PROPOSED REGULATIONS OF THE DEPARTMENT OF LABOR STANDARDS

DELEADING AND LEAD-SAFE RENOVATION REGULATIONS

Proposed Amendments to 454 CMR 22.00, et seq.

RESPONSE TO PUBLIC COMMENTS

454 CMR 22.02 – Definitions

- Tarpaulin needs to be defined. Any containment product continues to specify in the regulation that material must be "smooth and impermeable". Canvas is not impermeable yet it is allowed on exterior ground cover. Needs to be defined in a teachable way.

Response: Definition of Tarpaulin: Effective ground cover capable of containing dust or visible debris. This may include polyethylene, cotton or other fabric materials, so long as the cover is impermeable of visible debris.

- Minor Repair and Maintenance Activities
  Last five words of this definition needs further clarification. By pure read of the way this is stated, it appears that any threshold of disturbing a lead painted surface is eliminated. These five words seem to contradict the previous portion of the definition.

Response: For clarification, the definition of *Minor Repair and Maintenance Activities* will be revised as follows: "Renovation, repair and painting activities carried out for a fee in or on target housing or child occupied facilities that disturb 6 or fewer square feet of painted surface per room on building interiors, or a total of 20 or fewer square feet of painted surface on exterior surfaces, where none of the work practices prohibited by 454 CMR 22.11(1)(a) are used, and where the work does not involve window replacement."

- Vertical Containment
  Should there be a better definition with relation to height of work surface or leave as is to be interpreted as a performance standard?

Response: The definition of Vertical Containment is to be interpreted as a performance standard.

- Work Area
  If this is considered a performance regulation and any floor cover we put in place MUST contain dust and debris, why not make this definition similar to a statement that work area is defined as the size of your ground/floor cover?

Response: The work area may be larger than the ground / floor cover as long as it contains the dust and debris being generated as a result of the work.

454 CMR 22.03(3)(b)

- Why is this portion of waivers left in regulation when the application of this item is beyond any current date?

Response: 454 CMR 22.03(3)(b) is no longer applicable since any certification as a Certified Firm issued by EPA pursuant to 40 CFR 745.89 on or before July 9, 2010 has now expired. Therefore, this section will be stricken from the regulations.

454 CMR 22.04

- **(1)(a)(10)** Is the intention to literally receive the actual respiratory program from each company or continue with the affirmation page of the application stating the contractor has in fact this in place?

Response: DLS's intention is to receive the actual respiratory program from each company.

- **(1)(a)(11)** Is the Department asking for a Standard Operating Procedure from each contractor detailing how they intend on implementing their worker protection as required by OSHA and the current 454 CMR 22.09? or a written PPE Plan?

Response: Yes. DLS is going back to this standard.

- Reference in this item points incorrectly to the asbestos standard of OSHA (29 CFR 1926.1101)
- This appears to be in partial a duplicate of the 22.04(1)(a)10 or at very best a bit confusing.

Response: This is not a duplicate. These are two free-standing standards. The correct citation for OSHA should be 29 CFR 1926.62.

454 CMR 22.07(6)(b)

- Why does the Lead Safe Renovator-Supervisor Moderate Risk Deleading Option not need the Moderate Risk Portion to be refreshed with the current deleading issues?

Response: See 454 CMR 22.08(4)(a)5.f. The Moderate Risk portion predates the RRP requirement that goes back five years.

454 CMR 22.08

- Did the DLS consider the fact that some people would not like to use online-training?

Response: DLS has allowed the option of electronic training in order to be consistent with the EPA's RRP program with which we are reciprocal. DLS maintains that quality training is a threshold for compliance.

- **(4)(a)(5)(e)** Instructors credentials – was this meant for webinars and not online recorded trainings? Is a training firm who is already approved in live classes need to resubmit the very same credentials?

Response: The requirements for live versus online classes are different. Therefore, the training firm who is already approved for live classes must resubmit an application which meets the EPA Model Renovation Repair and Painting Rule E-learning Course Component Implementation Requirements, as set forth in 454 CMR 22.08(4)(a)5.a. through v.

- **(4)(a)(5)(i)** Proposed changes do not read as strongly as they should
  - Dept should consider making of certain technological abilities mandatory under the CMR
  - Department should try to eliminate some grey area for entities or workers
  - Will control quizzes at end of each module meet this requirement?

Response: This suggestion is covered in a later section of the regulation. See 454 CMR 22.08(4)(a)5.s.

- **(4)(a)(5)(j)** Technology to prevent screen shots is not available at this level of security

- **(4)(a)(5)(m)** This appears to apply to webinar models and not online recorded classes. Please explain how to apply in an online recorded class platform.

Response: This does not apply to online recorded classes.

- **(4)(a)(5)(n)** Will this notice be through the same portal as the live class process?

Response: Yes.

- **(4)(a)(5)(o)** Department should be specific on what meets the requirement of a live trainer available 24/7. Does e-mail communication satisfy this requirement?

Response: E-mail communication is acceptable within a reasonable timeframe.

- There should be a time frame in which an application should expect a thorough review of their application and a complete detailed response should they be rejected as to what items were found to be non-acceptable.

Response: This suggestion is covered in 454 CMR 22.07(4).

- **(4)(i)** The Department should answer whether a LSR-S train other sub-contractor employees or can we only train our direct employees or add "worker" in the definitions which would spell out his/her relationship to the LSR-S assigned to the project.

Response: Subcontractors must have their own supervisors who will train their own workers.

454 CMR 22.09

- The area of decontamination and changing rooms, stated in the 29 CFR 1926.62(i) and its subsections. Is one to read the initial statement under 22.09(1) as referencing these topics or will the DLS not enforce these topics?

Response: DLS maintains the authority to enforce such requirements, unless preempted by OSHA.

- The regulation only calls for such compliance in Class 1 deleading jobs. However, the exposure levels on a LSR project could require that the contractor provide such by OSHA. If the answer is this is our law, perhaps some notice firmer than stated in 22.09 (1) should be inserted so the typical contractor is not left confused.

Response: DLS's authority to inspect Deleading and Renovation jobs was delegated by the EPA, and not OSHA.

454 CMR 22.12(1)(b)(1)

- Wording of the regulation is not changing to comply with OSHA's regulation
  a. Department should consider that OSHA states that the sign is only posted when exposure above the PEL is existent
  b. Did the Department change regulation in anticipation that a person doing moderate risk deleading would not be exposing above the PEL?

Response: See answer above. Appropriately, DLS will accept EPA signage or OSHA signage if the work is subject to OSHA.

- Where OSHA says in its regulations that a sign is not needed until the exposure is above the PEL your then following OSHA procedures with the deleading regulations one word to engineer down?

Response: You must have a sign with OSHA or EPA as applicable.

- Could that person then omit the requirement of the sign if that be the case should we be requiring them to return back to the warning sign as well?

Response: No you cannot omit a sign.

- Why is the change in signage important?

Response: The change in signage is related to the EO 562 in making our regulations match federal regulations, which is why it specifically references the OSHA standard.

Lead Safe Work Practices

A) Whether it be a renovation or deleading, work practices should be the same
    a. There is a heavier burden on a designer
    b. In some cases, renovator does the same work, if not more
B) Medical Monitoring should be consistent with OSHA and in accordance with EO 562
    a. anyone coming in contact with lead or where the disturbance of lead is going to be reaching levels requiring under OSHA's regulations medical monitoring and protection should be spelled out specifically
    b. Department still has references to material safety data sheets where technically OSHA's standards has removed them from the MSDS. Regulation should be written in a manner to get these corrects covered
    c. Under OSHA's regulation on medical removal and return to work is permitted when there have been consecutive tests that are below forty (40). Massachusetts regulation states that worker may return when two consecutive samples indicate that the blood level is at or below forty (40).
        i. Why the different standards?

Response: DLS encourages compliance with OSHA and current science that would dictate adult exposures to lesser levels of lead in blood. However, DLS does not currently require licenses of Lead Safe Renovation Contractors as individuals.

Appendix

Interiors Why are protruding edges such as baseboard caps or chair rails left out of the surfaces to be cleared using the Clearance Verification Procedure? It seems these surfaces have the ability to hold dust that could carry lead at heights that young children could be exposed to.

Response: EPA specifies what clearance verification is, and DLS is consistent with EPA.

Other Comments:

- The Department should consider that there are several states in the United States that require lead removal certifications and requirements for ALL construction or renovation projects not just limited to housing or school.

- Certificate numbers should be the same as number that is given by the trainer.

Response: This is impractical, since every trainer has its own numbering system.

- The costs estimated by the Department for complying with the regulations are not accurate.

Response: DLS does not set cost estimates. EPA sets this.