



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

January 5, 2022

MEMORANDUM

SUBJECT: Consideration of Public Comments on Withdrawal of Two Answers to Frequent Questions about Property Management Companies and the Toxic Substances Control Act Lead-based Paint Renovation, Repair and Painting Rule

FROM: Michal Freedhoff
Assistant Administrator
Office of Chemical Safety and Pollution Prevention (7101M)

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Lawrence E. Starfield
Acting Assistance Administrator
Office of Enforcement and Compliance Assurance (2201A)

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TO: Michael S. Regan
Administrator (1101A)

FOR: Inclusion in Public Docket, ID No. EPA-HQ-OECA-2021-0763

The U.S. Environmental Protection Agency recently announced its intent to withdraw two Frequently Asked Questions (FAQs) concerning property management companies (PMCs) and their compliance responsibilities under the Toxic Substances Control Act (TSCA) Lead Renovation, Repair and Painting (RRP) Rule. 86 Fed. Reg. 60,812 (Nov. 4, 2021) (Notice). As discussed below, we recommend that you approve the withdrawal of FQ 23002-13650 and FQ 23002-18348 from the document entitled “EPA Lead-Based Paint Program Frequent Questions,” to take effect as planned on March 21, 2022.

In the November 4, 2021 Notice, the EPA requested public comment to identify any relevant information that could change the EPA’s decision to withdraw the two FAQs. The Notice explained that, following the comment period and the Agency’s consideration of comments received by that date, the EPA intended to post a memorandum that states whether the withdrawal will take effect as planned. The EPA stated that it would make the memorandum available on its website at: www.epa.gov/lead, and in the docket for the Notice. The EPA received comments from six commenters on this Notice. After careful review, we have determined that the comments did not identify information that changed the Agency’s preliminary decision to withdraw the FAQs. However, the comments did prompt EPA to decide it is appropriate to clarify that the withdrawal of these FAQs neither changes the definition of “renovation” in the RRP rule, nor changes the regulation in any other way. This clarification is discussed below.

Some commenters objected to the Notice, interpreting it as inappropriately expanding definitions of key terms under the RRP Rule. Other commenters supported the Notice because they favored expanding

definitions of key terms under the RRP Rule. In particular, commenters focused on a list of activities that EPA had included as examples of activities that PMCs undertake. However, these comments misunderstand the EPA's intent in including the list of activities. The description of certain activities in Unit II.G of the Notice (i.e., section II.G of the Notice), entitled "*Examples of PMCs' Varying Levels of Involvement With Renovations*," 86 Fed. Reg. 60,814-15, is not a new regulatory determination or an expansion of the definition of "renovation" or other key phrases in the RRP Rule. Rather, the paragraph with the bulleted list of activities (such as soliciting bids, applying for permits, etc.) was included in the Notice to provide illustrative examples of activities that some PMCs do, and the EPA did not purport to or intend to reach any legal conclusion about those activities, such as whether or not they constitute performing or offering to perform a renovation. *See id.* at 60,815. Instead, the EPA explained that any conclusions about the activities will take into account fact specific circumstances. In a later paragraph summarizing and concluding Unit II.G, the EPA stated that compensation for any of the activities described in Unit II.G "may" establish a compliance obligation, and the Agency explained that any such determinations would be exercised in the context of the facts and circumstances of individual renovations. *Id.* ("Consistent with the requirements in the RRP rule, the EPA will evaluate compliance and appropriate enforcement actions on the basis of each case's individual facts and circumstances, and the EPA may exercise its enforcement discretion regarding PMC obligations."). The EPA described in Unit II.G the wide variety of factual scenarios that may arise and explained in Unit II.I that the Agency "intends, upon withdrawal, to assess compliance by PMCs that are performing or offering to perform renovations for compensation—either by using their own employees or hiring an outside firm—according to the same requirements placed upon any other entity that performs or offers to perform a renovation for compensation in target housing or child-occupied facilities." *Id.*; *see also id.* at 60,813 and 60,814 (citing 40 CFR 745.81(a)(2)(ii) as an example of the applicable language of the RRP rule).

Some commenters also asserted that the Notice was impermissibly modifying the RRP Rule without notice-and-comment rulemaking. Yet the EPA did not and does not intend the November 4, 2021 Notice to modify the RRP regulation in any way, nor did the Notice purport to do so. Rather, the Notice simply announced the Agency's intent to withdraw the two FQs and explained why. The EPA would rely on the duly promulgated and existing RRP regulations—not the November 4, 2021 Notice—in any enforcement activity related to this subject.

Some commenters suggested modifying the FQs or providing new guidance in lieu of or in addition to withdrawing the two FQs discussed in the Notice. EPA appreciates the suggestions and may act on them in the future. For now, the Agency favors withdrawing the two FQs for the reasons described in the Notice.

With this memorandum, we recommend that the withdrawal take effect as planned on March 21, 2022. This affects FQ 23002-13650 and FQ 23002-18348 from the document entitled "EPA Lead-Based Paint Program Frequent Questions," accessible at <http://www.epa.gov/lead/fqs-rrp-rule>. Please indicate below whether you approve or disapprove.

Approved: 
Michael S. Regan
Administrator

Disapproved: _____
Michael S. Regan
Administrator

Date: JAN 11 2022