- 4. Comment:** These rules and associated documentation do not acknowledge the increased monetary costs that property owners and contractors will incur, specifically for independent dust clearance testing that will be required after interior RRPM activities. These costs will be in the hundreds of dollars per project, and potentially much more if initial clearance is not achieved.

Requiring third-party testing rather than allowing for self-certification will add at least \$650.00 - \$1,500 to even the smallest of jobs. This is also a challenge working in a home with lead paint as it doesn't matter where the work is being done, there will always be lead present in dust clearance tests. One could find paint chips in a doorway, but the work could be in another part of the house. Airflow will move this dust around which will result in a positive test. Again, the lack of enforcement and an increase in costs will not provide the results the department is seeking.

We know that self-certification works on job sites. Responsible contractors follow safety measures in all of their tasks, lead-related work is no exception. Requiring third-party dust clearing oversight will add additional costs and given the current shortage of skilled workers will add a lot of lag time before work can start and possibly, when building occupants could return to their homes if they must wait for the clearance testing to register acceptable results.

Response: The Health Department has updated the rule to require that a cleaning verification process be conducted by the RRPM Supervisor, in lieu of dust clearance by an independent third party, as written in the proposed rule. This will eliminate any additional lag time and costs. This requirement is similar to what is currently in federal law, required by EPA. Homeowners may request a dust clearance be conducted, but it is not required.

- 5. Comment:** RRPM supervisors and firms must be licensed by the Health Department. Vermont does not offer a license category equivalent to a Dust Sampling Technician. The RRPM firm is required to have a licensed lead-safe RRPM supervisor on-site at all times when RRPM work is underway.

Currently, The EPA requires that firms and supervisors have to be certified after attending the necessary training. An EPA certified individual can then train others on a job site. These employees are then considered self-certified and can perform the relevant work provided that they are properly supervised by a certified person.

Requiring an additional license would add further burdens without providing more protections given that these protocols are already in place. The enforcement for this new requirement is lacking as it is with Renewable Energy Building Standards for which we have asked that enforcement be considered a priority. We see this new addition to lead rules in a similar category. Increasing requirements without the ability for proper oversight encourages the growth of less reputable business practices along with consumers choosing to ignore the rules due to the additional expense.

Response: The Lead-safe RRPM Supervisor license is required by Vermont statute. Vermont statute does not have a license category equivalent to EPA's Dust Sampling Technician.

Those individuals that obtain a Lead-safe RRPM Supervisor license may train workers on the job in proper lead-safe work practices, similarly to the EPA's requirement. The licensed Lead-safe RRPM Supervisor must remain on the worksite to supervise those workers while they conduct RRPM activities.

The Health Department does not have jurisdiction over the Renewable Energy Building Standards.

- 6. Comment:** Vermont does not allow for the use of test kits to determine the lead-free status of a property, but rather requires a licensed lead-based risk assessor to make a determination concerning the presence of lead-based paint using an XRF analyzer.

If the test kit confirms that there is lead present the site shouldn't require a licensed lead-based risk assessor to test with an XRF analyzer. The cost of an XRF analyzer is between \$15,000 and \$50,000. There aren't a lot of people available with this equipment to perform this work.

We hope we understand your statement to mean that as long as the test kit confirms the presence of lead there is no need for this added expense since proper protocols will already be in order.

Response: By Vermont statute, all paint in target housing, child-occupied facilities, and pre-1978 public facilities, commercial facilities, and bridges or other superstructures is presumed to be lead-based. There is no requirement that a licensed lead-based risk assessor test with an XRF analyzer to demonstrate or confirm that paint is lead-based.

Rather, only if the property owner wishes to claim an exemption from the lead rules, they must show that their property is free of lead-based paint by having a licensed lead-based risk assessor test all the surfaces in the property with an XRF analyzer and submit a written report to the Health Department. This requirement is currently in Vermont law. and does not happen frequently.

- 7. Comment:** Additional costs from these regulations will lead to contractors skirting the laws in order to reduce costs, or clients not completing work.

Response: The Health Department has updated the rule to require that a cleaning verification process be conducted by the RRPM Supervisor, in lieu of the dust clearance by an independent third party, as written in the proposed rule. This requirement is similar to what is currently in federal law, required by EPA. This will eliminate any costs beyond what is already required by federal law.

- 8. Comment:** Enforcement – It is far too easy for a client and a contractor to reach an agreement and do the work “bending” the rules. Increased costs and lack of effective enforcement just exacerbates this situation.

Response: The Department is looking to improve outreach and education. With the Vermont Department of Health working to implement these regulations as opposed to the EPA, there will be more on-the-ground oversight and assistance.