



September 22, 2008

Document Control Office (7407M)
Office of Pollution Prevention and Toxics
Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460-0001

Re: Docket ID EPA-HQ-OPPT-2008-0382

Docket Officer:

The American Industrial Hygiene Association (AIHA) appreciates the opportunity to comment on the EPA Proposed Rule to revise the existing fees for EPA's Lead-Based Paint Activities and establish fees for the Renovation, Repair, and Painting rule. The proposed rule was published in the *Federal Register* on August 21, 2008.

As the premier association of occupational and environmental health and safety professionals, AIHA members serve on the front line of worker health and safety. AIHA members, as well as employees and employers, rely on federal and state rules and regulations to improve the health and safety of the workplace and believe the issue of standards and requirements for lead-based paint training programs and the fees charged for these programs and contractors is of the utmost importance.

The AIHA Construction Committee reviewed the Proposed Rule and offers the following comments:

Proposed Rule
Lead; Fees for Accreditation of Training Programs and Certification of
Lead-Based Paint Activities and Renovation Contractors

The AIHA recognizes that the proposed rule deals solely with fees associated with firms and workers involved with existing Lead-Based Paint Activities regulations and recent Renovation, Repair, and Painting rules in target housing and child-occupied facilities. Further, the AIHA recognizes that the proposed rule on fees applies only in the States, Territories, and Indian Tribes that do not have authorized programs. While the actual fees contained in the proposed rule warrant comment, the greatest adverse impact to firms, either contractors or training providers, comes from having to go through accreditation and certification activities in each State operating

an authorized program. The AIHA strongly encourages the EPA to use this rule and all other appropriate vehicles to encourage greater reciprocity among the States in all aspects of its Title X/TSCA 402 rulemaking. That said, the AIHA offers the following comments in response to the questions posed by EPA in the proposed rule.

1. EPA is proposing to adjust estimates for Lead-Based Paint Activities to lower individual certification and re-certification fees for workers and recover these fees from the fees charged to training course providers and firms.

Comment: AIHA is not in a position to comment on the merits of reduced fees for workers or Tribes and Tribal workers. However, it is not appropriate to recover any reduced worker fees from training providers. Training providers have no opportunity to recover their investment other than the training fees from the immediate course offering. Lead abatement “firms” that employ certified workers have the repeated opportunity to recover their investment through the work they perform. Therefore, any shortfall in worker certification fees should only be recovered from “firms” certification fees.

2. EPA requested comments on apportioning costs for enforcement and Headquarters Administration in a way as to generate fee estimates similar to the current fees.

Comment: AIHA sees no basis for apportioning costs solely to generate fees similar to current fees. As indicated in the proposed rule, EPA has been administering the accreditation and certification program for nearly a decade. EPA should rely on its own data to estimate future costs.

3. EPA requests comments on whether the estimated costs for the Lead-Based Paint Activities rule should be combined with the Renovation, Repair and Painting Program.

Comment: EPA should estimate the costs of the two programs separately. EPA has nearly a decade of data regarding the Lead-Based Paint Activities rule and should rely on this data to properly allocate its cost. Conversely, the magnitude of the unknowns for the new program should be evaluated on their own merit.

4. EPA requests comments on whether firms with annual revenues below \$25,000 should pay a reduced firm certification fee, which would be offset by increasing the fees for other firms and/or training providers.

Comment: Reducing the fee for low annual revenue firms may have merit for the reasons outlined by EPA, however, any associated increase should be borne solely by other firms (i.e. not training providers) who have an interest in the overall renovation and repair market. See the Comment to item #1 above.

5. EPA requests comment on reducing fees for certain small businesses, whether these fees would be appropriate, what level of revenue should trigger the lower fee, or whether a measure other than gross receipts, such as number of employees, should be used to determine who qualifies for the reduced fee.

Comment: AIHA supports efforts to encourage participation of small businesses in commerce in general, but has no specific basis on which to respond to EPA's request. AIHA suggests whatever action taken by EPA be easy to administer (for both the small business and EPA) and easy to enforce so that costs allocated to other firms are not excessive. AIHA suggests reliance on any existing applicable threshold for defining small business that may exist within the Small Business Administration or similar agency.

6. EPA solicited comments on its numerical estimates of the numbers of lessors and property managers, including those without employees that will require firm certification.

Comment: AIHA has no specific basis on which to challenge EPA estimates. Input from other trade associations, such as the Building Owners and Managers Association (BOMA), should be pursued.

7. EPA requests comments on whether the final rule should establish lower fees for State and local governments seeking firm certification and their employees seeking individual certification.

Comment: AIHA recognizes that governments are already exempt from paying Federal accreditation fees, and sees no basis to establish additional discounts for certifications, especially if the decreased fees for governments would be recovered from non-government firms and individuals.

8. EPA requests comments on whether certification fees should be lower for State and local governments and their employees, what those fees should be, and how to apportion the remainder of the costs across all of the other accreditation and certification activities.

Comment: See the Comment to item #7. Should EPA decide to discount State and local government certification fees, it should be limited to employees only, as any governmental agency should be fully capable of supporting its certification fee as a firm. Recovery of these costs should clearly not be allocated to accreditation activities as these firms and trainers are already paying for the government's protection for accreditation fees and have no opportunity to recover these extra costs.

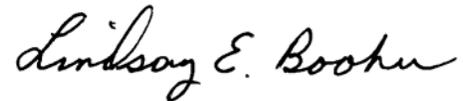
9. EPA requests comment on how many State and local government firms and individuals must comply with the Lead-Based Paint Activities regulations and Renovation, Repair, and Painting rule.

Comment: AIHA is not in a position to offer objective feedback in this area. The Committee is also in agreement that the proposed rule adds no new compliance burden.

AIHA appreciates the opportunity to work with EPA to help achieve the mutual goal of protecting workers and others from injury and illness caused by exposure to lead-based paint and other workplace hazards. We look forward to further opportunities to work with the agency on this and similar issues and regulatory priorities.

If AIHA can be of any further assistance, please contact me. Thank you.

Sincerely,

A handwritten signature in black ink that reads "Lindsay E. Booher". The signature is written in a cursive, flowing style.

Lindsay E. Booher, CIH, CSP
AIHA President

cc: AIHA Board of Directors
AIHA Construction Committee