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ABSTRACT

This two-part report deals with the Lead Exposure Reduction Act of 1992 (H.R. 5730), an amendment to the Toxic Substances Control Act and the Federal Food, Drug, and Cosmetic Act. The amendment is intended to lead to the reduction of levels of lead in the environment and to lower the degree of childhood exposure to lead. The bill provides for a program of inspection for lead-based paint at covered schools and for lead hazards at covered day care facilities; inspections in cases of lead in drinking water at covered schools and facilities; a program for training and licensing of lead-based paint abatement contractors and their workers; and repair or recall of drinking water coolers. Part 1 of the report includes: (1) the amendment itself; (2) background information and a rationale; (3) a summary of hearings on the amendment; (4) committee findings and cost estimates; (5) the cost estimate of the Congressional Budget Office; (6) section-by-section analysis; (7) dissenting views; and (8) changes in existing law made by the bill. Part 2 is an additional report, submitted by the Committee on Education and Labor, with suggestions for amendments to the bill. (MM)

102D CONGRESS
2d Session
HOUSE OF REPRESENTATIVES
REPT. 102-852
Part 1

LEAD EXPOSURE REDUCTION ACT OF 1992

AUGUST 14, 1992.—Ordered to be printed

Mr. DINGELL, from the Committee on Energy and Commerce, submitted the following

REPORT

together with

ADDITIONAL AND DISSENTING VIEWS

[To accompany 5730]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 5730) to amend the Toxic Substances Control Act to reduce the levels of lead in the environment, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Lead Exposure Reduction Act of 1992".

SEC. 2. AMENDMENT OF THE TOXIC SUBSTANCES CONTROL ACT.

(a) AMENDMENT OF THE TOXIC SUBSTANCES CONTROL ACT.—The Toxic Substances Control Act (15 U.S.C. 2601 and following seq.) is amended by adding after title III the following new title:

"TITLE IV—LEAD EXPOSURE REDUCTION

"Subtitle A—Findings, Policy, and Definitions

"SEC. 401. FINDINGS AND POLICY.

"(a) FINDINGS.—The Congress finds that—

"(1) lead poisoning is the most prevalent disease of environmental origin among American children today, and children under six years of age are at special risk because of their susceptibility to the potency of lead as a neurologic toxin;

"(2) the effects of lead on children may include permanent, significant neurologic and physiologic impairment, and additional health effects occur in adults;

"(3) because of the practical difficulties of removing lead already dispersed into the environment, children and adults will continue to be exposed to such lead for years;

"(4) as a result of decades of highly dispersive uses of lead in a variety of products, contamination of the environment with unacceptable levels of lead is widespread;

"(5) the continued manufacture, import, processing, use, and disposal of some lead-containing products may cause further releases of lead to the environment, and such releases contribute to further environmental contamination and resultant exposure to lead; and

"(6) methods to reduce existing lead exposure levels must be improved, especially through the development of more effective and affordable methods for abating lead-based paint, which continues to be a major cause of childhood lead poisoning.

"(b) POLICY.—It is the policy of the United States that further releases of lead to the environment should be minimized, and means should be developed and implemented to reduce sources of lead that result in adverse human or environmental exposures.

"SEC. 402. DEFINITIONS.

"(a) IN GENERAL.—As used in this title—

"(1) COVERED DAY CARE CENTER.—The term 'covered day care center' means—

"(A) the interior and exterior of any building constructed before 1980 which is used as a day care facility which regularly provides day care services for children in kindergarten or younger children, and

"(B) any land and structures thereon and any related common grounds or playground area and playground structures which are under the same ownership as such building and which would be regularly accessible to children in kindergarten or younger children.

"(2) COVERED SCHOOL.—The term 'covered school' means—

"(A) the interior and exterior of any building constructed before 1980 which is used as an elementary school as defined in section 1471 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2891), or as a kindergarten, which regularly provides education for children in kindergarten or younger children, and

"(B) any land and structures thereon and any related common grounds or playground area and playground structures which are under the same ownership as such building and which would be regularly accessible to children in kindergarten or younger children.

"(3) DAY CARE FACILITY.—The term 'day care facility' means any portion of a facility used for day care for children in kindergarten or younger children and owned or operated by a person that provides such day care for compensation and that—

"(A) is licensed or regulated under State law for day care purposes; or

"(B) receives Federal funds for day care purposes.

"(4) DELEADER.—The term 'deleader' means a person who offers to reduce or eliminate lead-based paint or lead hazards or to plan such activities. Where such activities are performed at any facility by employees of the owner or operator of such facility, such term includes such owner or operator.

"(5) DISTRIBUTOR.—The term 'distributor' means any individual, firm, corporation, or other entity which takes title to goods purchased for resale.

"(6) FACILITY.—The term 'facility' means any public or private dwelling constructed before 1980, public building constructed before 1980, commercial building, bridge, or other structure or superstructure.

"(7) LEAD-BASED PAINT.—The term 'lead-based paint' means any paint or surface coating that contains lead in excess of the action level described in 'Interim Guidelines for Hazard Identification and Abatement for Public and Indian Housing' of the Department of Housing and Urban Development, as in effect on the date of enactment of this title.

"(8) LEAD-BASED PAINT ABATEMENT ACTIVITIES.—The term 'lead-based paint abatement activities' means the inspection, removal, encapsulation, in place management, lead hazard reduction, handling, transportation, or disposal of lead-based paint or materials containing lead from lead-based paint at or from any facility or the planning of any such activities. Such term shall not include renovation, remodeling, maintenance or repair activities that incidentally remove, encapsulate, manage in-place, handle, transport, or dispose of such paint or materials if such activities do not present more than a de minimis risk of exposure to lead.

"(9) LEAD-BASED PAINT ABATEMENT CONTRACTOR.—The term 'lead-based paint abatement contractor' means any contractor performing lead-based paint abatement activities for compensation. Where such activities are performed at any facility by employees of the owner or operator of such facility, such term includes such owner or operator.

"(10) LEAD HAZARD.—The term 'lead hazard' means—

"(A) lead-based paint that is chipping, peeling, flaking, or chalking;

"(B) any surface coated with lead-based paint which is subject to abrasion;

"(C) any surface coated with lead-based paint that can be mouthed by a child under 6 years of age; and

"(D) interior dust or exterior soil that contains a dangerous level of lead, as identified under section 423.

"(11) LEAD INSPECTION.—The term 'lead inspection' means an inspection to detect the presence of any lead-based paint or lead hazard.

"(12) LOCAL EDUCATION AGENCY.—The term 'local education agency' means—

"(A) any local educational agency as defined in section 1471 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2891),

"(B) the owner of any private nonprofit elementary or secondary school building, and

"(C) the governing authority of any school operating under the defense dependent's education system provided for under the Defense Dependent's Education Act of 1978 (20 U.S.C. 921 and following).

"(13) OWNER OR OPERATOR.—The term 'owner or operator' when used with respect to a school means the local education agency with jurisdiction over that school.

"(14) PACKAGE.—The term 'package' means a container providing a means of marketing, protecting, or handling a product, and includes a unit package, an intermediate package, crate, pail, rigid foil, unsealed receptacle such as a carrying case, cup, and such other trays, wrappers and wrapping films, bags, tubs, and shipping or other containers, as the Administrator by regulation, may define.

"(15) PACKAGING COMPONENT.—The term 'packaging component' means any individual assembled part of a package such as any interior or exterior blocking, bracing, cushioning, weatherproofing, exterior strapping, coating, closure, ink, and label. For the purposes of this title, tin-plated steel that meets the American Society for Testing and Materials (ASTM) Specification A-623 shall be deemed an individual packaging component.

"(16) PERSON.—The term 'person' means an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or any interstate body and shall include each department, agency, or instrumentality of the United States.

"(b) EXCEPTIONS.—For purposes of this title the terms 'package' and 'packaging component' shall not include—

"(1) ceramic ware or crystal,

"(2) a container used for radiation shielding,

"(3) a foil on an alcohol beverage bottle,

"(4) any casing for a lead-acid battery,

"(5) steel strapping, or

"(6) any package or packaging component containing lead which is regulated or subject to regulation under the Federal Food, Drug, and Cosmetic Act.

"Subtitle B—Lead Containing Products and Packages

"SEC. 411. RESTRICTIONS ON CONTINUING USES OF CERTAIN LEAD-CONTAINING PRODUCTS.

"(a) GENERAL RESTRICTIONS.—Except as otherwise provided in this title, beginning on the date one year after the enactment of the Lead Exposure Reduction Act of 1992, no person may import, manufacture or process a product in any of the following product categories:

"(1) INKS.—Inks containing more than 0.1 percent lead by dry weight used in printing newspapers, newspaper supplements, or magazines published more than once per month.

"(2) PAINTS.—Paints containing more than 0.06 percent lead by dry weight (other than any paint covered by subsection (c), (d), or (e)).

"(3) BRICK MORTAR.—Brick mortar containing more than 2 percent lead by dry weight.

"(4) GLASS COATINGS.—(A) Architectural glass coatings containing more than 0.06 percent lead by dry weight.

"(B) Automotive window coatings containing more than 0.06 percent lead by dry weight.

"(C) Mirror backings containing more than 0.06 percent lead by dry weight.

In applying the prohibitions contained in this subsection in the case of items listed in paragraph (2), the date 3 years after the enactment of the Lead Exposure Reduction Act of 1992, and in the case of items listed in paragraph (4), the date 5 years after the enactment of such Act, shall be substituted for the date one year after the enactment of such Act. Nothing in this section shall prohibit the recycling of any product listed in this subsection where, following its original use, such product is reused as a raw material in the manufacture of any product not listed in this subsection.

"(b) EPA AUTHORITY TO ISSUE EXEMPTIONS.—The Administrator shall, by rule, exempt from regulation under this section products used—

"(1) for medical purposes (as defined by the Administrator in such rule, in consultation with the Secretary of Health and Human Services);

"(2) for purposes in the paramount interest of the United States (as determined by the Administrator, in consultation with the Secretary of Defense);

"(3) for radiation protection;

"(4) in the mining industry to determine the presence of noble metals in geological materials; and

"(5) as radiation shielding in electronic devices and in specialized electronics uses where the Administrator has determined that no appropriate substitutes for lead are available.

"(c) CERTAIN PRIMER PAINTS.—

"(1) PRIMER PAINTS SUITABLE FOR USE AS AN ELECTROCOAT OR ELECTRODEPOSITION PRIMER (OR BOTH) ON MOTOR VEHICLE PARTS.—(A) Five years after the enactment of the Lead Exposure Reduction Act of 1992, and every 5 years thereafter until the Administrator makes a determination under subparagraph (B), the Administrator shall determine, following public notice and opportunity for comment, whether there are 1 or more primer paints suitable for use as an electrocoat or electrodeposition primer (or both) on motor vehicle parts that—

"(i) contain 0.06 percent lead by weight in dry film, or less

"(ii) have corrosion inhibition and related performance characteristics substantially equivalent to primer paints in use for corrosion inhibition, as of the date of enactment of this section, and

"(iii) do not pose a greater risk to human health and the environment than primer paints in use as of the date of enactment of this section for such corrosion inhibition.

"(B) If the Administrator determines pursuant to subparagraph (A) that one or more such primer paints exist, and that use of any such primer paint is eco-

nomically feasible at the time of such determination, the Administrator shall identify the lead content level of such primer paint. Three years after the Administrator makes such a determination, no person shall import, manufacture, or process any electrocoat or electrodeposition primer paint with a lead content that exceeds the level identified by the Administrator. Four years after the Administrator makes such a determination, no person shall distribute in commerce any electrocoat or electrodeposition primer paint (or import or manufacture any new motor vehicle or new motor vehicle part coated with such primer paint) with a lead content level that exceeds the level identified by the Administrator. In the case of such motor vehicles and parts, such prohibition shall not be effective until the beginning of the first motor vehicle model year which begins after such 4-year period. Whenever the Administrator makes a determination under this paragraph, the Administrator shall publish notice of the restrictions imposed under this subsection pursuant to such determination.

"(C) If the Administrator determines pursuant to subparagraph (A) that there does not exist a primer paint suitable for use as an electrocoat or electrodeposition primer (or both) on motor vehicle parts with a lead content level of 0.06 percent lead by weight in dry film or less or that the use of all such primer paints is not economically feasible at the time of such determination, 13 years after the date of the enactment of the Lead Exposure Reduction Act of 1992, no person shall import, manufacture, or process any electrocoat or electrodeposition primer paint with a lead content level greater than 0.06 percent lead by weight in dry film, and 14 years after the date of such enactment, no person shall distribute in commerce any electrocoat or electrodeposition primer paint (or import, manufacture any new motor vehicle or new motor vehicle part coated with such primer paint) with a lead content level greater than 0.06 percent lead by weight in dry film. In the case of such motor vehicles and parts, such prohibition shall not be effective until the beginning of the first motor vehicle model year which begins after such 14-year period.

"(2) CERTAIN PAINTS AND PRIMERS FOR AGRICULTURAL, CONSTRUCTION, GENERAL PURPOSE INDUSTRIAL, AND FORESTRY EQUIPMENT.—(A) Five years after the enactment of the Lead Exposure Reduction Act of 1992, and every 5 years thereafter until the Administrator makes a determination under subparagraph (B), the Administrator shall determine, following public notice and opportunity for comment, whether there are 1 or more original equipment manufacturer paints and primers and service paints and primers for agricultural, construction, general purpose industrial and forestry equipment that—

"(i) in the dry coating have a lead solubility of less than 60mg/liter ANSI standard Z66.1,

"(ii) have corrosion inhibition and related performance characteristics substantially equivalent to original equipment manufacturer paints and primers and service paints and primers in use as of the date of enactment of this section for agricultural, construction, general purpose industrial and forestry equipment, and

"(iii) do not pose a greater risk to human health and the environment than original equipment manufacturer paints and primers and service paints and primers in use as of the date of enactment of this section for agricultural, construction, general purpose industrial and forestry equipment.

"(B) If the Administrator determines pursuant to subparagraph (A) that one or more such paints and primers exist, and that use of any such paint or primer is economically feasible at the time of such determination, the Administrator shall identify the lead content of such paint or primer. Three years after the Administrator makes such a determination, no person shall import, manufacture, or process any original equipment manufacturer paints and primers and service paints and primers for agricultural, construction, general purpose industrial and forestry equipment with a lead content that exceeds the level identified by the Administrator. Four years after the Administrator makes such a determination, no person shall distribute in commerce any original equipment manufacturer paints and primers and service paints and primers for agricultural, construction, general purpose industrial and forestry equipment (or import or manufacture any new equipment or new equipment part coated with such paint or primer) with a lead content that exceeds the level identified by the Administrator. Whenever the Administrator makes a determination under this paragraph, the Administrator shall publish a notice of any restriction imposed under this paragraph pursuant to such determination.

"(C) If the Administrator determines pursuant to subparagraph (A) that there does not exist paint or primer suitable for use for original equipment manufacturer and service paints and primers for agricultural, construction, general purpose industrial and forestry equipment which in the dry coating has a lead solubility of less than 60mg/liter ANSI standard Z66.1 or that the use of all such paints and primers is not economically feasible at the time of such determination, 13 years after the date of the enactment of the Lead Exposure Reduction Act of 1992, no person shall import, manufacture, or process any original equipment manufacturer paint or primer or service paints and primers for agricultural, construction, general purpose industrial and forestry equipment which in the dry coating has a lead solubility greater than 60mg/liter ANSI standard Z66.1, and 14 years after the date of such enactment, no person shall distribute in commerce any original equipment manufacturer paints and primers or service paint or primer for agricultural, construction, general purpose industrial and forestry equipment (or import or manufacture any such new equipment or new equipment part coated with such paint or primer) which in the dry coating has a lead solubility greater than 60mg/liter ANSI standard Z66.1.

"(D)(i) The Administrator may, after public notice and opportunity for comment, promulgate regulations to establish a percentage by dry weight of the allowable lead content for original equipment manufacturer paints and primers or service paint or primer for agricultural, construction, general purpose industrial and forestry equipment that is greater than the percentage applicable under subparagraph (C) if the Administrator establishes restrictions on the use of such paints and primers or group of paints and primers and determines (I) that substitutes are unavailable or do not have substantially similar performance characteristics and (II) that the regulation increasing the percentage of allowable lead content, together with such restrictions on use, will protect human health and the environment.

"(ii) If the Administrator establishes by regulation an increased percentage of the allowable lead content under clause (i), the regulation establishing such percentage shall terminate on the date that is 6 years after the date such regulation becomes final, except that if, not later than 12 months prior to such termination, the Administrator determines pursuant to clause (i), that the extension of such regulation is appropriate, the Administrator may extend such regulation. Each such extension shall be for a 6-year period.

"(iii) In promulgating any regulation or extension under this subparagraph with respect to the allowable lead content, the Administrator shall, prior to the promulgation of a final regulation or extension, consider and publish a statement that describes the effects on human health and the environment of the proposed allowable lead content level for original equipment manufacturer paints and primers or service paint or primer for agricultural, construction, general purpose industrial and forestry equipment.

"(d) PAINTS CONTAINING LEAD CHROMATE PIGMENTS.—(1) Five years after the enactment of the Lead Exposure Reduction Act of 1992, following public notice and opportunity for comment, the Administrator shall determine if there is a substitute for paints containing lead chromate pigments for use in any class or category of uses that—

"(A) contains 0.06 percent lead by weight in dry film or less,

"(B) has performance characteristics substantially equivalent to paints containing lead chromate pigments in use, as of the date of enactment of this section, in such class or category of uses, and

"(C) does not pose a greater risk to human health and the environment in such class or category of uses than paints containing lead chromate pigments in use as of the date of enactment of this section.

Unless the Administrator determines, that, for a particular class or category of uses, no such substitute exists or is economically feasible for use in such class or category of uses, 6 years after the date of the enactment of the Lead Exposure Reduction Act of 1992, the use of any paint containing lead chromate pigment in such class or category of uses shall be unlawful.

"(2) If the Administrator determines under paragraph (1) that no substitute referred to in paragraph (1) exists for any class or category of uses, or that no substitute is economically feasible for use in any class or category of uses, the Administrator shall delay the effective dates of the prohibition under paragraph (1) for a period of 6 additional years for that class or category of uses. At 6-year intervals after making such determination, the Administrator shall make an additional determination under paragraph (1) and delay the effective dates of such prohibitions for additional 6-year periods for a particular class or category of uses if the Administrator

determines under paragraph (1) that no substitute referred to in paragraph (1) exists for that class or category.

"(3) This subsection shall not apply to any lead chromate pigments in original equipment manufacturer paints and primers or service paint or primer for agricultural, construction, general purpose industrial and forestry equipment.

"(e) EXEMPTIONS FROM LEAD CONTENT REQUIREMENTS.—

"(1) STATUTORY EXEMPTIONS.—The restrictions on lead content under this section shall not apply to the following:

"(A) ARTIST PAINT.—Any paint for use by an artist in a work of art if such paint is sold or otherwise distributed in packages labeled as follows:

'CONTAINS LEAD—FOR USE BY ADULTS ONLY. DO NOT USE OR STORE AROUND CHILDREN OR IN AREAS ACCESSIBLE TO CHILDREN'

"(B) CERTAIN ZINC ENRICHED INDUSTRIAL PAINT.—Zinc enriched industrial paint with an incidental presence of lead not greater than 0.19 percent lead by dry weight.

"(2) LABELS.—

"(A) SIZE AND PLACEMENT.—Unless the Administrator promulgates regulations within 24 months after the date of enactment of the Lead Exposure Reduction Act of 1992 specifying alternate type size and placement of the wording for labels referred to in paragraph (1), that wording shall be placed prominently on the package in letters the same size as the largest text letter (except for logos or brand markings) otherwise affixed to the label or packaging of the product until the Administrator promulgates such regulations.

"(B) OTHER LABELING REQUIREMENTS.—Compliance with the labeling provisions of paragraph (1) shall not constitute, in whole or in part, a defense to liability or a cause for reduction in damages in any suit, whether civil or criminal, brought under any law, whether Federal or State, other than suit for failure to comply with the labeling requirements of this section.

"SEC. 412. RESTRICTION ON LEAD-CONTAINING PACKAGES.

"(a) PROHIBITION ON INTENTIONAL INTRODUCTION OF LEAD.—Beginning on the date that is 48 months after the date of the enactment of the Lead Exposure Reduction Act of 1992—

"(1) no package or packaging component shall be sold or distributed in commerce by a manufacturer or distributor, which includes, in the package, or in any packaging component, any ink, dye, pigment, adhesive, stabilizer, or other additive to which lead has been intentionally introduced as an element during manufacturing or distribution (as opposed to the incidental presence of lead); and

"(2) no product shall be or distributed in commerce by its manufacturer or distributor in a package which includes, in the package itself or in any of its packaging components, any ink, dye, pigment, adhesive, stabilizer, or other additive to which any lead has been intentionally introduced as an element during manufacturing or distribution (as opposed to the incidental presence of lead).

Nothing in this section shall prohibit the recycling of any package or packaging component referred to in this subsection where, following its original use, such package or packaging component is reused as a raw material in the manufacture of any product. Nothing in this section shall be construed to prohibit the sale of any previously used package or packaging component to any person for reuse in the manner described in the preceding sentence.

"(b) PROHIBITION ON INCIDENTAL PRESENCE OF LEAD.—No package or packaging component shall be sold or distributed in commerce by a manufacturer or distributor, and no product shall be by a manufacturer or distributor in a package, if the aggregate of the concentration levels, from any incidental presence of lead present in the package or packaging component, exceeds—

"(1) for the fifth 12-month period following the date of the enactment of the Lead Exposure Reduction Act of 1992, 600 parts per million by weight (0.06 percent);

"(2) for the sixth 12-month period following the date of the enactment of the Lead Exposure Reduction Act of 1992, 250 parts per million by weight (0.025 percent); and

"(3) for the seventh 12-month period following the date of the enactment of the Lead Exposure Reduction Act of 1992, and for each 12-month period thereafter, 100 parts per million by weight (0.01 percent).

"(c) EXEMPTION FROM PACKAGING REQUIREMENTS.—Prior to the expiration of the 84-month period following the date of the enactment of the Lead Exposure Reduction Act of 1992, upon receipt of an application (in such form and containing such information as the Administrator may prescribe by regulation) the Administrator may exempt from the requirements of subsection (a) or (b)—

"(1) a package or packaging component manufactured prior to the date of the enactment of the Lead Exposure Reduction Act of 1992, as determined by the Administrator; and

"(2) a package or packaging component to which lead has been added in the manufacturing, forming, printing, or distribution process in order to comply with health or safety requirements of Federal law or the law of any State or political subdivision of a State.

"(d) CERTIFICATE OF COMPLIANCE.—(1) A certificate of compliance stating that a package or packaging component is in compliance with the requirements of this section shall be prepared and retained by its manufacturer or distributor.

"(2) In any case in which compliance with this section is based on an exemption under subsection (c), such certificate shall state the specific basis upon which the exemption is claimed.

"(3) A certificate of compliance shall be signed by an authorized official of the manufacturer or distributor, as the case may be.

"SEC. 413. MODIFICATION OF RESTRICTIONS IN SECTIONS 411 AND 412.

"(a) IN GENERAL.—The Administrator may, after public notice and opportunity for comment, promulgate regulations to modify, pursuant to subsections (b) and (c) of this section, the percentage of the allowable lead content for—

"(1) a product, or a group of products, within a product category described in paragraphs (1) through (4) of subsection (a) of section 411; or

"(2) a package or packaging component the lead content of which is regulated under section 412.

"(b) LESSER PERCENTAGE.—The Administrator may, pursuant to subsection (a), establish by regulation a percentage of the allowable lead content level that is less than that allowable under—

"(1) subsection (a) of section 411 (including nondetectable levels) for a product, or a group of products, within any product category described in paragraphs (1) through (4) of such subsection (a), or

"(2) subsection (b) of section 412 for a package or packaging component

if the Administrator determines that a reduction in the percentage of allowable lead content is necessary to protect human health or the environment.

"(c) GREATER PERCENTAGE.—(1) The Administrator may, pursuant to subsection (a), establish by regulation a percentage by dry weight of the allowable lead content for a product, or a group of products, within any product category described in paragraphs (1) through (7) of subsection (a) of section 411 or for any package or packaging component regulated under section 412 that is greater than otherwise allowable under section 411 or 412 if the Administrator establishes restrictions on the use of such product or group of products or package or packaging component and determines—

"(A) that substitutes are unavailable or do not have substantially similar performance characteristics, and

"(B) that the regulation increasing the percentage of allowable lead content, together with such restrictions on use, will protect human health and the environment.

"(2) If the Administrator establishes by regulation an increased percentage of the allowable lead content for a product, or a group of products, within a product category or for a package or packaging component, pursuant to this subsection, the regulation establishing such percentage shall terminate on the date that is 6 years after the date such regulation becomes final, except that if, not later than 12 months prior to such termination, the Administrator determines pursuant to paragraph (1), that extension of such regulation is appropriate, the Administrator may extend such regulation. Each such extension shall be for a 6-year period.

"(d) STATEMENTS BY ADMINISTRATOR RELATING TO MODIFICATIONS OF RESTRICTIONS.—In promulgating or extending any regulation under this subsection with respect to the allowable lead content, the Administrator shall describe the effects of the proposed allowable lead content level on human health and the environment.

"SEC. 414. INVENTORY OF LEAD-CONTAINING PRODUCTS AND NEW USE NOTIFICATION PROCEDURES.

"(a) CREATION OF AN INVENTORY OF USES OF LEAD IN PRODUCTS IN COMMERCE.—(1) Within 60 days after the date of enactment of the Lead Exposure Reduction Act of 1992, the Administrator shall, with the active participation of all interested parties, initiate a survey of all lead-containing products sold or distributed in commerce in the United States.

"(2) Based on the survey described in paragraph (1), the Administrator shall develop an inventory of all lead-containing products sold or distributed in commerce (hereinafter in this section referred to as the 'Inventory'). In developing the Inventory, the Administrator may group together in product categories those products that are both functionally similar and that provide similar opportunities for lead exposure or release during manufacturing, processing, or use, or at the end of the product's useful life (taking into account other applicable regulations).

"(3) The Administrator shall publish in the Federal Register in draft form the Inventory described in paragraph (2), and shall request public comment on the draft Inventory. Not later than 24 months following enactment of this section, and following public notice and opportunity to comment on the draft Inventory, the Administrator shall publish such Inventory in final form.

"(4) For the purposes of this section, any product that contains lead-containing components included on the Inventory shall be deemed to be included on the Inventory.

"(5) If the Administrator fails to publish the Inventory by the date required in paragraph (3), until such Inventory is published, the products referred to in subsection (c)(6) shall be deemed to comprise the Inventory.

"(6) The Administrator may, from time to time, after notice and opportunity for comment, make modifications in the Inventory published under this subsection, and publish a modified Inventory.

"(b) LIST OF USES OF LEAD IN PRODUCTS THAT POSE EXPOSURE CONCERNS.—(1) 36 months after the enactment of the Lead Exposure Reduction Act of 1992, the Administrator shall promulgate, by rule, a list (hereinafter in this section referred to as the 'List') of lead-containing products or categories of such products that the Administrator determines may reasonably be anticipated to present an unreasonable risk of injury to health or the environment due to exposure to lead during manufacturing, processing, distribution in commerce or use, or at the end of the product's useful life, taking into account other applicable regulations. Any such determination shall be based on exposure-related information pertaining to such products or categories of products, or to products or categories of products that pose similar exposure risks. For each product or category, the Administrator shall specify the concentration of lead (as a percentage of the dry weight of such product) which the Administrator determines to be the maximum concentration of lead found in such product or category of products.

"(2)(A) After promulgating the List, the Administrator by rule may add products or categories of products to the List upon determining that they meet the standard set forth in paragraph (1), or may delete products or categories of products from the List upon determining that they do not meet the standard set forth in paragraph (1).

"(B) Any person may petition the Administrator to make a determination to add products or categories of products to the List, or delete products or categories of products from the List. Within 90 days after receipt of a petition, the Administrator shall take one of the following actions:

"(i) Grant the petition and initiate a rulemaking to add or delete products or product categories as requested.

"(ii) Deny the petition and publish in the Federal Register an explanation of the basis for denying the petition.

If the Administrator grants the petition, he shall complete the rulemaking within 90 days after initiating it.

"(c) NOTIFICATION OF NEW USES OF LEAD IN PRODUCTS IN COMMERCE.—(1) After publication of the Inventory in final form pursuant to subsection (a)(3), any person who manufactures, processes, or imports a lead-containing product shall submit to the Administrator a notice pursuant to paragraph (2) upon commencement of the manufacture, processing, or importation of such product, for any product which—

"(A) is not on the Inventory, or

"(B) is a product that is identified on the List, or that falls within one of the categories identified on the List,

and which utilizes a higher concentration of lead as a percentage of dry weight than that previously identified by the Administrator for such product or category under

subsection (b)(1) (unless the concentration is exceeded on a percentage basis solely through efforts to reduce the size or weight of the product, rather than by the addition of larger quantities of lead into the product).

"(2) The notice required by paragraph (1) shall include each of the following:

"(A) A general description of the product.

"(B) A description of the manner in which lead is used in the product.

"(C) The quantity of such product manufactured, processed, or imported.

"(D) The amount and percentage of lead used in the manufacturing of the product, or the amount and percentage of lead contained in the imported product.

"(3) On an annual basis, the Administrator shall publish a report which provides a nonconfidential summary of new uses identified pursuant to this subsection, including aggregated information regarding the amount of lead associated with such new products.

"(4) The notification requirement contained in this subsection shall not apply to research and development activities, as defined in regulations promulgated under section 5 of this Act.

"(5 Following receipt of a notice under paragraph (1), the Administrator shall amend the Inventory as appropriate. The Administrator also shall evaluate whether any new products should be added to the List of lead-containing products under subsection (b)(1).

"(6) If publication of the final List is delayed beyond the deadline set forth in subsection (b), the following provisions shall apply:

"(A) Commencing on the date that the final List is required to be promulgated under subsection (b) and until such time as the final List is published, no person shall manufacture, process, or import a product that is one of the products or that falls within one of the product categories identified in subparagraph (B) if such product, or a substantially similar product, has not been distributed in commerce prior to enactment of this section, or if the product contains a greater percentage of lead than substantially similar products distributed in commerce before enactment of this section, unless such person has submitted a notice under paragraph (2).

"(B) The list of products or categories of products referred to in subparagraph (A) are:

"(i) Paints and coatings other than paints and coatings used as electrodeposition paints and coatings on motor vehicles.

"(ii) Plastic additives other than polyvinyl chloride heat stabilizers.

"(iii) Gasoline additives.

"(iv) Foil wine wrappers.

"(v) Rubber cure agents, protective agents, and pigments.

"(vi) Solder other than solder used in original manufacture or in commercial servicing of electronic or electrical products.

"(vii) Printing inks.

"(viii) Sound-proofing shielding.

"(ix) Roofing material.

"(C) In any proceeding to enforce subparagraph (A) or (B), the manufacturer, processor, or importer shall have the burden of demonstrating that he had a reasonable basis for concluding that the product in question (or a substantially similar product) has been previously distributed in commerce.

"(7) Not later than 36 months after enactment of the Lead Exposure Reduction Act of 1992 and 24 months thereafter, the Administrator shall submit a report to Congress describing (A) the rate of diversion of small sealed lead-acid batteries from the solid waste stream, and (B) the quantity of lead entering the solid waste stream in the form of small sealed lead-acid batteries. In preparing such reports, the Administrator shall undertake such original investigation as may be necessary to generate the data needed to make the findings required in the reports, or may rely on data generated and compiled by industry and other concerned organizations. Any person submitting confidential information to the Administrator pursuant to the preceding sentence shall also submit data that is publicly available. If the Administrator finds that the relevant information is not available and certifies that such information cannot be readily obtained, small sealed lead-acid batteries shall be deemed to appear on the list established pursuant to subsection (b) (or that has taken effect pursuant to paragraph (6) if applicable) effective 90 days after the date on which such report is required to be submitted.

"(d) EXEMPTIONS.—Subsections (b) and (c) shall not apply to any of the following:

"(1) Stained glass products.

"(2) Fishing weights and lures.

"(3) Articles referred to in section 3(2)(B)(v) of this Act.

"(4) Containers used for radiation shielding.

This section shall not apply for any metal, glass, paper, or textiles sold or distributed by the owner or operator of any automotive dismantler or recycling facility regulated by a State or by the Administrator.

"SEC. 415. PRODUCT LABELING.

"(a) IN GENERAL.—(1) Not later than 36 months after the date of the enactment of the Lead Exposure Reduction Act of 1992, the Administrator shall promulgate regulations that provide for the labeling of products which appear on the List of lead-containing products required to be published under section 414. Such regulations shall not apply to lead-acid batteries to the extent that the labeling of such batteries as to their lead content is regulated under other authority of Federal law or to products regulated under the Federal Food, Drug and Cosmetic Act. The regulations under this section may distinguish between the labels required for products which present a risk of exposure to lead during manufacture or processing and the labels required for products which present a risk of exposure to lead during distribution or use.

"(2) The regulations promulgated pursuant to paragraph (1) shall take effect not later than 36 months after the date of enactment of the Lead Exposure Reduction Act of 1992.

"(b) CONTENT OF REGULATIONS.—The regulations described in subsection (a) shall specify the wording, type size, and placement of the labels described in such subsection.

"(c) OTHER LABELING REQUIREMENTS.—Compliance with the labeling provisions of this section shall not constitute, in whole or in part, a defense to liability or a cause for reduction in damages in any suit, whether civil or criminal, brought under any law, whether Federal or State, other than a suit for failure to comply with the labeling requirements of this section.

"(d) PRODUCTS EXEMPT FROM LEAD CONTENT REQUIREMENTS.—For additional requirements relating to the labeling of certain exempt articles and of packages containing certain exempt articles, see section 411(f).

"Subtitle C—Lead-Based Paint Abatement

"SEC. 421. LEAD-BASED PAINT ABATEMENT TRAINING AND CERTIFICATION.

"(a) REGULATIONS.—

"(1) IN GENERAL.—Not later than 18 months after the date of enactment of the Lead Exposure Reduction Act of 1992, the Administrator shall, in consultation with other appropriate Federal departments and agencies, promulgate final regulations governing lead-based paint abatement activities. The provisions of this section shall supersede the provisions set forth under the heading 'Lead Abatement Training and Certification' and under the heading 'Training Grants' in title III of the Act entitled 'An Act making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, commissions, corporations, and offices for the fiscal year ending September 30, 1992, and for other purposes', Public Law 102-139, and upon the enactment of this section the provisions set forth in such public law under such headings shall cease to have any force and effect.

"(2) ACCREDITATION OF TRAINING PROGRAMS.—Final regulations promulgated under paragraph (1) shall contain specific requirements for the accreditation of lead-based paint abatement training programs for workers, supervisors, inspectors and planners, and other individuals involved in lead-based paint abatement activities, including, but not limited, to each of the following:

"(A) Minimum requirements for the accreditation of training providers.

"(B) Minimum training curriculum requirements, which shall, to the extent appropriate for the category of individuals being trained, include training in—

"(i) health effects of lead and sources of exposures;

"(ii) worker protection practices and procedures;

"(iii) abatement activities, lead hazard reduction, and in-place management;

"(iv) prohibited abatement methods and practices;

"(v) lead-based paint abatement waste clean-up and disposal requirements;

"(vi) testing, risk assessment, and monitoring;

"(vii) medical monitoring of abatement personnel;
"(viii) lead-based paint encapsulation and maintenance practices;
"(ix) recordkeeping;
"(x) worker rights and responsibilities; and
"(xi) insurance and bonding requirements.
"(C) Minimum training hour requirements.
"(D) Minimum hands-on training requirements.
"(E) Minimum trainee competency and proficiency requirements.
"(F) Minimum requirements for training program quality control.

"(3) LICENSING REGULATIONS.—

"(A) TIER 1 LICENSING CATEGORIES.—The regulations promulgated under paragraph (1) shall include a program to license lead-based paint abatement contractors who are deleaders or who are engaged in demolition, lead inspection, or in removing lead from bridges.

"(B) ADDITIONAL CATEGORIES.—The Administrator may amend the regulations under paragraph (1) to require additional categories of lead-based paint abatement contractors to be licensed under the program referred to in subparagraph (A).

"(C) ABILITY TO COMPLY WITH STANDARDS.—The regulations under paragraph (1) may provide for different types of licenses for different categories of lead-based paint abatement activities. Such regulations shall require that each applicant for a license under this section demonstrate the ability to comply with the standards referred to in paragraph (4) that are applicable to the category of lead-based paint activities engaged in by the license applicant.

"(D) ISSUANCE OF LICENSE.—The Administrator (or the State in the case of an authorized State program) shall make license applications available under the licensing program and shall, within 6 months after a license application is submitted under a licensing program under this paragraph, issue the license or deny the application. No such application shall be denied until the applicant has been afforded the opportunity for an administrative hearing with respect to such denial.

"(4) STANDARDS FOR CONDUCTING ACTIVITIES.—

"(A) IN GENERAL.—The regulations under paragraph (1) shall contain standards for performing lead-based paint abatement activities, taking into account reliability, effectiveness, and safety. The regulations shall address a range of abatement and lead hazard reduction options, including those which are inexpensive and easily applicable.

"(B) TRAINING.—Such standards shall require each lead-based paint abatement contractor subject to the licensing requirements of this subsection to ensure that all individuals engaged in lead-based paint abatement activities on behalf of such contractor have received, through a training program accredited under this section, appropriate training respecting the activities for which the contractor is required to be licensed. Such a training program may be conducted by the contractor or by any other person. Such training shall not be required for individuals whose participation in such activities is incidental and does not present more than a de minimis risk of exposure to lead. The Administrator may waive the requirement that individuals have received such training for a period not in excess of 1 year after the effective date of such standards in any area if the Administrator determines that accredited training programs are not sufficiently available in such area. The Administrator shall publish an explanation of the reasons for such determination.

"(5) COMPLIANCE WITH LICENSING REQUIREMENT AND STANDARDS.—Not later than 2 years after the establishment of a licensing program under paragraph (3) for any category of lead-based paint abatement contractors, no contractor in such category may carry out any lead-based paint abatement activity unless such contractor has applied for a license under such program and unless such contractor complies with the standards referred to in paragraph (4). After the date 6 months after the date on which a lead-based paint abatement contractor applies for such a license, it shall be unlawful for the contractor to carry out lead-based paint abatement activity unless the Administrator (or the State in the case of an authorized State program) has (A) issued the contractor a license under such program or (B) failed to act on the license application. Upon issuance of a license under such a program to any lead-based paint abatement contractor, such contractor shall comply with the terms of the license.

"(6) INTERIM GUIDELINES.—Not later than 90 days after the enactment of this title, the Administrator shall issue interim worker protection guidelines for lead-based paint abatement contractors as recommended in the Department of Housing and Urban Development guidelines published at Federal Register 55, page 38973 (September 28, 1990) (Revised Chapter 8).

"(7) RENOVATION AND REMODELING.—

"(A) GUIDELINES.—In order to reduce the risk of exposure to lead in connection with renovation and remodeling, the Administrator shall, within 18 months after the enactment of the Lead Exposure Reduction Act of 1992, promulgate guidelines for the conduct of renovation and remodeling activities which may create a risk of exposure to dangerous levels of lead. The Administrator shall disseminate such guidelines to persons engaged in renovation and remodeling through hardware and paint stores, employee organizations, trade groups, State and local agencies, and through other appropriate means.

"(B) STUDY OF LICENSING.—The Administrator shall conduct a study of the extent to which persons engaged in various types of renovation and remodeling activities are exposed to lead in the conduct of such activities or disturb lead and create a lead hazard on a regular or occasional basis. The Administrator shall complete such study and publish the results thereof within 30 months after the enactment of the Lead Exposure Reduction Act of 1992.

"(C) LICENSING DETERMINATION.—Within 4 years after the enactment of the Lead Exposure Reduction Act of 1992, the Administrator shall take action under paragraph (3)(B) to require the licensing of lead-based paint abatement contractors engaged in renovation or remodeling that create lead hazards in the course of such activities. In determining who shall be required to be licensed the Administrator shall utilize the results of the study under subparagraph (B) and consult with the representatives of labor organizations, lead-based paint abatement contractors, persons engaged in remodeling and renovation, experts in lead health effects, and others. If the Administrator determines that any category of persons engaged in renovation or remodeling should not be licensed, the Administrator shall publish and explanation of the basis for that determination.

"(8) REVIEW AND REVISION.—The Administrator shall review the regulations under paragraph (1) not less frequently than every 2 years after the initial promulgation thereof, and, as necessary, revise such regulations.

"(9) ACCREDITATION AND LICENSE FEES.—The Administrator (or the State in the case of an authorized State program) shall impose a fee on—

"(A) persons operating training programs accredited under this subtitle; and

"(B) lead-based paint abatement contractors licensed under a licensing program established under paragraph (3).

The fees shall be established at such level as is necessary to cover the costs of administering and enforcing the standards and regulations under this section which are applicable to such programs and contractors. The fee shall not be imposed on any State, local government, or nonprofit training program. The Administrator (or the State in the case of an authorized State program) may waive the fee for lead-based paint abatement contractors under subparagraph (A) for the purpose of training their own employees.

"(10) SUSPENSION OR REVOCATION.—The Administrator (or the State in the case of an authorized State program) may suspend or revoke any accreditation or license issued under this section whenever the Administrator (or State) determines, after notice and opportunity for hearing, that the holder of such accreditation or license has violated any requirement of this section.

"(b) NIEHS RESPONSIBILITIES.—

"(1) TRAINING GRANT PROGRAM.—(A) Grants for the training and education of workers and supervisors who are or may be directly engaged in lead-based paint abatement activities shall be administered by the National Institute of Environmental Health Sciences (hereinafter in this subsection referred to as the 'NIEHS').

"(B) Grants made under this section shall be awarded to nonprofit organizations—

"(i) which are engaged in the training and education of workers and supervisors who are or who may be directly engaged in lead-based paint abatement activities,

"(ii) which have demonstrated experience in implementing and operating health and safety lead-based paint abatement training and education programs, and

"(iii) with a demonstrated ability to reach, and involve in lead-based paint training programs, target populations of individuals who are or will be engaged in lead-based paint abatement activities.

Grants shall be awarded only to those organizations that fund at least 30 percent of their lead-based paint abatement training programs from non-Federal sources, excluding in-kind contributions. Grants may also be made to municipalities to carry out such training and education for their employees.

"(C) From the amounts authorized to be appropriated to carry out this title, at a minimum, $5,000,000 are authorized to be appropriated for each of the fiscal years 1994 through 1997 to make grants under this paragraph.

"(2) CONSULTATION.—The Administrator shall consult with the NIEHS prior to proposing, establishing, or revising any accreditation requirements under this section.

"(3) EVALUATION OF PROGRAMS.—NIEHS shall conduct periodic and comprehensive assessments of the efficacy of the worker and supervisor training programs developed and offered by the NIEHS training grantees. The Director shall prepare reports on the results of these assessments addressed to the Administrator to include recommendations as may be appropriate for the revision of these programs. From the amounts authorized to implement this title, $500,000 is authorized to be appropriated to the NIEHS for each of the fiscal years 1994 through 1997 to carry out this paragraph.

"(c) ESTABLISHMENT OF ADVISORY COMMITTEE ON LEAD P· 'ONING.—

"(1) ESTABLISHMENT AND RESPONSIBILITIES; MEETINGS.—(A) The Administrator shall establish an Advisory Committee on Lead Poisoning Prevention comprised of 15 members appointed by the Administrator as follows: 2 representatives of lead-based paint abatement contractors; 3 representatives of employee organizations in the building and construction trades industry whose members have the greatest likelihood of exposure to lead-based paint in the residential and other abatement markets; 2 representatives of national public interest or health organizations with experience in lead-based paint poisoning prevention efforts; 2 representatives of cities, 1 representative of the housing industry; 1 representative of school boards; 1 representative of day care providers; 1 representative of an organization representing parents or teachers; and 2 representatives of State agencies charged with enforcement of lead-based paint poisoning prevention efforts. The Administrator may also appoint nonvoting members to the committee from other appropriate Federal agencies.

"(B) The Advisory Committee shall advise the Administrator on all matters contained in sections 433 and 421. Such advice shall be solicited, to the maximum extent practicable, prior to the promulgation of any and all regulations, or the issuance of any guidance document pertaining to sections 433 and 421.

"(C) The Advisory Committee shall meet no fewer than 3 times each calendar year, hold all meetings open to the public, require a transcript to be kept of the meetings and to be made available for public inspection, and set meeting agendas. The Administrator shall provide to the Advisory Committee such support and facilities as may be necessary for operation of the Advisory Committee.

"(2) RECOMMENDATIONS.—The Administrator shall respond in writing to any formal recommendations made by a majority of members of the Advisory Committee within 60 days of the Advisory Committee's issuance of such recommendation.

"(3) TERM OF OFFICE; COMPENSATION.—(A) The term of office of each member shall be 3 years and the terms shall be staggered so that the term of office of no more than 1 representative of the same interest shall expire in the same year.

"(B) Members shall, while serving on the Advisory Committee, be entitled to receive reasonable reimbursement for travel, food, and lodging expenses.

"SEC. 422. LEAD CONTAMINATION IN SCHOOLS AND DAY CARE CENTERS.

"(a) COVERED SCHOOLS.—

"(1) INSPECTION.—Not later than 2 years after the date of enactment of the Lead Exposure Reduction Act of 1992, the Administrator shall promulgate a rule requiring the owner or operator of each covered school to conduct, within 2 years after such promulgation—

"(A) an inspection of the covered school to detect lead-based paint that is chipping, peeling, flaking, or chalking, and

"(B) an inspection of each room and playground area at the covered school in either daily or significant use by children in kindergarten or by younger children to detect any lead-based paint and to detect any interior dust in such rooms or any exterior soil in such playground areas at such school which dust or soil contains a dangerous level of lead, as identified under section 423,

and prepare a report containing the results of such inspections. For purposes of this subsection, 'significant use' means use by more than 1 child at least twice per week, and at least for 2 hours per week.

"(2) NOTIFICATION.—(A) In each case in which an inspection under paragraph (1) indicates the presence of lead-based paint, or interior dust or exterior soil containing a dangerous level of lead, as identified under section 423, at a covered school, the owner or operator of the covered school shall, within 120 days after receiving the report under paragraph (1), provide all teachers and other school personnel and parents (or guardians) of all children attending the covered school concerned with a copy of risk disclosure information meeting the requirements of subparagraph (B). The owner or operator of the covered school shall also provide such risk disclosure information to newly hired teachers and other personnel and parents (or guardians) of newly enrolled children for so long as lead-based paint, or interior dust or exterior soil containing a dangerous level of lead, as identified under section 423, continues to be present at the covered school.

"(B) As part of the rule required under paragraph (1), the Administrator shall prescribe the contents of the risk disclosure information to be provided. Such information shall include each of the following:

"(i) A summary of the results of the inspection under paragraph (1).

"(ii) A description of the risks of lead exposure to children in kindergarten and younger children and teachers and other personnel at the school concerned, taking into account the accessibility of lead-based paint or interior or dust or exterior soil containing a dangerous level of lead, as identified under section 423, to children under 6 years of age and other appropriate factors.

"(iii) A description of any lead abatement undertaken, or to be undertaken, by the owner or operator concerned.

"(C) An owner or operator of a covered school may provide the risk disclosure information to the parents (or guardians) of the children attending the covered school concerned in the same manner as written materials are regularly delivered to such parents (or guardians).

"(3) ABATEMENT IN LIEU OF NOTIFICATION.—An owner or operator of a covered school shall not be required to provide notification under paragraph (2) if, prior to the date on which such notification would be required, the owner or operator performs abatement, conducts a reinspection, and obtains a report showing that the lead-based paint, and any interior dust containing a dangerous level of lead, as identified under section 423, has been removed or encapsulated and any exterior soil containing a dangerous level of lead, as identified under section 423 has been abated to a condition such that the soil is no longer dangerous. An owner or operator that elects to perform abatement under this subsection in lieu of notification under paragraph (2) shall make a copy of the inspection reports available in its administrative offices and shall notify parent, teacher, and employee organizations of the availability of such reports.

"(b) COVERED DAY CARE CENTERS.—

"(1) INSPECTION.—Not later than 2 years after the date of enactment of the Lead Exposure Reduction Act of 1992, the Administrator shall promulgate a rule requiring the owner or operator of each covered day care center to conduct, within 2 years after such promulgation, an inspection of each room and playground area at the covered day care center in either daily or significant use by children in kindergarten or by younger children to detect any lead hazard in such rooms or playground areas, and prepare a report containing the results of such inspection. For purposes of this subsection, 'significant use' means use by more than 1 child at least twice per week, and at least for 2 hours per week.

"(2) NOTIFICATION.—(A) In each case in which an inspection under paragraph (1) indicates the presence of a lead hazard at a covered day care center, the owner or operator of the covered day care center shall, within 180 days after receiving the report under paragraph (1), provide all teachers and other day care center personnel and parents (or guardians) of all children attending the covered day care center concerned with a copy of risk disclosure information meeting the requirements of subparagraph (B). The owner or operator of the

covered day care center shall also provide such risk disclosure information to newly hired teachers and other personnel and parents (or guardians) of newly enrolled children for so long as the lead hazard continues to be present at the covered day care center.

"(B) As part of the rule required under paragraph (1), tne Administrator shall prescribe the contents of the risk disclosure information to be provided. Such information shall include each of the following:

"(i) A summary of the results of the inspection under paragraph (1).

"(ii) A description of the risks of lead exposure to children in kindergarten and younger children and teachers and other personnel at the day care center concerned, taking into account the accessibility of the lead hazard to children under 6 years of age and other appropriate factors.

"(iii) A description of any lead abatement undertaken, or to be undertaken, by the owner or operator concerned.

"(C) An owner or operator of a covered day care center may provide the risk disclosure information to the parents (or guardians) of the children attending the covered day care center concerned in the same manner as written materials are regularly delivered to such parents (or guardians).

"(3) ABATEMENT IN LIEU OF NOTIFICATION.—An owner or operator of a covered day care center shall not be required to provide notification under paragraph (2) if, prior to the date on which such notification would be required, the owner or operator performs abatement, conducts a reinspection, and obtains a report showing that the lead hazard has been abated such that it no longer constitutes a lead hazard. An owner or operator that elects to perform abatement under this subsection in lieu of notification under paragraph (2) shall make a copy of the inspection reports available in its administrative offices and shall notify parent, teacher, and employee organizations of the availability of such reports.

"(c) RENOVATED AREAS.—Effective for renovations commencing more than 2 years after the promulgation of a rule under subsection (a) or (b), for each covered school or covered day care center in which a renovation will be undertaken, the owner or operator of the covered school or covered day care center shall conduct, prior to such renovation, an inspection of the area to detect any lead-based paint that might be disturbed as a result of such renovation and shall take such actions as are necessary to ensure that such renovation does not result in a dangerous level of lead, as identified under section 423, in interior dust or exterior soil.

"(d) FINANCIAL ASSISTANCE.—

"(1) ASSISTANCE PROGRAM.—There is hereby established within the Environmental Protection Agency a Lead Hazard Abatement Assistance Program, which shall be administered in accordance with this subsection.

"(2) APPLICATIONS FOR ASSISTANCE.—Applications for financial assistance for—

"(A) testing for, and abating, lead-based paint, and interior dust or exterior soil containing a dangerous level of lead, as identified under section 423, in covered schools, and

"(B) testing for, and abating, lead hazards at covered day care centers

shall be submitted by owners or operators of covered schools and covered day care centers to the Governor, or the Governor's designee.

"(3) GOVERNOR'S SUBMISSION AND PRIORITY LIST.—Each year, in accordance with procedures established by the Administrator, the Governor of each State shall—

"(A) forward to the Administrator all applications for financial assistance received by the Governor, and

"(B) submit with such applications a priority list ranking, without regard to the public or private nature of the owner or operator involved, the applications for financial assistance.

In preparing the priority list, the Governor shall take into account financial need, the health risks involved, and other appropriate factors.

"(4) AWARD OF FINANCIAL ASSISTANCE.—The Administrator shall award financial assistance to applicants under this subsection. In awarding such assistance, the Administrator shall take into account the priority lists of the Governors, financial need, the health risks involved, and other appropriate factors.

"(5) AUTHORIZATION.—There are authorized to be appropriated for each of the 4 consecutive fiscal years commencing with fiscal year 1994, $30,000,000 to carry out this subsection.

"(e) PUBLIC PROTECTION.—No owner or operator of a covered school or covered day care center may discriminate against a person in any way because the person provided information relating to a potential violation of this section to any other person, including a State or the Administrator.

"(f) PENALTIES.—For purposes of enforcing this section, the penalties applicable under section 16 shall not be more than $5,000.

"(g) USE OF PENALTIES.—The court in any action against an owner or operator of a covered school or covered day care center for violation of this section shall have discretion to order that all civil penalties collected be used, in lieu of payment to the United States, to reimburse the owner or operator for the costs of lead-based paint abatement activities undertaken by such owner or operator.

"(h) INSPECTIONS.—The inspections required under this section and any abatement performed in lieu of notification shall be carried out by lead-based paint abatement contractors who are in compliance with the licensing requirements of section 421.

"SEC. 423. IDENTIFICATION OF DANGEROUS LEVELS OF LEAD; SOIL INSPECTION AND ABATEMENT.

"(a) IDENTIFICATION OF DANGEROUS LEVELS OF LEAD.—Within 2 years after the enactment of this title, the Administrator shall promulgate regulations which shall identify, for purposes of this title, dangerous levels of lead in interior dust and exterior soil, taking into account its accessibility to children under 6 years of age and other appropriate factors. For interior dust, such levels shall not exceed the recommended clearance criteria for dust lead in the 'Interim Guidelines for Hazard Identification and Abatement for Public and Indian Housing' of the Department of Housing and Urban Development, as in effect on the date of enactment of this title.

"(b) INSPECTION AND ABATEMENT REGULATIONS.—Not later than 2 years after the enactment of this title, the Administrator shall promulgate regulations applicable to contractors who inspect for, or abate, dangerous levels of lead in exterior soil for compensation at public or private dwellings, covered schools, or covered day care centers. Such regulations shall contain standards for performing such activities, including standards for in-place management, taking into account reliability, effectiveness, and safety. Such regulations shall also include licensing requirements for such contractors and appropriate training requirements. Such regulations shall be integrated, to the maximum extent practicable, with the regulations under section 421 governing lead-based paint abatement activities.

"SEC. 424. AUTHORIZED STATE PROGRAMS.

"(a) APPROVAL.—Any State which seeks to administer and enforce the standards, regulations, or other requirements established under section 421, 422, 423, or any combination thereof, may, after notice and opportunity for public hearing, develop and submit to the Administrator an application, in such form as the Administrator shall require, for authorization of such a State program. Any such State may also certify to the Administrator at the time of submitting such program that the State program meets the requirements of paragraphs (1) and (2) of subsection (b). Upon submission of such certification, the State program shall be deemed to be authorized under this section, and shall apply in such State in lieu of the corresponding Federal program under section 421, 422, 423, or any combination thereof, as the case may be, until such time as the Administrator disapproves the program or withdraws the authorization.

"(b) APPROVAL OR DISAPPROVAL.—Within 180 days following submission of an application under subsection (a), the Administrator shall approve or disapprove the application. The Administrator may approve the application only if, after notice and after opportunity for public hearing, the Administrator finds that—

"(1) the State program is at least as protective of human health and the environment as the Federal program under section 421, 422, 423, or any combination thereof, as the case may be, and

"(2) such State program provides adequate enforcement.

Upon authorization of a State program under this section, it shall be unlawful for any person to violate or fail or refuse to comply with any requirement of such program.

"(c) WITHDRAWAL OF AUTHORIZATION.—If a State is not administering and enforcing a program authorized under this section in compliance with standards, regulations, and other requirements of this subtitle, the Administrator shall so notify the State and, if corrective action is not completed within a reasonable time, not to exceed 180 days, the Administrator shall withdraw authorization of such program and establish a Federal program pursuant to this subtitle.

"(d) MODEL STATE PROGRAM.—Within 18 months after the enactment of this title, the Administrator shall promulgate a model State program which may be adopted by any State which seeks to administer and enforce a State program under this subtitle. Such model program shall, to the extent practicable, encourage States to utilize existing State and local licensing and accreditation programs and procedures.

Such program shall encourage reciprocity among the States with respect to the licensing under section 421.

"(e) OTHER STATE REQUIREMENTS.—Nothing in this subtitle shall be construed to prohibit any State or political subdivision thereof from imposing any requirements which are more stringent than those imposed by this subtitle.

"(f) STATE AND LOCAL LICENSING.—The regulations under this subtitle shall, to the extent appropriate, encourage States to seek program authorization and to use existing State and local licensing and accreditation procedures, except that a State or local government shall not require more than 1 license under this section for any lead-based paint abatement contractor to carry out lead-based paint abatement activities in a category in the State or political subdivision thereof.

"(g) GRANTS TO AUTHORIZED STATES.—The Administrator is authorized to make grants to States carrying out authorized State programs which have been approved by the Administrator under this section to assist the States in administering such programs. The grants shall be subject to such terms and conditions as the Administrator may establish to further the purposes of this title.

"SEC. 425. LEAD ABATEMENT AND MEASUREMENT.

"(a) PROGRAM TO PROMOTE LEAD EXPOSURE ABATEMENT.—(1) The Administrator, in cooperation with other appropriate Federal departments and agencies, shall conduct a comprehensive program to promote safe, effective, and affordable monitoring, detection and abatement of lead-based paint and other lead exposure hazards.

"(2) The Administrator shall chair an Inter-Agency Coordinating Committee on Childhood Lead Poisoning Prevention (hereinafter in this paragraph referred to as 'the Committee') comprised of the Administrator and the heads of such other Federal agencies and departments deemed appropriate by the Administrator. The Committee shall—

"(A) identify obstacles to effective program implementation and priority research needs;

"(B) coordinate responsibilities of each agency and department to prevent duplication of effort and to assure that critical actions are taken in a timely manner;

"(C) review and coordinate agency budget requests to assure a coordinated, effective and comprehensive federal lead poisoning prevention program;

"(D) make specific recommendations for the implementation of comprehensive, effective and enforceable lead poisoning prevention programs at the Federal, State and local levels (including recommendations concerning the feasibility of developing minimum uniform standards and procedures for incorporation into State and local programs); and

"(E) actively solicit the participation of State and local lead poisoning prevention programs, nationally respected experts, and community-based lead poisoning education programs.

"(b) STANDARDS FOR ENVIRONMENTAL SAMPLING LABORATORIES.—(1) The Administrator shall establish protocols, criteria, and minimum performance standards for laboratory analysis of lead in paint films, soil and dust. Within 2 years after the enactment of this title, the Administrator, in consultation with the Secretary of Health and Human Services, shall establish a program to certify laboratories as qualified to test substances for lead content unless the Administrator determines, by the date specified in this paragraph, that effective voluntary accreditation programs are in place and operating on a nationwide basis at the time of such determination. To be certified under such program, a laboratory shall, at a minimum, demonstrate an ability to test substances accurately for lead content.

"(2) Not later than 24 months after the date of the enactment of the Lead Exposure Reduction Act of 1992, and annually thereafter, the Administrator shall publish and make available to the public a list of certified or accredited environmental sampling laboratories.

"(3) If the Administrator determines under paragraph (1) that effective voluntary accreditation programs are in place for environmental sampling laboratories, the Administrator shall review the performance and effectiveness of such programs within 3 years after such determination. If, upon such review, the Administrator determines that the voluntary accreditation programs are not effective in assuring the quality and consistency of laboratory analyses, the Administrator shall, not more than 12 months thereafter, establish a certification program that meets the requirements of paragraph (1).

"(c) EXPOSURE STUDIES.—(1) The Secretary of Health and Human Services (hereafter in this subsection referred to as the 'Secretary'), acting through the Director of the Centers for Disease Control, (CDC), and the Director of the National Institute of

Environmental Health Sciences, shall jointly conduct a study of the sources of lead exposure in children who have elevated blood lead levels (or other indicators of elevated lead body burden), as defined by the Director of the Centers for Disease Control.

"(2) The Secretary, in consultation with the Director of the National Institute of Environmental Health Sciences, shall conduct a comprehensive study of means to reduce hazardous occupational lead abatement exposures. This study shall include, at a minimum, each of the following—

"(A) Surveillance and intervention capability in the States to identify and prevent hazardous exposures to lead abatement workers.

"(B) Demonstration of lead abatement control methods and devices and work practices to identify and prevent hazardous lead exposures in the workplace.

"(C) Evaluation of health effects of low and high levels of occupational lead exposures on reproductive, neurological, renal, and cardiovascular health.

"(D) Identification of high risk occupational settings to which prevention activities and resources should be targeted.

"(E) A study assessing the potential exposures and risks from lead to janitorial and custodial workers.

"(3) The studies described in paragraphs (1) and (2) shall, as appropriate, examine the relative contributions to elevated lead body burden from each of the following:

"(A) Drinking water.

"(B) Food.

"(C) Lead-based paint and dust from lead-based paint.

"(D) Exterior sources such as ambient air and lead in soil.

"(E) Occupational exposures, and other exposures that the Secretary determines to be appropriate.

"(4) Not later than 30 months after the date of the enactment of the Lead Exposure Reduction Act of 1992, the Secretary shall submit a report to the Congress concerning the studies described in paragraphs (1) and (2).

"(d) PUBLIC EDUCATION.—(1) The Administrator, in conjunction with the Secretary of Health and Human Services, acting through the Assistant Secretary for Health of the Department of Health and Human Services, shall sponsor public education and outreach activities to increase public awareness of—

"(A) the scope and severity of lead poisoning from household sources;

"(B) potential exposure to sources of lead in schools and childhood day care centers;

"(C) the implications of exposures for men and women, particularly those of childbearing age;

"(D) the need for careful, quality, abatement and management actions;

"(E) the need for universal screening of children; and

"(F) other components of a lead poisoning prevention program.

"(2) The activities described in paragraph (1) shall be designed to provide educational services and information to—

"(A) health professionals;

"(B) the general public, with emphasis on parents of young children;

"(C) homeowners, landlords, and tenants;

"(D) consumers of home improvement products;

"(E) the residential real estate industry; and

"(F) the home renovation industry.

"(3) In implementing the activities described in paragraph (1), the Administrator shall assure coordination with the President's Commission on Environmental Quality's education and awareness campaign on lead poisoning.

"(4) The Administrator, in consultation with the chairman of the Consumer Product Safety Commission, shall develop information to be distributed by retailers of home improvement products to provide consumers with practical information related to the hazards of renovation and remodeling where lead-based paint may be present.

"(e) TECHNICAL ASSISTANCE.—

"(1) CLEARINGHOUSE.—Not later than 6 months after the enactment of this subsection, the Administrator shall establish, in consultation with the Secretary of Housing and Urban Development and the Director of the Centers for Disease Control, a National Clearinghouse on Childhood Lead Poisoning (hereinafter in this section referred to as 'Clearinghouse'). The Clearinghouse shall—

"(A) collect, evaluate, and disseminate current information on the assessment and reduction of lead hazards, adverse health effects, sources of exposure, detection and risk assessment methods, environmental hazards abatement, and clean-up standards;

"(B) maintain a rapid-alert system to inform licensed lead-based paint abatement contractors of significant developments in research related to lead-based paint hazards; and

"(C) perform any other duty that the Administrator determines necessary to achieve the purposes of this Act.

"(2) HOTLINE.—Not later than 6 months after the enactment of this subsection, the Administrator, in cooperation with other Federal agencies and with State and local governments, shall establish a single lead hazard hotline to provide the public with answers to questions about lead poisoning prevention and referrals to the Clearinghouse for technical information.

"(f) PRODUCTS FOR LEAD-BASED PAINT ABATEMENT ACTIVITIES.—Not later than 30 months after the date of enactment of the Lead Exposure Reduction Act of 1992, the President shall, after notice and opportunity for comment, establish by rule appropriate criteria, testing protocols, and performance characteristics as are necessary to ensure, to the greatest extent possible and consistent with the purposes and policy of the Lead Exposure Reduction Act of 1992, that deleading, encapsulating, testing, or similar lead-based paint abatement products introduced into commerce after a period specified in the rule are effective for the intended use described by the manufacturer. The rule shall identify the types or classes of products that are subject to such rule. The President, in implementation of the rule, shall, to the maximum extent possible, utilize independent testing laboratories, as appropriate, and consult with such entities and others in developing the rules. The President may delegate the authorities under this subsection to the Environmental Protection Agency or the Secretary of Commerce or such other appropriate agency.

"Subtitle D—General Provisions

"SEC. 431. REGULATIONS.

"The regulations of the Administrator under this title shall include such recordkeeping and reporting requirements as may be necessary to insure the effective implementation of this title. The regulations may be amended from time to time as necessary.

"SEC. 432. CONTROL OF LEAD HAZARDS AT FEDERAL FACILITIES.

"Each department, agency, and instrumentality of executive, legislative, and judicial branches of the Federal Government (1) having jurisdiction over any property or facility, or (2) engaged in any activity resulting, or which may result, in a lead hazard, and each officer, agent, or employee thereof, shall be subject to, and comply with, all Federal, State, interstate, and local requirements, both substantive and procedural, (including any requirement for certification, licensing, recordkeeping, or reporting or any provisions for injunctive relief and such sanctions as may be imposed by a court to enforce such relief) respecting lead-based paint, lead-based paint abatement, and lead hazards in the same manner, and to the same extent as any nongovernmental entity is subject to such requirements, including the payment of reasonable service charges. The Federal, State, interstate, and local substantive and procedural requirements referred to in this subsection include, but are not limited to, all administrative orders and all civil and administrative penalties and fines regardless of whether such penalties or fines are punitive or coercive in nature, or whether imposed for past or continuing violations. The reasonable service charges referred to in this section include, but are not limited to, fees or charges assessed for certification and licensing, as well as any other nondiscriminatory charges that are assessed in connection with a Federal, State, interstate, or local lead-based paint, lead-based paint abatement, or lead hazard abatement program. For purposes of enforcing any such substantive or procedural requirement (including, but not limited to, any injunctive relief, administrative order, or civil or administrative penalty or fine) against any such department, agency, or instrumentality, the United States hereby expressly waives any immunity otherwise applicable to the United States. No agent, employee, or officer of the United States shall be personally liable for any civil penalty under any Federal, State, interstate, or local law relating to lead-based paint, lead-based paint abatement, or lead hazards with respect to any act or omission within the scope of his official duties.

"SEC. 433. PROHIBITED ACTS.

"It shall be unlawful for any person to fail or refuse to comply with a provision of this title or with any rule or order issued under this title.

"SEC. 434. RELATIONSHIP TO OTHER FEDERAL LAW.

"Nothing in this title shall affect the authority of other appropriate Federal agencies to establish or enforce any requirements which are at least as stringent as those established pursuant to this title regarding any product subject to regulation under this title.

"SEC. 435. GENERAL PROVISIONS RELATING TO ADMINISTRATIVE PROCEEDINGS.

"(a) APPLICABILITY.—This section applies to the promulgation or revision of any regulation issued under this title.

"(b) RULEMAKING DOCKET.—Not later than the date of proposal of any action to which this section applies, the Administrator shall establish a rulemaking docket for such action (hereinafter in this subsection referred to as a 'rule'). Whenever a rule applies only within a particular State, a second (identical) docket shall be established in the appropriate regional office of the Environmental Protection Agency.

"(c) INSPECTION AND COPYING.—(1) The rulemaking docket required under subsection (b) shall be open for inspection by the public at reasonable times specified in the notice of proposed rulemaking. Any person may copy documents contained in the docket. The Administrator shall provide copying facilities which may be used at the expense of the person seeking copies, but the Administrator may waive or reduce such expenses in such instances as the public interest requires. Any person may request copies by mail if the person pays the expenses, including personnel costs to do the copying.

"(2)(A) Promptly upon receipt by the agency, all written comments and documentary information on the proposed rule received from any person for inclusion in the docket during the comment period shall be placed in the docket. The transcript of public hearings, if any, on the proposed rule shall also be included in the docket promptly upon receipt from the person who transcribed such hearings. All documents which become available after the proposed rule has been published and which the Administrator determines are of central relevance to the rulemaking shall be placed in the docket as soon as possible after their availability.

"(B) The drafts of proposed rules submitted by the Administrator to the Office of Management and Budget for any interagency review process prior to proposal of any such rule, all documents accompanying such drafts, and all written comments thereon by other agencies and all written responses to such written comments by the Administrator shall be placed in the docket no later than the date of proposal of the rule. The drafts of the final rule submitted for such review process prior to promulgation and all such written comments thereon, all documents accompanying such drafts, and written responses thereto shall be placed in the docket no later than the date of promulgation.

"(d) EXPLANATION.—(1) The promulgated rule shall be accompanied by an explanation of the reasons for any major changes in the promulgated rule from the proposed rule.

"(2) The promulgated rule shall also be accompanied by a response to each of the significant comments, criticisms, and new data submitted in written or oral presentations during the comment period.

"(3) The promulgated rule may not be based (in part or whole) on any information or data which has not been placed in the docket as of the date of such promulgation.

"(e) JUDICIAL REVIEW.—The material referred to in subsection (c)(2)(B) shall not be included in the record for judicial review.

"(f) EFFECTIVE DATE.—The requirements of this section shall take effect with respect to any rule the proposal of which occurs after 90 days after the date of the enactment of this section.

"SEC. 436. NOTICE OF CERTAIN REQUIREMENTS.

"Six months after the date of enactment of the Lead Exposure Reduction Act of 1992, the Administrator shall publish notice of the restrictions imposed under section 411 and 412.

"SEC. 437. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to carry out the purposes of this title such sums as may be necessary.".

SEC. 3. TECHNICAL AND CONFORMING AMENDMENTS.

The Toxic Substances Control Act (15 U.S.C. 2610) is amended as follows:

(1) In paragraph (1) of section 7(a), strike "or 6" and insert "6, or title IV" and after "5" insert "or title IV".

(2) In the first sentence of subsection (a) of section 11:

(A) Strike "or mixtures" before "are manufactured" and insert ", mixtures, or products subject to title IV".

(B) Insert "such products," before "or such articles".

(3) In paragraph (1) of subsection (b) of section 11, strike "or mixtures" and insert ", mixtures, or products subject to title IV".

(4) In paragraph (1) of section 13(a), strike "or 6" in each place it appears and insert ", 6, or title IV" and strike "or 7" and insert ", 7 or title IV".

(5) In section 16, insert "or 433" after "section 15" each place it appears.

(6) In section 17 amend subsection (a) to read as follows:

"(a) SPECIFIC ENFORCEMENT.—(1) The district courts of the United States shall have jurisdiction over civil actions to—

"(A) restrain any violation of section 15 or 433,

"(B) restrain any person from taking any action prohibited by section 5, 6, or 411, or by a rule or order under section 5, 6, or subtitle B of title IV,

"(C) compel the taking of any action required by or under this Act, or

"(D) direct any manufacturer or processor of a chemical substance, mixture, or product subject to subtitle B of title IV manufactured or processed in violation of section 5, 6, or subtitle B of title IV, or a rule or order under section 5, 6, or subtitle B of title IV, and distributed in commerce, (i) to give notice of such fact to distributors in commerce of such substance, mixture, or product and, to the extent reasonably ascertainable, to other persons in possession of such substance, mixture, or product or exposed to such substance, mixture, or product, (ii) to give public notice of such risk of injury, and (iii) to either replace or repurchase such substance, mixture, or product, whichever the person to which the requirement is directed elects.".

(7) In the first sentence of subsection (b) of section 17—

(A) strike "or mixture" after "Any chemical substance" and inserting ", mixture, or product subject to subtitle B of title IV"; and

(B) insert "product," before "or article" in each place that it appears.

(8) In section 19—

(A) In the first sentence of subsection (a), after "title II" insert "or IV".

(B) Before the semicolon at the end of subsection (a)(3)(B) insert "and in the case of a rule under title IV, the finding required for the issuance of such a rule".

(9) In section 20(a)(1) after "title II" insert "or IV" in each place it appears.

(10) Add at the end of the table of contents in section 1 the following:

"TITLE IV—LEAD EXPOSURE REDUCTION

"Subtitle A—Findings, Policy, and Definitions

"Sec. 401. Findings and policy.
"Sec. 402. Definitions

"Subtitle B—Lead Containing Products and Packages

"Sec. 411. Restrictions on continuing uses of certain lead-containing products
"Sec. 412. Restriction on lead-containing packages
"Sec. 413. Modification of restrictions in sections 411 or 412
"Sec. 414. Inventory of lead-containing products and new use notification procedures
"Sec. 415. Product labeling.

"Subtitle C—Lead-Based Paint Abatement

"Sec. 421. Lead-based paint abatement training and certification
"Sec. 422. Lead contamination in schools and day care centers.
"Sec. 423. Identification of dangerous levels of lead; soil inspection and abatement
"Sec. 424. Authorized State programs.
"Sec. 435. Lead abatement and measurement

"Subtitle D—General Provisions

"Sec. 431. Regulations.
"Sec. 432. Control of lead hazards at Federal facilities.
"Sec. 433. Prohibited acts.
"Sec. 434. Relationship to other Federal law.
"Sec. 435. General provisions relating to administrative proceedings
"Sec. 436. Notice of certain requirements.
"Sec. 437. Authorization of appropriations".

SEC. 4. AMENDMENTS TO SAFE DRINKING WATER ACT.

(a) SCHOOL DRINKING WATER CONTAINING LEAD.—

(1) TESTING.—Section 1464(d)(1) of the Public Health Service Act (the Safe Drinking Water Act; 42 U.S.C. 300j-23) is amended by adding the following at the end thereof: "Within 24 months after the enactment of the Lead Exposure Reduction Act of 1992, each local education agency shall complete testing, in accordance with the protocol under subsection (b), for lead contamination in drinking water from coolers and other drinking water outlets (including outlets used in food preparation) at schools under the jurisdiction of such agency. In

the case of a day care facility (not covered by the testing under the preceding sentence) for kindergarten or younger children which is owned or operated by a person who provides day care for compensation and who is licensed or regulated for day care purposes under State law or who receives Federal funding for day care purposes, the Administrator shall publish notice within 6 months after enactment of the Lead Exposure Reduction Act of 1992 that each such person shall complete testing, in accordance with the protocol under subsection (b) modified as appropriate for such facilities, for lead contamination in drinking water from coolers and other drinking water outlets (including outlets used in food preparation) at such facilities. Such testing of such facilities shall be completed within 24 months after the publication of such notice. The Administrator shall work with the States, local education agencies, and such owners or operators in the development and publication of such notice and in the identification of such facilities and in ensuring that the testing, including analysis thereof, is as inexpensive as possible. Within 18 months after the date of the enactment of the Lead Exposure Reduction Act of 1992, the Administrator shall publish notice of when such 24-month period will expire.".

(2) PUBLIC AVAILABILITY.—Section 1464(d)(2) of the Public Health Service Act (the Safe Drinking Water Act; 42 U.S.C. 300j-24(d)(2)) is amended by inserting "or day care facility" after "agency" in each place it appears and after "school" and inserting the following before the period at the end thereof: "and, if the testing results show any tap water lead concentrations in excess of 15 parts per billion, the local education agency or the owner or operator of the day care facility shall, within 90 days after completion of such testing, provide to all teachers and other school or day care personnel at the school or day care facility and to parents (and guardians) of children enrolled in the school or day care facility risk disclosure information meeting the requirements established by the Administrator under this paragraph. The local education agency or the owner or operator of the day care facility shall simultaneously provide a copy of such materials to the agency with primary enforcement responsibility for the public water system which serves the school or day care facility. Such agency with primary enforcement responsibility shall promptly (but not later than 3 months after receipt of such materials) transmit to the Administrator a summary of such materials. The Administrator, in consultation with the Centers for Disease Control, shall, within 18 months after the enactment of the Lead Exposure Reduction Act of 1992, promulgate a rule prescribing the contents of the risk disclosure information to be provided by local education agencies or by owners or operators of day care facilities. Such rule shall require such information to include each of the following:

"(A) A summary of the testing results.

"(B) A description of the risks of lead exposure to children and teachers and other personnel at the school or day care facility concerned.

"(C) A description of any abatement action undertaken, or to be undertaken, by the local education agency or by the owner or operator of the day care facility".

(3) TESTING OF COOLERS.—Section 1463(a) is amended by inserting after the second sentence the following: "After notice and opportunity for public comment, the Administrator shall also separately identify those brands and models, or portions thereof, of drinking water coolers imported or manufactured before the enactment of the Lead Contamination Control Act of 1988 which the Administrator finds contribute 20 parts per billion or more of lead to drinking water from such coolers, based on the results of appropriate, reliable, and representative samples and tests using, to the extent appropriate, the EPA sampling protocol set forth in the January 1989 EPA publication entitled 'Lead in School's Drinking Water' (taking into consideration relevant factors that may affect the testing and sampling and the test and sample results) and relying to the extent possible on tests conducted since 1988 in schools and elsewhere by school officials, by such manufacturers, and by the Administrator. Such tests and sampling shall specifically evaluate lead contamination originating from such coolers and not from sedimentation or other external sources. A list of such separately identified coolers shall be published as soon as practicable after the enactment of this sentence, but not later than 30 months after such enactment.".

(4) ORDER.—At the end of section 1462, add the following new sentence: "In the case of coolers separately identified under the second sentence of section 1463(a), the Commission shall immediately give notice to the manufacturers and importers of such coolers for the purposes of providing an opportunity to com-

ment on such identification and the finding of the Administrator of the Environmental Protection Agency. The Commission shall, within 1 year after such notice to the manufacturers and importers thereof and after notice and an opportunity for a public hearing in accordance with section 2064(f) of title 15, United States Code, issue an order that such coolers are considered imminently hazardous consumer products and such order shall require such manufacturers and importers to repair, replace, or recall or provide a refund in the case of such coolers which are located in elementary, junior, or high schools, or day care facilities. In the case of all other such identified coolers, wherever located, the Commission shall, within 2 years of the notice to the manufacturers and importers as called for above, issue a final order (after such notice and opportunity for a hearing) to the manufacturers to require such manufacturers and importers to repair, replace, or recall such coolers or provide a refund or discount for such coolers, after taking into consideration, for purposes of fashioning the final order, the age, condition, and location of the coolers, lead time, and other relevant factors, including the actions of such manufacturers and importers to take voluntary actions and their financial and other resources.".

(5) FEDERAL ASSISTANCE.—(A) Section 1465 of the Public Health Service Act (the Safe Drinking Water Act; 42 U.S.C. 300j-25(a)) is amended to read as follows:

"SEC. 1465. FEDERAL ASSISTANCE REGARDING LEAD CONTAMINATION IN SCHOOL DRINKING WATER.

"(a) ASSISTANCE PROGRAM.—There is hereby established within the Environmental Protection Agency a Lead in School and Day Care Drinking Water Assistance Program, which shall be administered in accordance with this section.

"(b) APPLICATIONS FOR ASSISTANCE.—Applications for financial assistance for testing for, and remedying, lead contamination in drinking water from drinking water coolers and from other sources of lead contamination at schools under the jurisdiction of local education agencies and at day care facilities shall be submitted by such agencies and by the owners and operators of day care facilities to the Governor, or the Governor's designee.

"(c) GOVERNOR'S SUBMISSION AND PRIORITY LIST.—Each year, in accordance with procedures established by the Administrator, the Governor of each State shall—

"(1) forward to the Administrator all applications for financial assistance received by the Governor, and

"(2) submit with such applications a priority list ranking without regard to the public or private nature of the agency or owner or operator involved, the applications for financial assistance.

In preparing the priority list, the Governor shall take into account financial need, the health risks involved, and other appropriate factors.

"(d) AWARD OF FINANCIAL ASSISTANCE.—The Administrator shall award financial assistance to applicants. In awarding such assistance, the Administrator shall take into account the priority lists of the Governors, financial need, the health risks involved, and other appropriate factors.

"(e) AUTHORIZATION.—There are authorized to be appropriated for each of the 4 consecutive fiscal years commencing with fiscal year 1994, $30,000,000 to carry out this section.".

(6) CIVIL PENALTIES.—Section 1464 of the Public Health Service Act (the Safe Drinking Water Act; 42 U.S.C. 300j-24(d)(2)) is amended by adding the following new subsection at the end thereof:

"(e) ENFORCEMENT.—Effective 1 year after publication of notice under subsection (a)(1), any local education agency and any owner or operator of a day care facility which fails or refuses to comply with the requirements of subsections (d) (1) and (2) shall be subject to a civil penalty in the amount of $5,000 for each such violation. The Administrator may bring an action in the appropriate United States district court to assess and collect such penalty or to enjoin any such violation. The court in any action against a local education agency or against any owner or operator of a day care facility under this section or section 1449 shall have discretion to order that all civil penalties collected be used, in lieu of payment to the United States, to reimburse the local education agency or the owner or operator of the day care facility for the costs of testing and remedying lead contamination in drinking water.".

(b) LEAD PIPES, SOLDER, AND FLUX.—

(1) IN GENERAL.—Section 1417 of the Public Health Service Act (the Safe Drinking Water Act; 42 U.S.C. 300g-6) is amended as follows:

(A) Subsection (a) is amended—

(i) by inserting "pipe or plumbing fitting," after "pipe,"; and

(ii) by adding the following at the end thereof

"Effective 2 years after the enactment of the Lead Contamination Control Act Amendments of 1991, it shall be unlawful (I) for any person to introduce into commerce any pipe or pipe or plumbing fitting that is not lead free, (II) for persons engaged in the business of selling plumbing supplies to sell solder or flux which is not lead free, or (III) for any person to introduce into commerce any solder or flux which is not lead free unless such solder or flux bears a prominent label stating that it is illegal to use such solder or flux in the installation or repair of any plumbing providing water for human consumption.".

(B) Subsection (d) is amended by adding the following at the end thereof: "Not later than 2 years from the date of enactment of the Lead Exposure Reduction Act of 1992, the Administrator shall promulgate regulations setting a health-effects based performance standard establishing minimal leaching levels of lead from new plumbing fittings conveying drinking water. At a minimum, such plumbing fittings shall not cause lead concentration in drinking water to increase by more than 15 ppb when in prolonged contact with such fittings as determined by such performance standard. Such standard shall be effective 5 years after the date of enactment. Effective 5 years from the date of enactment of the Lead Exposure Reduction Act of 1992, when used with respect to new plumbing fittings, the term 'lead free' refers only to plumbing fittings that meet such health effects based performance standard. If the regulations required to be promulgated under this subsection have not been promulgated by the date that is 48 months after the date of enactment of the Lead Exposure Reduction Act of 1992, no person may import, manufacture, process, or distribute in commerce a plumbing fitting that contains more than 7 percent lead by dry weight. If the regulations required to be promulgated under this subsection have not been promulgated by the date that is 60 months after the date of enactment of the Lead Exposure Reduction Act of 1992, no person may import, manufacture, process, or distribute in commerce a plumbing fitting that contains more than 6 percent lead by dry weight. If the regulations required to be promulgated under this subsection have not been promulgated by the date that is 72 months after the date of enactment of the Lead Exposure Reduction Act of 1992, no person may import, manufacture, process, or distribute in commerce a plumbing fitting that contains more than 5 percent lead by dry weight. If the regulations required to be promulgated under this subsection have not been promulgated by the date that is 84 months after the date of enactment of the Lead Exposure Reduction Act of 1992, no person may import, manufacture, process, or distribute in commerce a plumbing fitting that contains more than 4 percent lead by dry weight.".

(C) In subsection (d)(2), insert "and plumbing" after "pipe" in each place it appears.

(2) ENFORCEMENT.—Title XIV of the Public Health Service Act (the Safe Drinking Water Act; 42 U.S.C. 300g–6) is amended as follows:

(A) Subsection (c) of section 1417 is amended by inserting "(1)" after "PENALTIES.—" and by adding the following at the end thereof:

"(2) Any person who violates any requirement of this section, including any requirement of any regulation, order, or certification issued under this section, shall be in violation of this section and shall be liable to the United States for a civil penalty in an amount not to exceed $10,000 for each such violation.

"(3) The Administrator may commerce a civil action to enjoin any violation of this section or to assess and recover any civil penalty under paragraph (2). Any action under this paragraph may be brought in the district court of the United States for the district in which the violation is alleged to have occurred or in which the defendant resides or has its principal place of business, and the court shall have jurisdiction to issue injunctive relief and to assess a civil penalty.

"(4) The Administrator may issue an order to any person requiring such person to comply with any requirement of this section and the Administrator may, after notice and opportunity for hearing on the record in accordance with sections 554 and 556 of title 5 of the United States Code, issue an order assessing a civil penalty for violation of this section.".

(B) In section 1445(a)(1), strike all of the first sentence before "shall establish" and insert "Every person who is subject to any requirement of this title" and strike "by regulation".

(C) In section 1445(b)(1), strike "any supplier of water" and all that follows down to "is authorized to" and insert "any person who is subject to any requirement of this title or any person who is in charge of any property of such person,".

SEC. 5. LEAD IN FOOD.

The Federal Food, Drug, and Cosmetic Act is amended as follows:

(1) At the end of section 402 (21 U.S.C. 342) add the following:

"(f) For the third 12-month period following the date of enactment of the Lead Exposure Reduction Act of 1992 and thereafter, if any package or packaging component (including any solder or flux) used in packaging such food contains any lead that has been intentionally introduced into such package or component.

"(g) If the incidental presence of lead in any package or packaging component (including any solder or flux) used in packaging such food exceeds—

"(1) for the third 12-month period following the date of enactment of the Lead Exposure Reduction Act of 1992, 600 parts per million (0.06 percent);

"(2) for the fourth 12-month period following the date of enactment of the Lead Exposure Reduction Act of 1992, 250 parts per million (0.025 percent); and

"(3) for the fifth 12-month period following the date of enactment of the Lead Exposure Reduction Act of 1992 and thereafter, 100 parts per million (0.01 percent).".

(2)(A) Chapter IV (21 U.S.C. 341 et seq.) is amended by adding at the end the following:

"SEC. 413. LEAD REGULATIONS.

"(a) CERAMIC WARES.—Not later than 18 months after the date of enactment of the Lead Exposure Reduction Act of 1992, the Secretary shall promulgate regulations to establish such standards and testing procedures with respect to lead in ceramic wares as are necessary to make food that contacts such ware not adulterated as containing an added substance under section 402(a)(1).

"(b) CRYSTAL WARES.—Not later than 30 months after the date of enactment of the Lead Exposure Reduction Act of 1992, the Secretary shall promulgate regulations to establish such standards and testing procedures with respect to lead in crystal wares as are necessary to make food that contacts such ware not adulterated as containing an added substance under section 402(a)(1).

"(c) FOODS.—Not later than 24 months after enactment of the Lead Exposure Reduction Act of 1992, the Secretary shall promulgate regulations to reduce lead in processed food. Such regulations shall determine the processed foods and related manufacturing practices that are significant sources of lead in the diet and require the greatest degree of reduction of lead in such foods that is achievable in practice.".

(B) Section 301 (21 U.S.C. 331) is amended by adding at the end the following:

"(u) Effective 6 months after the promulgation of regulations under section 413(a), the introduction or delivery into interstate commerce of any ceramic ware that is not in compliance with regulations under section 413.

"(v) Effective 6 months after the promulgation of regulations under section 413(b), the introduction or delivery into interstate commerce of any crystal ware that is not in compliance with regulations under section 413.

"(w) Effective 6 months after promulgation of regulations under section 413(c), the introduction, or delivery for introduction, into commerce of any processed food, or other action, in violation of section 413(c).".

PURPOSE AND SUMMARY

H.R. 5730 amends the Toxic Substances Control Act; the Safe Drinking Water Act; and the Federal Food, Drug, and Cosmetic Act to reduce the levels of lead in the environment and childhood exposure to lead from various sources, including products and plumbing fixtures. The bill provides a program of inspection for lead-based paint at covered schools and for lead hazards at covered day care facilities. It also provides for such inspections in the case of led in drinking water at such schools and facilities. It establishes a program for the training and licensing of lead-based paint abatement contractors and their workers. It provides for the repair or recall of drinking water coolers.

Background and Need for the Legislation

The health effects of lead exposure

Lead poisoning is the most serious environmental threat to young children today. According to a statement of October 1991 by the Centers for Disease Control (CDC), "childhood lead poisoning is one of the most common pediatric health problems in the United States today and it is entirely preventable." It is also a "problem worldwide." In February 1991, CDC stated, "millions of American children, from all geographic areas and socioeconomic strata, have lead levels high enough to cause adverse health effects."[1]

The effects of lead on young children

Young children under six are the most frequent victims of lead poisoning. Their exposure is greater than that of adults, because they often swallow lead dust from deteriorated paint or contaminated soils during normal mouthing activities. Moreover, their developing bodies absorb lead more readily than adults and are especially vulnerable to its toxic effects.

Lead can adversely affect virtually every system in a child's body. Low levels of lead exposure can shorten physical stature, impair kidney development, and alter red blood cell metabolism and vitamin D synthesis. Lead is also a probable human carcinogen.

The most significant impacts, however, affect the development of the central nervous system. Low levels of lead exposure in young children can reduce intelligence; impair perception, hearing, and speech; and cause behavior disorders like hyperactivity.

The adverse effects of lead exposure on children are being detected at lower and lower levels. In 1970, the Centers for Disease Control regarded a blood lead level of 60 micrograms per deciliter (μg/dl) as the threshold for childhood lead poisoning. Since then, the threshold for lead poisoning has been lowered four times. Most recently, CDC announced in October 1991 a new "level of concern" for lead in the blood stream, replacing the single, all-purpose childhood lead poisoning definition with a multitiered approach that included lowering the old level of concern to 10 micrograms per deciliter (μg/dl). The CDC said:

> Community prevention activities should be triggered by blood lead levels [greater than or equal to] 10 μg/dl. Medical evaluation and environmental investigation and remediation should be done for all children with blood lead levels [greater than or equal to] 20 μg/dl. All children with blood lead levels [greater than or equal to] 15 μg/dl require individual case management, including nutritional and educational interventions and more frequent screening. Furthermore, depending on the availability of resources, environmental investigation (including a home inspection) and remediation should be done for children with blood lead levels of 15–19 μg/dl, if such levels persist. The high-

[1] Centers for Disease Control, "Strategic Plan for the Elimination of Childhood Lead Poisoning" (1991).

est priority should continue to be the children with the highest blood lead levels.[2]

CDC took this action because of what it called "overwhelming and compelling" scientific evidence showing adverse health effects on young children at blood lead levels "at least as low as" 10 μg/dl.

Number of children at risk

Childhood lead poisoning is a pervasive environmental illness. The Environmental Protection Agency estimates that in 1990, 15 percent of the children under six—nearly one child out of every six—had blood lead levels above 10 μg/dl. This is more than 3 million children.

Several recent studies have assessed current lead exposure levels based not on model projections, but on data from programs that test children for lead exposure. These studies show extremely high levels of lead poisoning.

In May 1992, the Centers for Disease Control reported the results of a survey of lead poisoning in Oakland and other California cities. The survey found that 67 percent of the children tested in Oakland had blood lead levels of 10 μg/dl or greater. In two communities in the Los Angeles area, 32 percent of the children tested had blood lead levels of 10 μg/dl or greater.[3]

In October 1991, the Centers for Disease Control reported the results of testing of children who visited public health clinics in low-income neighborhoods of Chicago. This study showed that 66 percent of the children tested had blood lead levels of 10 μg/dl or greater. The average blood lead level of the children was 13.4 μg/dl.[4]

An unpublished study by the Centers for Disease Control in October and November 1991 screened children who sought medical treatment at inner-city emergency departments in Philadelphia. This study found that 29 percent of the children tested had blood lead levels of 15 μg/dl or greater.[5]

In a report released in March 1992, EPA's Midwest Office (Region V) used model projections to estimate that there are 166,000 children with blood lead levels greater than 10 μg/dl in six Midwestern states. According to EPA, there are 46,129 children with blood lead levels greater than 10 μg/dl in Illinois; 35,797 children with blood lead levels greater than 10 μg/dl in Ohio; 28,225 children with blood lead levels greater than 10 μg/dl in Michigan; 22,170 children with blood lead levels greater than 10 μg/dl in Wisconsin; 18,551 children with blood lead levels greater than 10 μg/dl in Minnesota; and 15,439 children with blood lead levels greater than 10 μg/dl in Indiana.[6]

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[2] Centers for Disease Control, "Preventing Led Poisoning in Young Children" (1991).

[3] Centers for Disease Control, "Blood Lead Levels Among Children in High-Risk Areas: California," 17 Morbidity and Mortality Weekly Report 291 (1992).

[4] Centers for Disease Control, "Evaluation of the Erythrocyte Protoporphyrin Test as a Screen for Elevated Blood Lead Levels," 119 Journal of Pediatrics 548 (1991).

[5] Centers for Disease Control, "Emergency Department Screening for Elevated Blood Lead Levels."

[6] Environmental Protection Agency, "Spatial and Numerical Dimensions of Young Minority Children Exposed to Low-Level Environmental Sources of Lead" (Mar. 1992).

Universal screening

In October 1991, the CDC recommended as a goal "universal screening" (i.e., the testing of every child for elevated blood lead levels), unless it can be shown that the "community in which these children live does not have a childhood lead poisoning problem," because "virtually all children are at risk for lead poisoning." According to CDC, "deciding that no problem exists requires that a large number or percentage of children be tested." This is a major departure from current practice, in which just 5 percent of children receive blood lead tests. The CDC said "screening children with a high probability of exposure to high-dose sources is the highest priority." It states, that in general, "screening and assessment for lead poisoning should focus on children younger than 72 months of age."[7]

The risks to pregnant women and women of child-bearing age

Pregnant women are also a high-risk group, because of the vulnerability of the fetus. The placental barrier does not stop lead. As a result, maternal lead exposure causes elevated blood lead levels in the developing fetus.

According to federal health officials, the fetus is potentially at risk of developmental defects when the maternal blood lead level exceeds 10 μg/dl. In 1984, this level was exceeded in 10 percent of all pregnancies. In addition, CDC estimates that each increase of 1 μg/dl in maternal blood lead levels increases the risk of infant mortality by 1 in 10,000.

A related concern is the long-term accumulation of lead in women of child-bearing age. Lead can be stored in bones for over 25 years. This lead may be mobilized during pregnancy and absorbed by the fetus.

The effects on other adults

Lead also poses genuine health risks for all adults. Lead exposure increases adult blood pressure, which in turn increases the risk of heart disease and stroke. In addition, some studies indicate that lead exposure may also damage the male reproductive system.

EXPOSURE TO LEAD-BASED PAINT

Lead-based paint and soil are the single most significant causes of childhood exposure that can cause lead poisoning. According to the Environmental Protection Agency, 2 million children have been exposed to enough lead from deteriorated lead-based paint to cause their blood lead levels to exceed the 10 μg/dl level of concern.

The history of lead-based paint

Lead-based paint was first produced in the United States in Philadelphia in 1804. Its use remained widespread through the 1940's, declining gradually in the 1950's and thereafter. In 1978, the Consumer Products Safety Commission (CPSC) finally banned the manufacture of paints with a lead content in excess of 0.06 per-

[7] Centers for Disease Control, "Preventing Lead Poisoning in Young Children" (1991).

cent by weight for residences, buildings accessible to the public, playgrounds, toys, and furniture.

EXPOSURE TO LEAD IN SOIL

Lead-contaminated soils can pose a serious health risk as a pathway to children for lead deposited from paint, gasoline, and industrial sources. Children playing on these soils can ingest lead during normal hand-to-mouth activity. Moreover, the lead-contaminated soils can be tracked indoors, contributing to high lead levels in interior dust. Overall, the Environmental Protection Agency has estimated that up to 30 percent of the exposures leading to 3 million cases of elevated blood lead levels in children in the U.S. may be caused by lead-contaminated soils.

Lead-contaminated soils pose a special risk to children suffering from "pica," which is a compulsion to eat inedible substances. Pica children can ingest 100 times the amount of soil ingested by average children. Pica appears to affect as many as 5 percent to 10 percent of all children.

The causes of soil contamination

Most soil naturally contains a small amount of lead. In the U.S., average background lead concentrations are 16 parts per million (ppm). In many places, however, human activities have dramatically increased lead levels in soil. Major urban areas have been the most affected, with average lead concentrations often exceeding 500 ppm.

The most widespread cause of soil contamination is the fallout from leaded gasoline. Since the 1920's, when lead was first introduced in gasoline, 4 to 5 million metric tons of lead have been estimated to be deposited in soils from vehicles using leaded gasoline. As a result, soils within 25 meters of roadways are frequently contaminated with lead, sometimes reaching lead concentrations in excess of 10,000 ppm. The Committee notes that the use of lead in gasoline for motor vehicles, but not for airplanes, has all but ended in all States.

Lead smelters, solid waste incinerators, and mining operations can also cause high lead levels in nearby soils. In the case of mining, however, the lead particles tend to be bigger and less hazardous.

Efforts to reduce lead in soil

Federal efforts have successfully controlled many sources of new lead pollution. The phase-down of lead in gasoline, which began in 1975, has lowered nationwide lead emissions by 96 percent. As a result, in some areas, soils are no longer receiving significant new lead burdens.

Unfortunately, there is no comparable federal program to reduce the high lead levels that already exist in soils. The federal Superfund program has been used to clean up lead-contaminated soils on industrial hazardous waste sites. But no significant federal efforts have been made to clean up lead-contaminated soils in residential backyards or in school or public playgrounds, even though these sites generally pose the greatest health risks.

Among the states, only Minnesota has taken an active interest in cleaning up lead-contaminated soils in residential areas. Measures to reduce lead in soil are rarely adopted outside of Minnesota, because most families are unaware of the potential hazards.

EXPOSURE TO LEAD IN DRINKING WATER

Drinking water also causes exposure to lead, producing 20 percent of the public's overall exposure. Compared to lead paint, lead in drinking water affects many more people, but does so at generally lower levels of exposure. The Environmental Protection Agency estimates that 30 million children are exposed to some lead in drinking water. Of these, more than 20 million are exposed to enough lead to reduce their IQ by at least small amounts.

Lead in drinking water poses a specific risk to bottle-fed infants. These infants may receive more than 85 percent of their lead exposure from drinking water. Severe lead poisoning can be caused if parents or day care centers use water with high lead levels to prepare infant formula.

Lead in drinking water can also jeopardize the health of adults. Pregnant women are vulnerable, because lead in drinking water can be transmitted to the fetus. In addition, EPA has estimated that lead in drinking water contributes to over 600,000 cases of hypertension (abnormally high blood pressure) in adults, which can lead to strokes and heart attacks.

The sources of lead in drinking water

Most lead in drinking water leaches into the water from lead-bearing materials in home plumbing and the water distribution system. Common sources of lead include lead pipes, lead solder used to join copper pipes, and brass faucets, which can contain up to 8 percent lead. Water fountains that chill drinking water ("water coolers") can contain lead-lined tanks and other lead-bearing parts. Tests of water coolers at schools have in some cases shown lead levels as high as 100 parts per billion (ppb) or higher.

Another significant source of contamination is lead "service lines," which are used to connect individual houses to water mains. Lead service lines can be found in 20 percent of the water systems in the U.S. Within these systems, 10 million lead service lines are in use.

The extent of lead contamination

High levels of lead are common in drinking water throughout the country. Nationwide, EPA estimates that 20 percent of all homes have first-draw lead levels in excess of 20 ppb. Lead problems are particularly acute in the Northeast, Southeast, and Northwest, because water is generally more corrosive in these regions. One water system serving several thousand people in South Carolina has lead levels in excess of 250 ppb. Cities such as Chicago that have many lead service lines also have high lead levels in their drinking water. However, in a July 31, 1992, letter to the Committee regarding H.R. 2840, EPA said that "most drinking water intake is not from first-draw, standing conditions." Further, "even among high-risk homes, there is a significant versatility in

tap water lead levels that 15 ppb measured in the 90th percentile of a distribution from a typical community will have a corresponding average level of approximately 4 ppb."

Recent tests have even shown high lead levels in House and Senate office buildings, and the Supreme Court.

The history of regulation

Despite the significant health risks, federal efforts to regulate lead in drinking water have been marked by delays and ineffectual standards.

The original 1974 Safe Drinking Water Act (SDWA) directed EPA to establish national primary drinking water regulations (NPDWRs) for important drinking water pollutants. These regulations were to set enforceable maximum contaminant levels (MCLs) for public water systems. In 1975, EPA set an interim NPDWR for lead at 50 ppb. The 1974 Act required EPA to revise the interim NPDWR by 1977, after review by the National Academy of Sciences.

The National Academy of Sciences completed its review in 1977, recommending that the NPDWR for lead be cut in half or more because it did not provide a sufficient "margin of safety" for fetuses and young children. However, EPA failed to act. In 1986, Congress responded to EPA's inaction by passing new amendments to the Safe Drinking Water Act. These amendments directed EPA to promulgate a new NPDWR for lead by 1989. EPA again missed the statutory deadline. Finally, acting under court order, EPA issued a revised NPDWR in May 1991.

Congress has required direct action to remove lead from solder, pipes, and coolers. However, as with the NPDWR for lead, implementation of these requirements has been flawed. In the 1986 SDWA Amendments, Congress required that lead in solder and lead pipes be "lead free" (as defined in section 1417(d) of the SDWA) in public water systems and home plumbing facilities providing water for human consumption which is connected to a public water system. The EPA Inspector General studied enforcement of this requirement in 4 States and found that the States were not adequately ensuring the enforcement of it.

Two years later, in the Lead Contamination Control Act of 1988, Congress took specific action against water coolers, prohibiting the manufacture of any new coolers which are not lead free and requiring the recall of any existing coolers with lead-lined tanks. But implementation of the requirement relating to the listing after testing of water coolers that are "not lead free" has been hindered because EPA has tested fewer than 10 percent of the hundreds of models of water coolers currently in use.

The special problems of lead in school drinking water

Lead in the drinking water of schools and day care centers can pose special health risks. Not only are young children especially vulnerable to lead poisoning, but in addition the water in schools and day care centers can reach high levels when it remains stagnant over weekends and vacations or even overnight.

The Lead Contamination Control Act of 1988 addressed these risks by encouraging all schools and day care centers to test their

water supplies for lead contamination. Testing has been limited. According to a June 1991 publication by the Natural Resources Defense Council:

> of the 50 states and 3 territories (referred to hereinafter as "53 states"), 17 reported that drinking water from one or more outlets in about 1,650 day care or other pre-school facilities had been sampled and analyzed for lead. This figure represents 0.6% of licensed child care facilities in the United States, and a mere 0.1% of the total number of facilities which includes 1,000,000 unlicensed ones. Thirty-two states had no information on day care testing and 4 states reported an "impression" that some testing may have been done. The under-five population in these latter 36 states is 14 million, of whom 3.5 million are estimated to be poor.[8]

EXPOSURE TO LEAD IN FOOD

Lead in the food supply is another important source of exposure to lead. According to the Agency for Toxic Substances and Disease Registry in 1990, 5 percent of the young children in the United States may ingest enough lead in food to be at risk of lead poisoning. Sources of lead in the diet include ceramic ware coated with lead-based glazes, crystal ware, and imported food cans using lead solder. Certain processed foods, including calcium supplements made from animal meal, may also have high lead levels.

HEARINGS

The Committee's Subcommittee on Transportation and Hazardous Materials held one day of hearings on H.R. 3554 on October 23, 1991. Testimony was received from The Honorable Harry Reid, United States Senate; Victor J. Kimm, Deputy Administrator for Pesticides and Toxic Substances, U.S. Environmental Protection Agency; Jeffrey L. Zelms, President, Doe Run Company, on behalf of the Lead Industries Association; Peter F. McCloskey, President, Electronic Industries Association; Arthur M. Hawkins, First Executive Vice-President, Battery Council International; George Vary, Executive Director, American Zinc Association; Thomas Graves, Director of Federal Affairs, National Paint and Coatings Association; J. Lawrence Robinson, Executive Vice-President, Dry Color Manufacturers Association; Knut Ringen, Director, Laborers' Health and Safety Fund, Laborers' International Union; Karen Florini, Senior Attorney, Environmental Defense Fund; and Don Ryan, Executive Director, The Alliance to End Childhood Lead Poisoning.

The Committee's Subcommittee on Health and the Environment held three days of hearings on lead poisoning on April 25, 1991, July 26, 1991, and February 25, 1992. Over forty witnesses testified at these hearings, including officials from the Department of Health and Human Services and the Environmental Protection Agency; representatives of health, environmental, education, labor, and civil rights organizations; and representatives of real estate as-

[8] Natural Resources Defense Council, "The Lead Contamination Control Act. A Study in Non-Compliance," June 1991.

sociations and drinking water suppliers. The Subcommittee on Health and the Environment had several exchanges of correspondence with EPA, including letters dated June 24, 1991, August 5, 1991, January 22, 1992, and April 30, 1992. In addition, the Committee had several exchanges of correspondence with the EPA regarding H.R. 2840, including letters dated December 27, 1991, March 26, April 23, May 11, and July 31, 1992.

Committee Consideration

On November 4, 1991, the Subcommittee on Health and the Environment met in open session and ordered reported H.R. 2840, the "Lead Contamination Control Act Amendments of 1991", as amended, by a voice vote, a quorum being present.

On April 2, 1992, the Subcommittee on Transportation and Hazardous Materials met in open session and ordered reported H.R. 3554, the "Lead Exposure Reduction Act of 1991", as amended, by a voice vote, a quorum being present.

On August 5, 1992, the Committee met in open session and ordered reported H.R. 5730, the "Lead Exposure Reduction Act of 1992", a clean bill combining provisions of H.R. 2840 and H.R. 3554, with amendments by a recorded vote of 39 to 4, a quorum being present.

Committee Oversight Findings

Pursuant to clause 2(l)(3)(A) of Rule XI of the Rules of the House of Representatives, the Subcommittees on Transportation and Hazardous Materials, Health and the Environment, and Oversight and Investigations held oversight hearings and made findings that are reflected in the legislative report.

Committee on Government Operations

Pursuant to clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives, no oversight findings have been submitted to the Committee by the Committee on Government Operations.

Committee Cost Estimate

In compliance with clause 7(a) of rule XIII of the Rules of the House of Representatives, the Committee estimate of the cost to the Federal Government for Fiscal Years 1993 to 1997 for carrying out H.R. 5730 is as follows:

[By fiscal year in millions of dollars]

	1993	1994	1995	1996	1997
Estimated authorization level	20	74	69	69	69
Estimated outlays	16	11	38	69	69

CONGRESSIONAL BUDGET OFFICE ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 12, 1992.

Hon. JOHN D. DINGELL,
Chairman, Committee on Energy and Commerce, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for H.R. 5730, the Lead Exposure Reduction Act of 1992.

Enactment of H.R. 5730 would not affect direct spending or receipts. Therefore, pay-as-you-go procedures would not apply to the bill.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

ROBERT D. REISCHAUER,
Director.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: H.R. 5730.

2. Bill title: Lead Exposure Reduction Act of 1992.

3. Bill status: As ordered reported by the House Committee on Energy and Commerce on August 5, 1992.

4. Bill purpose: The Lead Exposure Reduction Act of 1992 would amend the Toxic Substances Control Act in an attempt to reduce the levels of lead present in certain products and product packaging, and in schools and day care facilities. The bill would require the Environmental Protection Agency (EPA) to develop training and licensing programs for individuals and firms involved in remedying problems with lead-based paint. H.R. 5730 would authorize appropriations of $30 million annually over the 1994-1997 period for grants to schools and day care facilities to conduct testing for the presence of lead in paint, dust, or soil, and to remedy lead hazards that are identified.

The bill also would amend the Safe Drinking Water Act to require testing for the presence of lead in drinking water at schools and day care facilities. The legislation would authorize appropriations of $30 million annually over the 1994-1997 period to test for lead in the drinking water of these facilities and to correct contamination problems.

Finally, H.R. 5730 would amend the Food, Drug and Cosmetic Act to require the Department of Health and Human Services (HHS) to establish regulations on the lead content of food packaging and other food contact materials.

5. Estimated cost to the Federal Government:

[By fiscal year, in millions of dollars]

	1993	1994	1995	1996	1997
Estimated authorization level	20	74	69	69	69
Estimated outlays	16	11	38	69	69

The costs of this bill fall within budget function 300.

Basis of estimate: CBO assumes that the bill will be enacted by the start of fiscal year 1993, that amounts authorized will be appropriated prior to the beginning of each fiscal year, and that spending will occur at historical rates for similar activities. For the cost of activities where no specified amounts are authorized by the bill, we based our estimates on information from EPA and HHS.

H.R. 5730 would require EPA to establish a program to certify training programs for workers involved in abating lead-based paint problems, and to issue licenses to contractors engaged in this work. Based on information from EPA regarding its experience with an asbestos training program, CBO estimates that this provision would cost about $30 million annually. The bill specifies that the costs to administer and enforce this certification and licensing program are to be covered by fees on persons operating training programs and on contractors receiving licenses. Hence, CBO assumes that the operating costs of this program would be covered by such fees. H.R. 5730 authorizes appropriations of $5.5 million annually over the 1994–1997 period for grants (and the evaluation of such grants) to nonprofit organizations offering training to workers involved in remedying lead-based paint problems.

The bill would require EPA to establish an inventory of products containing lead and to update it for new products. We estimate this would cost about $0.5 million annually. The bill calls for EPA to develop a number of regulations, including rules to: prohibit lead in product packaging, require the labeling of products containing lead, establish standards for laboratories performing lead sampling analysis, establish standards for the performance of lead-based paint abatement products, and set minimum leaching levels of lead from new plumbing fittings. CBO estimates that promulgating these rules would cost $10 million over the 1993–1995 period. In addition, we estimate that EPA would spend about $6 million over the 1993–1994 period to develop the required regulations concerning lead testing in schools, in child day care centers, and in dust and soil. H.R. 5730 also would require EPA to sponsor public outreach programs on lead contamination. We estimate this activity could cost $2 million annually.

The Centers for Disease Control (CDC) and the National Institute of Environmental Health Science would be directed by this bill to conduct two major studies on the sources of lead exposure and on the means to reduce occupational lead exposure. Based on information from the CDC, we estimate these studies would cost a total of $5 million. In addition, the bill would require the Secretary of Health and Human Services to issue regulations on the lead content of ceramic ware, crystal ware, and processed food. We estimate that promulgating these rules would cost $2 million over the 1993–1995 period.

6. Pay-as-you-go considerations: The Budget Enforcement Act of 1990 sets up pay-as-you-go procedures for legislation affecting direct spending or receipts though 1995. CBO estimates that enactment of H.R. 5730 would not affect direct spending or receipts. Therefore, pay-as-you-go procedures would not apply to the bill.

7. Estimated cost to State and local governments: Section 4 of this bill would mandate testing for the presence of lead in drinking water in the nation's 84,000 primary and secondary public schools. EPA estimates that approximately half of the states currently have programs to test for lead in school drinking water. This type of test costs $100 to $200 per school. Completing testing of all public schools could cost as much as $5 million to $10 million.

Section 2 of H.R. 5730 would require inspections of paint, dust, and exterior soil for the presence of lead in approximately 50,000 public schools with elementary grades built before 1980. Based on limited experience with soil testing, EPA estimates these tests could cost $3,600 per school. In addition, about 20,000 secondary public schools built before 1980 would be required to inspect for lead-based paint that is chipping, peeling, flaking, or chalking. We estimate that the cost of this type of inspection for school buildings would average about $1,000 per building. In sum, these inspections of public school buildings and grounds would cost about $200 million.

While H.R. 5730 would not require state and local governments to abate any lead hazards they identify, the bill would require them to notify teachers and parents of children in the affected facilities. As a result, in many cases, states or localities will incur costs for remedial action.

Additional costs would be incurred by state and local governments for lead testing and inspections in government-operated child day care facilities constructed before 1980. (Privately operated schools and day care facilities would also have to be inspected, but would presumably bear the costs of such inspections.) CBO does not have a reliable estimate of the number of such government-operated facilities and therefore cannot estimate the cost of this provision. The number of such facilities and the average cost of inspecting them are likely to be much smaller than the corresponding figures for elementary schools.

In total, the bill would authorize appropriations of $240 million over the 1994-1997 period for grants to assist public and private schools and day care facilities in carrying out lead testing and remedial actions.

8. Estimate comparison: None.

9. Previous CBO estimate: None.

10. Estimate prepared by: Kim Cawley and Connie Takata.

11. Estimate approved by: C.G. Nuckols, Assistant Director for Budget Analysis.

Inflationary Impact Statement

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee makes the following statement with regard to the inflationary impact of the reported bill:

The Committee is unaware of any inflationary impact on the economy that will result from the passage of H.R. 5730, as amended.

SECTION-BY-SECTION DISCUSSION

Section 1. Short title

The "Lead Exposure Reduction Act of 1992".

Section 2. Amendment of the Toxic Substances Control Act

Adds a new Title IV to TSCA:

Title IV—Lead Exposure Reduction

Subtitle A—Findings, Policy, and Definitions

Section 401. Findings and policy

New Section 401 contains findings related to lead's toxicity, its pervasiveness in the environment, the need to prevent further environmental dispersion of lead, and the necessity of reducing existing exposure levels, especially in regards to lead-based paint.

U.S. policy is to minimize further releases of lead to the environment and reduce sources of lead that result in adverse human or environmental exposure.

Section 402. Definitions

The new Section 402 defines key terms.

The definition of "day care facility" covers any portion of a facility used for day care for children in kindergarten or younger children that is owned or operated by a person that provides such day care for compensation and that is licensed or regulated under State law for day care purposes or receives Federal funds for day care purposes. In applying this definition, day care facilities should be considered to have received Federal funds if they receive such funds either directly from the Federal government or through distribution by a State. An example or indirect Federal funding would be a day care facility that receives payment of funds or redemption of child care certificates from a state that is, in effect, acting as a conduit for distributing Federal funds.

The definition of "covered school" should not be interpreted as applying to a family that has elected to educate its children in the family home.

The term "lead-based paint" is used in Subtitle C and does not apply to Subtitle B.

The definition of "lead-based paint abatement activities" covers the inspection, removal, encapsulation, in place management, lead hazard reduction, handling, transportation, or disposal of lead-based paint or materials containing lead from lead-based paint at or from any facility or the planning of any such activities, except that the term does not include renovation, remodeling, maintenance, or repair activities that incidentally remove, encapsulate, manage in place, handle, transport, or dispose of such paint or materials if such activities do not present more than a de minimis risk of exposure to lead. In applying this definition, interior dust that

contains lead from lead-based paint should be considered a material containing lead from lead-based paint.

Subtitle B—Lead-Containing Products and Packages

Section 411. Restrictions on continuing uses of certain lead-containing products

Except as otherwise provided, one year after enactment no person may import, manufacturer, or process inks with a lead content level greater than 0.1 percent lead by dry weight used in printing newspapers, newspaper supplements, or magazines published more than once per month; or brick mortar with a lead content level greater than 2 percent lead by dry weight. Five years after enactment no person may manufacture, process, or import a product in any of the following categories: architectural glass and automotive window coatings, and mirror coatings, if such product has a lead content level greater than 0.06 percent lead by dry weight. Except as otherwise provided in this section, three years after enactment, no person may manufacture, process, or import any paint with a lead content level greater than 0.06 percent by dry weight.

Subsection (c) contains provisions establishing separate substitute review processes for certain primer paints suitable for use as an electrocoat or electrodeposition primer on motor vehicles or motor vehicle parts; and certain electrocoat and electrodeposition paints and primers for agricultural, construction, general purpose industrial, and forestry equipment. Subsection (d) establishes a substitute review mechanism for paints containing lead chromate pigments, except for such paints that are used as original equipment manufacturer paints and primers or service paint or primer for agricultural, construction, general purpose industrial and forestry equipment.

Subsection (e) exempts zinc-enriched industrial paint with an incidental presence of lead not greater than 0.19 percent lead by dry weight. This subsection also exempts artists' paint, if such paint is labeled in accordance with the requirements of the subsection.

The restrictions on the use of lead in "paints" in Subtitle B means paints and primers in the ordinary sense of the term, including paints and primers used on bridges and other steel structures. The term does not include the broader term "coatings" and, therefore, does not restrict the use of lead in particular engineering applications. For example, pure lead coatings may be used to line chemical reaction vessels because of the anticorrosive properties of lead; lead may also be used in electrostatic precipitators for air pollution control. Lead is also present in small quantities during industrial processes such as galvanizing, which coats steel with molten zinc by either hot dipping or electroplating to create a permanent metallurgical bond between the coating and the steel. These latter uses of lead are not restricted under Sections 411–413 in Subtitle B. EPA has considerable flexibility to define the term "paints" to avoid unnecessary restrictions on specialized uses of lead.

EPA shall promptly exempt by rule from the above restrictions products used for medical purposes, for purposes in the paramount

interest of the U.S., for radiation protection, for fire assay tests used in the mining industry to detect the presence of gold and other precious metals, and as radiation shielding in electronic devices and in specialized electronics uses.

Subsection (c)(1) provides for the phaseout of primer paints containing lead used on motor vehicle parts for corrosion inhibitive purposes. These primer paints, for which a non-lead substitute is currently unavailable, are used to inhibit rust and extend the life of the equipment. The application of corrosion inhibitive coatings, known as electrocoat or electrodeposition primers, is down in a strictly controlled factory setting where worker exposure is negligible.

This subsection requires EPA to review every 5 years the availability of suitable electrocoat or electrodeposition primer paints, for original equipment automotive uses, that have a lead content level of .06 percent or less. Three years after EPA determines that one or more such primer paints exists, no person may import, manufacture, or process any such with a lead level that exceeds that set by EPA; 4 years after this determination, these primer paints, or any new motor vehicle or motor vehicle part coated with these paints, may not be distributed in commerce. If EPA determines that a suitable primer paint with a lead content level of .06 percent or less does not exist, 3 years after enactment no person may import, manufacture, or process any such primer paint with a lead level greater than .06 percent; 14 years after enactment no such paint, or any new motor vehicle or motor vehicle part coated with such paints, with a lead level greater than .06 percent may be distributed in commerce.

The lead content levels for automotive primer paints prescribed in this provision would apply to primer coatings of both new motor vehicle bodies and new motor vehicle parts. This provision does not apply to top-coat paints and refinishing paints.

Subsection (c) also requires EPA to perform the same type of substitute review for original equipment manufacturer paints and primers and service paints and primers for agricultural, construction, general purpose industrial and forestry equipment. These paints are used and applied in a manner similar to the primer paints used in automotive applications, except that these paints often serve as both the primer coat and the top-coat.

Paints containing lead chromate pigments are banned five years after enactment unless EPA determines that, for particular uses of any such pigment, there are no acceptable substitutes. EPA must review substitutes for uses of lead chromate pigments every six years thereafter. This section provides opportunity for public notice and comment on determinations made by EPA regarding the availability of substitutes for paints and primers subject to regulation under this section. The Committee expects that EPA, in making determinations as to whether such substitutes have substantially equivalent performance characteristics, shall consult closely with representatives of the affected industries, and of environmental organizations.

Susection (e) exempts zinc-enriched industrial paint with an incidental presence of lead not greater than 0.19 percent by dry weight from the restrictions imposed under subsection than 0.19 percent

by dry weight from the restriction imposed under subsection (a)(2). Zinc dust is added to industrial paint to provide protection against metal corrosion and is obtained by recycling and processing scrap metal that also contains lead. It is expected that the lead content in the scrap metals used as raw materials in the production of this paint will decrease with time, resulting in a corresponding decrease in the lead levels found in this paint.

Section 412. Restriction on lead-containing packages

This section established a two-track program for reducing the lead content of packaging materials. These restrictions are very similar to model legislation issued by the Coalition of Northeastern Governors (CONEG). Beginning four years after enactment, no packaging or packaging component to which lead has been intentionally introduced may be offered for sale or promotional purposes. Beginning 60 months after enactment, the allowable indicidential lead level in packaging and packaging components is gradually reduced.

Packaging and packaging components manufactured prior to the date of enactment, as well as those to which lead has been added to comply with local, State, or federal health and/or safety laws, are exempt from the requirements of this section. Certificates of compliance with the requirements of this section must be prepared and maintained by manufacturers of packages and packaging components subject to regulation under this section.

For the purposes of this section, the term "intentionally introduced" means the purposeful introduction of lead into a packaging or packaging component with the intent that the lead be present in the packaging or packaging component. It is not intended to include the background levels of lead that naturally occur in raw materials or are present as post-consumer additions, and that are not purposefully added to perform as part of a packaging or packaging component. It is not intended to include any trace amounts of a processing aid or similar material used to produce a product from which a package or packaging component is manufactured, and which processing aid or similar material is reasonably expected to be consumed or transformed into a non-regulated material during the process. For purposes of this section, the term "incidental presence" means the presence of lead in a package or packaging component that was not purposefully introduced into the package or packaging component for its own properties or characteristics.

Section 413. Modification of restrictions in sections 411 and 412

This section allows EPA to modify the percentage of allowable lead content in any product, package, or packaging component regulated or subject to regulation under Sections 411 and 412.

Section 414. Inventory of lead-containing products and new use notification procedures

Twenty years ago, Congress recognized that little or no information existed to determine whether various chemicals presented hazards to human health and the environment. To address this deficiency, Congress required EPA under the Toxic Substances Control Act to compile an inventory of existing chemical substances. This

inventory has provided a useful mechanism for identifying chemical substances and determining which ones are likely to pose problems to health and the environment.

Over 1.2 million tons of lead are consumed in the United States each year. Nearly 80 percent of this amount is devoted to the manufacture of lead-acid batteries. The remaining 20 percent is used in a variety of applications. In some of these applications, substitutes may be available.

Congress has been considering lead control legislation for nearly three years. During this time, it has became clear that mechanism is needed to catalogue the uses of lead. This toxic metal is pervasive in our society; the full range of its uses and the lead content of many products is not fully known.

Subsection (a) requires EPA to conduct a survey of all lead-containing products. Because of the large numbers and types of products that contain lead, the Committee expects that EPA will group products into categories of products that are functionally similar and that involve similar exposure scenarios. Categories may be based on uses of lead, rather than product-specific groupings. Examples of categories of products might include lead-acid batteries, leaded paints and coatings, electronics products and lighting products. EPA must publish an Inventory that identifies such categories of products no later than 24 months after enactment of this title. EPA may periodically revise the Inventory.

Subsection (b) requires EPA to promulgate, by rule, with appropriate public notice and comment, a List of lead-containing products or categories of products that it determines may reasonably be anticipated to present an unreasonable risk of injury to health or the environment during manufacturing, processing, distribution in commerce or use, or at the end of the product's useful life, taking into account other applicable regulations. In making a determination to include a product or category of products on the List, EPA must base the determination on exposure-related information pertaining to such products or categories of products, or to products or categories of products that pose similar exposure risks. EPA shall specify the concentration of lead that it determines is the maximum concentration of lead that is currently found in products that fall within each category of products that appears on the List.

Subsection (c) requires any person who manufactures, processes or imports a product that (1) is not included in the Inventory, or does not fall within one of the product categories that are included in the Inventory or (2) is identified on the List, or falls within one of the categories of products identified on the List; and that has a higher lead concentration than previously identified by EPA for such products or category (unless the concentration results from efforts to reduce the product's size or weight), to submit notice of such activity to EPA simultaneous with the commencement of the manufacturing, processing, or importation of the product. Inclusion of products or categories of products on the list in subsection (c)(6) is not necessarily a Congressional finding that such products or any increase in the lead content of such products may be reasonably anticipated to present an unreasonable risk of injury to human health or the environment.

New product notifications must include: a general description of the product; a description of the manner in which lead is used in the product; the quantity of the manner in which lead is used in the product; the quantity of such product manufactured, processed, or imported; and the amount of lead used in the manufacturing of the product, or the amount and percentage of lead contained in the imported product. As appropriate, Section 14 of the Toxic Substances Control Act applies to information required to be submitted to the Administrator of the U.S. Environmental Protection Agency under this section.

EPA must publish an annual report providing a nonconfidential summary of new uses identified pursuant to this section. The subsection contains a default List that becomes effective if the EPA does not publish a List pursuant to subsection (b). No later than 36 months after enactment, EPA must report to Congress on the diversion rate of small sealed lead-acid batteries and the quantity of lead entering the waste stream from such batteries.

Exemptions from inclusion on the List required to be promulgated under subsection (b) and the new use notification requirements of subsection (c) (and therefore from the labeling requirements of Section 415) are provided for the following products or categories of products: stained glass products, fishing weights and lures, firearms and ammunition, and containers used for radiation shielding. Firearms and ammunition are explicitly exempt from TSCA coverage now (section 3(2)(B)(v)) and it is not intended that these materials be subject to the new use notification requirements. The risk of lead fishing weights to human health and the environment is currently under analysis by EPA.

This section does not apply to any post-consumer metal, glass, paper, or textiles sold or distributed by the owner or operator of any automotive dismantler or recycling facility regulated by a State or by EPA.

Section 414 does not contain any provisions designed to modify in any fashion the language currently found in Section 6 of the Toxic Substances Control Act. The Committee does not intend that the absence of such provisions be construed to be either an endorsement or a rejection of the current TSCA Section 6 language, and should not be construed in any way as affecting the legal standard found in TSCA Section 6. The Committee intends to address issues raised concerning this language during a later comprehensive review of TSCA.

Section 415. Product labeling

Section 415 requires EPA to promulgate regulations providing for the labeling of products which appear on the List promulgated pursuant to Section 413, except for lead-acid batteries required to be labeled under other authority of Federal law, and products regulated under the Federal Food, Drug and Cosmetic Act. These regulations may distinguish among labels where products present a risk of exposure during manufacture or processing and labels where products present a risk of exposure during distribution or use.

Subtitle C—Lead-Based Paint Abatement

Section 421.—Lead-based paint abatement training and certification

The new Section 421 requires EPA no later than 18 months after enactment to promulgate final regulations governing lead-based paint abatement activities.

The final regulations shall include minimum requirements for the following: training provider accreditation, curriculum requirements, (including specific requirements for the training of lead abatement workers, supervisors, contractors, inspectors, and planners, including but not limited to: health effects of and sources of exposure to lead, worker protection practices and procedures, abatement methods, prohibited abatement methods and practices, lead-based paint (LBP) abatement waste cleanup and disposal, testing and monitoring, medical monitoring of abatement personnel, LBP encapsulation and maintenance practices, recordkeeping, worker rights/responsibilities, and insurance and bonding requirements), training hour requirements, trainee competency and proficiency, and training program quality control.

The training curriculum requirements shall take into account the types of lead-based paint abatement activities engaged in by different categories of workers.

The regulations shall also include a program to license lead-based paint abatement contractors who are deleaders or who are engaged in demolition, lead inspection, or in removing lead from bridges. EPA may amend these regulations to require additional categories of lead-based paint abatement contractors to be licensed. The regulations may provide for different types of licenses for different categories of lead-based paint abatement activities. License applicants must demonstrate the ability to comply with the standards applicable to the category of activities engaged in by the applicant.

These regulations shall also include standards for conducting lead-based paint abatement activities, and provisions to ensure compliance with the standards set forth in the regulations. Contractors required to be licensed shall ensure that all workers engaged in lead-based paint abatement activities have received appropriate training through an accredited training program. The training requirement does not apply to workers whose participation in these activities is incidental and does not present more than a de minimis risk of exposure to lead. The training requirements may be waived for one year in areas where sufficient training programs are not available.

Within 2 years after the establishment of a licensing program under this section, all lead-based paint abatement contractors required to be licensed must have submitted a license application. By this time, the contractors must begin to comply with the standards for conducting lead-based paint abatement activities. EPA or the applicable State agency must act on the license application within 6 months of its filing. However, the failure to act thereon by EPA or the State does not make it unlawful for the contractor to carry out lead-based paint abatement activities.

No later than 90 days after enactment, EPA must issue interim worker protection guidelines that are at least as comprehensive as

the HUD worker protection guidelines published at FR 55, p. 38973 (9/28/90).

Within 18 months after enactment, EPA must promulgate guidelines for the conduct of renovation and remodeling activities that may create a risk of exposure to dangerous levels of lead. Within 30 months after enactment, EPA must complete a study of the extent to which persons engaged in various types of renovation and remodeling activities are exposed to lead or disturb lead and create a lead hazard on a regular or occasional basis. Within 4 years after enactment, EPA must require the licensing of lead-based paint abatement contractors engaged in renovation or remodeling that create lead hazards in the course of their activities. If EPA determines that any category of persons engaged in renovation or remodeling should not be licensed, it shall publish an explanation of the basis for that determination.

EPA must review and revise the final regulations every two years, as necessary. EPA (or the State in the case of an authorized State program) must charge fees for the accreditation of programs and contractor licensing under this section; the agency also has the authority to suspend or revoke any licenses or accreditation issued under this section. EPA (or a State in the case of an authorized State program) may waive the fee for lead-based paint abatement contractors for the purpose of training their own employees.

The National Institute of Environmental Health Sciences (NIEHS) must establish a program for distributing grants to nonprofit organizations for the training and education of workers involved in LBP abatement. NIEHS shall carry out periodic reviews of such training programs. Grants may also be made to municipalities to carry out such training and education for their employees.

An Advisory Committee on Lead Poisoning Prevention is established to advise the EPA on matters concerning the abatement of lead-based paint. Given the role played by NIEHS in the grant program, the Committee expects that the Administration will appoint a representative of NIEHS to the Advisory Committee as a nonvoting member.

Section 422. Lead contamination in schools and day care centers

The new Section 422 requires EPA to establish a program to inspect schools and day care facilities for lead-based paint or lead hazards and to notify parents and school or day care facility personnel of the results of such inspections. The bill does not require any abatement actions. The decision to perform abatement activities lies in the discretion of such schools and facilities. In this regard, the Committee notes that EPA has learned a number of lessons from the asbestos program. The Committee expects EPA and others to apply what was learned from those lessons.

Section 423. Identification of dangerous levels of lead; soil inspection and abatement

Within 2 years after enactment, EPA must promulgate regulations identifying dangerous lead levels in interior dust and exterior soil, taking into account its accessibility to children under 6 years of age and other appropriate factors. Simultaneously, EPA must also promulgate regulations that contain standards applicable to

contractors who inspect for, or abate, dangerous levels of lead in exterior soil.

Section 424. Authorized State programs

Section 424 permits States to administer the standards under Section 421 or 422, or 423. EPA must approve or disapprove a State program. A State may certify to EPA that is program meets the standards of either or both sections. Certified programs are deemed approved until disapproved by EPA.

EPA must withdraw approval of a State program if such program ceases to meet the minimum Federal standards.

EPA must develop a model state program which shall, to the extent practicable, encourage States to utilize existing State and local licensing and accreditation programs and procedures, and which shall encourage reciprocity among the States.

Any State or political subdivision thereof may impose requirements that are more stringent than those required by this subtitle.

The regulations under this subtitle shall encourage States to seek program authorization and to use existing State and local licensing programs, except that a State or local government shall not require more than one license under this section for any lead-based paint abatement contractor to carry out activities in a category in the State or political subdivision.

EPA may make grants to States that are implementing authorized State programs.

Section 425. Lead abatement and measurement

New Section 425 requires EPA, in consultation with other Federal departments and agencies, to conduct a program to promote safe, effective, and affordable lead exposure monitoring and abatement.

EPA must also:

Chair an Interagency Coordinating Committee on Childhood Lead Poisoning Prevention;

Establish protocols, criteria, and performance standards for analysis of lead in paint films, soil and dust, and establish within 2 years a program to certify lead testing laboratories;

Publish no later than 24 months after enactment a list of certified or accredited laboratories;

In conjunction with the Assistant Secretary of Health, conduct public education and outreach activities concerning lead exposure and the need for proper abatement;

In conjunction with the Consumer Product Safety Commission, develop information to be distributed by retailers to consumers providing practical guidance on the hazards of renovation and remodeling where lead-based paint is present; and

Establish a clearinghouse and hotline to distribute information relating to lead-based paint abatement activities.

The Secretary of Health and Human Services must conduct separate studies to (1) examine the sources of lead exposure in children and (2) examine means to reduce hazardous occupational lead exposure.

Within 30 months after the date of enactment, the President must establish appropriate criteria, testing protocols, and perform-

ance characteristics as are necessary to ensure, to the greatest extent possible and consistent with the purposes and policy of the Lead Exposure Reduction Act of 1992, that deleading, encapsulating, testing, and similar lead-based paint abatement products introduced into commerce after a period specified in the rule are effective for the intended use described by the manufacturer.

In implementing the requirements of this section, EPA and other Federal agencies and departments are encouraged to avail themselves of the technical expertise offered by private sector organizations such as the National Institute of Building Sciences and the American Industrial Hygiene Association. In the development of criteria, testing protocols, and performance standards for deleading, encapsulating, testing, and similar lead-based paint abatement products, EPA should consult with the National Institute of Standards and Technology.

Subtitle D: General Provisions

Section 431. Regulations

New Section 431 directs EPA to include such recordkeeping and reporting requirements in the regulations under the title as may be necessary to insure effective implementation.

Section 432. Control of lead hazards at Federal facilities

New Section 432 makes Federal facilities fully subject to all Federal, State, interstate, and local requirements respecting lead-based paint, lead-based paint abatement, and lead hazards.

Section 433. Prohibited acts

New Section 433 makes it unlawful for any person to fail or refuse to comply with any provision of this title or any rule or order issued under this title.

Section 434. Relationship to other Federal law

New Section 434 specifies that other appropriate Federal agencies may establish or enforce any requirements that are at least as stringent as those established pursuant to this title.

Section 435. General provisions relating to administrative proceedings

New Section 435 requires EPA to establish a rulemaking docket for the promulgation or revision of each regulation issued under this title. The rulemaking docket must include the drafts of proposed or final rules submitted by EPA to the Office of Management and Budget for any interagency review process, all documents accompanying such drafts, and all written comments thereon by other agencies and all written responses to such written comments by the Administrator. The provision parallels existing provisions of section 307(d) of the Clean Air Act.

Section 436. Notice of certain requirements

Six months after enactment, EPA shall publish notice of the requirements of Sections 411 and 412.

Section 437. Authorization of appropriations

New Section 437 authorizes such sums as may be necessary to implement the requirements of this title.

Section 3. Technical and conforming amendments

Section 3 makes technical and conforming amendments to the Toxic Substances Control Act.

Section 4. Amendments to Safe Drinking Water Act

Section 4 amends the Safe Drinking Water Act to strengthen the provisions relating to testing in schools and day care facilities, recall of dangerous water coolers, lead solder, and lead-containing plumbing fittings.

Section 4 does not amend the existing provisions of law relating to the control of lead in drinking water by public water systems. The Committee is aware of the May 1991 national primary drinking water regulations for lead promulgated by EPA which have been controversial. The absence of legislation regarding those regulations is not intended as a comment of any kind by the Committee on those regulations. It is also not intended in any way to affect any pending litigation regarding such regulations.

Section 5. Lead in food

Section 5 amends the Federal Food, Drug, and Cosmetic Act to add provisions restricting lead in food packaging, ceramic and crystal ware, and processed foods.

New Section 402(f) would prohibit, beginning with the third 12-month period following enactment, the use of any food package or packaging component (including any solder or flux) that contains any lead that has been intentionally introduced into such package or component. The provision only proscribes intentionally added lead, however, and would not prohibit the incidental presence of lead in food packages and components that is unavoidable because lead is ubiquitous in the environment.

Under new Section 413(c), the Secretary would be required, within 24 months of enactment, to promulgate regulations to reduce lead in processed food. In issuing the regulations, the Secretary would be required to determine the processed foods and related manufacturing practices that are significant sources of lead in the diet and to require the greatest degree of reduction of lead in such foods that is "achievable in practice." In determining lead reductions that are "achievable in practice," it is not intended that the Secretary require measures that are technologically impracticable, or that are so costly as not to be achievable in practice. The Committee does not intend Section 413(c) to mean that the processing of foods inherently results in significant contributions of lead to such foods.

Nothing in Section 5 of the Lead Exposure Reduction Act of 1992 is intended to affect in any way any other authority of the Secretary to address lead in food under the existing provisions of the Federal Food, Drug, and Cosmetic Act.

AGENCY VIEWS

U.S. ENVIRONMENTAL PROTECTION AGENCY,
Washington, DC, July 31, 1992.

Hon. JOHN D. DINGELL,
Chairman, Committee on Energy and Commerce, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: My staff and I have recently reviewed the July 23, 1992 staff draft of the Lead Exposure Reduction Act, which we understand is scheduled to be marked up soon in the Energy and Commerce Committee. While we certainly support the goal of reducing childhood lead exposure, we have several serious concerns about this bill and oppose the bill as drafted. Some of these concerns were discussed in Administrator Reilly's May 11, 1992 letter to you concerning H.R. 2840, The Lead Contamination Control Act Amendments (enclosed). Our comments are presented for your considerations.

GENERAL CONCERNS

Our major areas of concern involve the bill's lead training and certification approach, mandatory school inspections, amendments to the Safe Drinking Water Act (SDWA), arbitrary lead content restrictions on certain products, and the comprehensive inventory of lead products. Many of these provisions will result in significant costs to businesses and consumers without yielding an appreciable benefit in reducing the health risk from lead exposure.

Furthermore, we continue to have serious concerns about the overall workability of these provisions and their impact on job-creating sectors of the economy and on the availability and quality of services, such as day care. These negatives could far outweigh any potential health benefit that may result from this legislation.

Another general concern is that the bill will impose substantial costs on State and local governments without providing any means to pay for those costs. As you may be aware, the President has expressed his view that no significant burdens be placed on States and localities unless accompanied by commensurate funding, in accordance with the 1990 budget agreement.

In addition, we feel that in several areas of the bill, authorities are shifted away from Agencies, now currently engaged in certain activities, to completely different Agencies for no apparent reason. An example is the shift of the lead training grant program from EPA, where the program has been managed for the last two years, to the National Institute of Environmental Health Sciences (NIEHS). This change, which will require NIEHS to develop new lead training oversight capabilities that are already established at EPA, is not an efficient use of Federal resources.

SECTION 421. LEAD ABATEMENT TRAINING AND CERTIFICATION PROVISIONS

We have concerns with the lead abatement training and certification provisions in Section 421. These provisions require the Federal government to undertake responsibility for licensing various groups including inspectors, contractors and planners, as well as

accrediting training programs. We have serious concerns over the potential breadth of any certification program. We believe that contractors and others who intentionally engage in lead inspections and abatement should be subject to formal certification requirements. However, an attempt to accredit all manner of craftsmen and others involved in building renovation, remodeling or demolition may be neither feasible, given the size and diversity of this work force, nor necessary to protect health. There are several million workers in the housing trade industry, a small percentage of whom may disturb significant amounts of paint containing lead during work activities. Any attempt to certify all workers could divert us away from those workers with greatest need for protection and could needlessly hamper a major job-creating section of the U.S. economy. Instead, an education requirement for these individuals may be more appropriate.

While the Federal government has an important role to play in training and certification, we believe that the States can manage this program more effectively and efficiently than the Federal government, perhaps by building upon existing State-run training and accreditation programs. EPA, in consultation with other Federal agencies such as the Occupational Safety and Health Administration (OSHA) and the National Institute of Occupational Safety and Health (NIOSH), should be responsible for developing model training materials and for setting national accreditation and certification standards. This would include developing a model State plan for training and certification as well as implementing a process for approving State plans. EPA would also appropriately have a role in assisting States to develop and implement programs and providing some oversight to those programs.

In fact, many of the activities mentioned above are already being undertaken. EPA has developed a comprehensive lead training program, based in part at universities across the country, and we are also developing a model accreditation plan for States. The combination of these two programs should help assure that lead inspection and control personnel are both competent and proficient in their job performance.

EPA is coordinating its worker training initiatives with other Federal agencies through the Federal Interagency Lead-Based Paint Task Force. As a result, EPA recognizes that OSHA is considering revising its worker protection standards for lead and that it has issued training grants to address the hazards posed to workers from lead exposure. In addition, NIOSH has worked closely with the Department of Housing and Urban Development (HUD) in the development of worker protection recommendations for HUD's lead-based paint abatement program.

Section 421 also establishes an Advisory Committee on Lead Poisoning. EPA supports the concept of having a broad range of parties involved in program development. However, we feel that the Committee membership as outlined in the bill does not represent the full range of affected parties, including university training organizations. Additionally, the requirements for mandatory meetings and short time allowances for EPA to provide written responses to Committee concerns are overly burdensome. We would

support establishing a Committee with broader membership and with less statutory administrative structure.

SECTION 422. MANDATORY LEAD INSPECTION PROGRAM FOR SCHOOLS AND DAY CARE CENTERS

EPA has serious concerns about the impact of the mandatory lead inspection program on the general availability and quality of day care services. While well-intended, the amendment could significantly increase the cost and administrative hurdles associated with smaller, community-based day care services. A much more preferable approach would be a limited pilot program to gauge the need for, and scope of, such a program. These pilot inspections would assess the extent of lead hazards in schools and centers, and the health benefits of various risk reduction methods. This program should be focused on the most vulnerable populations, such as children six years of age or younger who occupy facilities built before 1960, and examine the practical considerations of limited or partial building inspections.

Of special concern are provisions which may create incentives to unnecessarily remove lead-based paint. Section 422, in particular, would exacerbate this problem by encouraging "abatement in lieu of notification." Simple inspection and notification of lead in schools or day care facilities, without an accurate assessment of the risks posed by lead, may lead to unfounded fears and unnecessary or counterproductive lead abatement. While lead-based paint that is in poor condition (e.g., chipping, peeling, flaking, or chalking) can present a hazard and may appropriately be removed or controlled in many instances, removing lead-based paint that is in good condition, apart from posing an unnecessary expense, can actually increase risk of exposure, especially if not carefully and properly conducted. We do not want to repeat the early experience of the asbestos-in-schools program where some schools removed all asbestos from their facilities regardless of its condition, at great expense, while potentially increasing exposure of the children targeted for protection. We would prefer that schools be able to consider all appropriate management and abatement options for lead paint, rather than only removal or encapsulation, if this step is explicitly offered in lieu of notification.

SECTION 4. AMENDMENTS TO THE SAFE DRINKING WATER ACT

We oppose the bill's amendments to the SDWA which would revise the drinking water testing requirements for schools. While schools are currently encouraged to participate in an existing voluntary program, a mandatory requirement for drinking water testing within a limited period of time (less than several years) may not be practical, especially given the increased costs which schools would have to bear. More importantly, implementation of any new requirements for remedial steps to be taken below EPA's 20 parts per billion (ppb) action level is currently beyond proven field technology for isolating the cause of the contamination. Additionally, it is important that EPA current sampling protocols be utilized to assure that accurate levels of lead can be reliably determined and reported.

We have concerns with respect to the bill's other amendments to the SDWA. First, the bill requires manufacturers to repair or replace all coolers identified by the Commission as contributing 20 ppb or more of lead to drinking water. Assigning retroactive liability in this manner creates a dangerous precedent to manufacturers of all goods, thereby stifling development of new and safer products. Given the scope of this recall and the number of coolers built before 1988, this provision would be very expensive. In addition, it is inappropriate to institute a national recall of certain models based in part on laboratory evidence when lead levels vary considerably depending on use, corrosivity of local water and age of cooler. Risks are best assessed at the local, not national, level.

EPA further opposes the provision in the SDWA amendment which outlines "hammer" requirements that are to prevail if the Agency does not promulgate, within specified periods after enactment, regulations establishing minimal leaching levels of lead from new plumbing fittings conveying drinking water. This provision is ineffective because it mandates a maximum percentage of lead content in fittings which is essentially unrelated to leachability of lead into drinking water.

SECTIONS 411 AND 414. OTHER REGULATION OF LEAD-CONTAINING PRODUCTS

Section 411 of the bill restricts continuing uses of certain lead-containing products. While we support the concept of pollution prevention as an environmental management tool, placing an arbitrary cap on the allowable level of lead in certain products is not a sound scientific approach. More complete information about the expected risks from the use of these products and the economic impacts of restricting lead use are necessary in order to determine whether the lead in these products presents an unreasonable risks to human health or the environment.

Section 414 of the bill would require EPA to develop a comprehensive inventory of lead-containing products. EPA is already in the process of completing a survey of current lead uses. This information, which will be published for public comment by the end of this year, will serve as the basis for our actions under the Toxic Substances Control Act (TSCA) to control any new uses of lead resulting in unacceptable exposures. Frankly, we fear any new inventory provision, even one which eliminates the need for direct industry reporting, could interfere with the EPA process already underway by diverting our current resources.

Finally, EPA is concerned that the bill would require shifting resources from priority activities and programs to comply with less critical mandates of a new law. While we do agree with the pollution prevention goals of this bill, an inordinate amount of resources would be lost from current federal action addressing the largest exposure sources (lead-based paint, dust, soil and drinking water) to accommodate the requirements of the new legislation. The draft bill, for example, could require nearly 20 new rule making efforts to control various lead products. We strongly feel that EPA already has sufficient authority to deal with current and future uses of lead which may present unreasonable risks.

I trust that these comments are useful to you and your staff. If you have any questions about these comments, please contact me.

The Office of Management and Budget has advised that it has no objections to the presentation of these views from the standpoint of the President's program.

Sincerely yours,

LINDA J. FISHER,
Assistant Administrator.

U.S. ENVIRONMENTAL PROTECTION AGENCY,
Washington, DC, May 11, 1992.

Hon. JOHN D. DINGELL,
Chairman, Committee on Energy and Commerce, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: This is in response to your letter of January 10, regarding provisions of H.R. 2840, the "Lead Contamination Control Act Amendments of 1991." On October 4, 1991, you wrote me concerning the drinking water provisions of H.R. 2840. I responded to your first letter in December; this letter continues our discussion, concentrating, as you requested in your more recent letter, on non-water provisions of the bill. Your letter of January 10 also asked us to address two other issues: the General Accounting Office's (GAO) testimony of last May and California's drinking water program. These two issues are being dealt with in separate correspondence to you.

Before I turn to specific comments on the non-water provisions of H.R. 2840, you should know what actions the Environmental Protection Agency (EPA) is already taking in this area as part of the Agency's effort to develop the infrastructure for a nationwide strategy for reducing lead exposure. First, EPA is working very closely with the Department of Housing and Urban Development (HUD) to provide technical expertise for the development of a national lead-based paint program.

Lead-based paint is the most significant source of lead exposure to children. It is responsible for a large percentage of elevate blood lead levels in children (above 25 μg/dl) in children. An interagency task force, co-chaired by HUD and EPA, provides a mechanism for coordination and communication among federal agencies involved in lead paint issues.

EPA's lead-based paint activities include:

1. Investigation of the long-term efficacy of the various abatement techniques (including encapsulation, removal, enclosure, and replacement) as performed by HUD in their Federal Housing Administration (FHA) Demonstration Project.

2. Investigation of the long-term efficacy of other control and abatement methods, including repair and maintenance as performed in Baltimore, and low-cost abatement techniques as demonstrated in other urban areas.

3. Evaluation of various lead measurement methodologies, including spot test kits and portable and non-portable x-ray fluorescence analyzers for measuring the lead content of paint. We are

working closely with the National Institute of Standards and Technology (NIST) in these efforts.

4. Development of a laboratory accreditation program, including the development of protocols and standard reference materials for various analytical methods. We are also in the process of finalizing a Memorandum of Understanding with the National Institute for Occupational Safety and Health (NIOSH) to establish an accreditation program. We expect to initiate a lab accreditation program this year, as required by 1992 Appropriations language.

5. Development of testing protocols to evaluate the effectiveness and durability of certain encapsulants.

6. Continued consideration of the applicability of the Resource Conservation and Recovery Act (RCRA) to wastes generated from abatement.

EPA's asbestos experience continued the Agency that, in addition to improperly conducted abatement activities, we also have to prevent inappropriate abatements. Dust and debris from unnecessary or improperly conducted abatement may result in a net increase in human exposures and risks. To avoid these problems, we are planning carefully with other federal agencies.

Other activities that are necessary to develop the infrastructure for a nationwide lead control program include:

1. Completion of model training courses that establish state-of-the-art abatement practices and procedures for lead inspectors, abatement supervisors, workers, and project designers. EPA presently envisions a state managed certification system, possibly combined with a voluntary national standardized exam, developed and administered by a professional and/or trade organization. EPA has begun discussions with state and labor representatives to discussed the best way to develop and implement such an accreditation system.

2. Establishment of training centers to disseminate the training courses. These centers would provide a geographically diverse network to help provide training courses where they are needed. EPA has entered into a cooperative agreement with the National University Continuing Education Association (NUCEA) to establish and oversee approximately five Regional Lead Training Centers (RLTCs) across the country. The RLTCs will train lead professionals from private industry, state and local government in lead inspection, control, and abatement practices. These centers will begin offering courses by June of 1992.

In addition, we recently disseminated grants to joint labor-management trust funds for education and training programs for workers involved in lead-based paint abatement.

3. Development of a risk communication strategy to get accurate information to the public. Many aspects of exposure to lead-based paint are currently uncertain, and our research efforts will help answer some of these questions. We realize that getting the correct information to the public is a primary responsibility of the Agency. Our first step in this strategy is the development of a lead public education brochure/poster. This brochure, directed at parents and day care providers, informs them about the hazards of lead exposure and offers ideas on how to reduce children's exposure. The President's Commission on Environmental Quality (PCEQ) is cur-

rently planning an extensive outreach program on lead. The Commission is working with many other groups inside and outside of government, including EPA, to coordinate an extensive effort designed to reach key audiences with information regarding how to reduce exposure to lead. EPA will also continue to work with HHS as appropriate, given HHS' lead responsibility for childhood lead poisoning prevention. Finally, EPA, HUD, and HHS also provide information to the public on lead related topics through a joint hotline/clearinghouse.

4. Development of a community-based primary prevention guide for lead poisoning through an EPA grant to the Alliance to End Childhood Lead Poisoning.

Another area of concern is lead-contaminated urban soil. Soil may be contaminated by non-industrial sources of lead, such as paint, gasoline, and household wastes, or by industrial sources, such as battery recycling sites, mining and milling sites, and smelters. EPA's Office of Emergency and Remedial Response is conducting a $15 million study of soil contaminated by non-industrial sources in Boston, Baltimore, and Cincinnati. With advice from the Centers for Disease Control (CDC), the Department of Agriculture, and other Agencies, EPA is conducting this pilot study to evaluate the effect on children's blood lead levels when lead-contaminated soil and dust are removed.

With regard to specific provisions in Section 4 of H.R. 2840, relating to Indoor Lead Contamination, we have the following comments:

Section 2801(a), pertaining to accreditation of instructors to train inspectors and deleaders, would require the HHS, acting through the National Institute for Environmental Health Sciences (NIEHS), to establish programs to accredit instructors to train lead inspectors and deleaders under the standards set in section 2802. Although the quality of instruction of abatement personnel is critical to good training, EPA believes that to accredit instructors would be overly resource intensive, while not providing assurance that the workforce conducting inspections and abatements are competent.

Section 2801(b) would require HHS to establish a program to license lead inspectors and deleaders who have met the minimum educational requirements of courses offered by accredited instructors. EPA has already publicly taken the lead on this effort. Additionally, FY92 Appropriations language authorizes EPA to underatke this effort.

Section 2801(c) would require HHS to establish a program to certify labs to test substances for lead content. WHile HHS is the appropriate agency to certify blood testing labs, EPA, working with HHS, has already assumed the role of initiating a lab accreditation program for environmental analysis.

Sections 2801 (d) and (e) would make HHS responsible for preparing and maintaining lists of licensed lead inspectors and deleaders and accredited instructors and labs to be distributed to state and local health and enviromental agencies and made available to the public. HHS would also be responsible for imposing fees and the suspension or revocation of licenses, accreditation and certificates. However, EPA believes that the implementation of accreditation

programs must be done at the State level. The Federal Government should act as a stimulus and support system for the States.

Section 2802(a) requires HHS, in consultation with other Federal agencies and with State and local governments, to prepare a report on the methods and devices that are available to inspect for lead paint and lead hazards and methods used to abate lead hazards. A great deal of research and demonstration work is already currently underway in this area by EPA, HUD, HHS, the Consumer Product Safety Commission (CPSC) and various state agencies.

Sections 2802 (b) and (c), pertaining to lead inspection and abatement standards, require HHS to promulgate specific standards for the performance of lead inspections of covered premises and for abatement of lead hazards. HUD, in consultation with EPA, has already developed interim guidelines for lead hazard identification and abatement in public and Indian housing. At the November 5, 1991 mark-up before the Health and the Environment Subcommittee of the Energy and Commerce Committee, the definition of "covered premises" was changed to include "contiguous land area under common ownership"; we interpret this to mean that soil would need to be inspected for lead, and abatement standards for soil would have to be set. As mentioned earlier, the Agency is conducting a study of soil contaminated by non-industrial sources in Boston, Baltimore, and Cincinnati to evaluate the effect on children's bold lead levels when lead-contaminated soil and dust are removed. H.R. 2840 requires that these inspection and abatement standards be completed within two years of enactment. However, it is unlikely that EPA will have a uniform and national standard soil cleanup level within a two-year time frame.

Section 2802(a) prohibits anyone from selling or distributing in interstate commerce any device for lead abatement or inspection that has not been approved under the above standards. We believe that product-by-product evaluations are best accomplished by private sector organizations. EPA, in consultation with other agencies, should set evaluation protocols.

Section 2803 (b), pertaining to lead disclosure provisions in contracts for purchase and sale of covered residential premises, requires HHS to promulgate regulations requiring sellers of residential property to provide a lead hazard information pamphlet and disclose any known lead paint, lead hazard, and any hazard inspection report to potential buyers. Information transfer and contract clauses are mandatory when selling or purchasing; however, inspection reports must be provided only when available. This provision implies that if there is no inspection report, the seller does not have to provide the buyer with information as to lead hazards associated with the property. In addition, Section 2803(b) has a provision that would require every contract for the purchase and sale of any interest in covered residential premises to contain a Lead Warning Statement.

Section 2803(d) has a similar provision that requires HHS to publish and, from time to time, revise a lead disclosure statement to be used in connection with the sale or lease or renovation of covered premises.

EPA does not support the bill's disclosure provisions as they could lead to many unnecessary and improper lead-based paint

abatement projects, which could increase risk, perhaps significantly, to the nation's children, who are most vulnerable.

A mandatory lead inspection, which includes paint, dust, and soil and which applies to rental properties, could overwhelm the available infrastructure of qualified lead identification and abatement professionals who must assure the work is done properly. We need to complete several efforts, including ones already mandated by Congress, to make our lead-in-soil activities meaningful. Finally, the bill must balance any potential hazards which may exist in homes with the need of low-income families to find housing. For example, will landlords, perhaps unable to quickly conduct testing and determine the presence of any lead-based paint in their buildings, be reluctant to rent to families with small children for liability or other reasons?

A mandatory federal disclosure requirement for information on the presence of lead in particular homes, at the point of transaction, is also of concern and, according to HUD, could lead to disruption in the private real estate market. On one hand, the bill could actually discourage homeowners and landlords from conducting inspections for fear of having to disclose hazards that may exist to potential buyers and renters. On the other hand, liability considerations stemming from this could actually drive unnecessary and improper abatements which, as noted above, could increase risk.

When the transfer of general awareness information on lead, such as through a pamphlet, incorporates reliable risk and risk management information, EPA recognizes its value. However, the bill would still inject the federal government into private real estate transactions, which are typically a state and local prerogative. In fact, a few states, including Massachusetts, have established lead disclosure laws and lead programs sufficient to support them. Other states are considering similar programs. State-by-state consideration and voluntary programs which include information on when and how best to abate lead paint may be the best approach.

Section 2804 requires HHS to undertake an education program directed at pediatricians, teachers, day care providers, parents, real estate agents, landlords, home renovation and remodeling contractors and workers, and the general public about the risks of lead poisoning. Several agencies, including EPA, HHS, HUD, and OSHA, are already undertaking this effort. In addition, PCEQ is coordinating an extensive public education effort as described earlier.

Section 2821(a), pertaining to lead contamination in schools and day care centers, requires HHS to promulgate a rule requiring local education agencies to conduct (within 4 years of enactment) a lead inspection for each covered school or day care center by a licensed lead inspector. We believe that targeting those at highest risk first is most appropriate, including children under seven, the most sensitive population. However, for older children, inspection schools would place a tremendous burden on schools without significant health benefits. Additionally, because we are unsure how pervasive lead hazards are in daycare centers and because of the financial burden that lead inspections would place on the centers, an inspection program would be most appropriate on a pilot scale, fol-

lowed by an evaluation prior to instigation of a national inspection program.

Thank you for the opportunity to comment on the technical feasibility of these provisions of H.R. 2840. We welcome further discussion on the Agency's lead program.

The Office of Management and Budget has advised that it has no objection to the presentation of these views from the standpoint of the President's program.

Sincerely yours,

WILLIAM K. REILLY.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TOXIC SUBSTANCES CONTROL ACT

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

This Act may be cited as the "Toxic Substances Control Act".

TABLE OF CONTENTS

SEC. 7. IMMINENT HAZARDS.

(a) ACTIONS AUTHORIZED AND REQUIRED.—(1) The Administrator may commence a civil action in an appropriate district court of the United States—

(A) for seizure of an imminently hazardous chemical substance or mixture or any article containing such a substance or mixture,

(B) for relief (as authorized by subsection (b)) against any person who manufactures, processes, distributes in commerce, or uses, or disposes of, an imminent hazardous chemical substance or mixture or any article containing such a substance or mixture, or

(C) for both such seizure and relief.

A civil action may be commenced under this paragraph notwithstanding the existence of a rule under section 4, 5, [or 6] *6, or title IV* or an order under section 5 *or title IV*, and notwithstanding the pendency of any administrative or judicial proceeding under any provision of this Act.

* * * * * * *

SEC. 11. INSPECTIONS AND SUBPOENAS.

(a) IN GENERAL.—For purposes of administering this Act, the Administrator, and any duly designated representative of the Administrator, may inspect any establishment, facility, or other premises in which chemical substances [or mixtures], *mixtures, or products subject to title IV* are manufactured, processed, stored, or held before or after their distribution in commerce and any conveyance being used to transport chemical substances, mixtures, *such products,* or such articles in connection with distribution in commerce. Such an inspection may only be made upon the presentation of appropriate credentials and of a written notice to the owner, operator, or agent in charge of the premises or conveyance to be inspected. A separate notice shall be given for each such inspection, but a notice shall not be required for each entry made during the period covered by the inspection. Each such inspection shall be commenced and completed with reasonable promptness and shall be conducted at reasonable times, within reasonable limits, and in a reasonable manner.

(b) SCOPE.—(1) Except as provided in paragraph (2), an inspection conducted under subsection (a) shall extend to all things within the premises or conveyance inspected (including records, files, papers, processes, controls, and facilities) bearing on whether the requirements of this Act applicable to the chemical substances [or mixtures], *mixtures, or products subject to title IV* within such premises or conveyance have been complied with.

* * * * * * *

SEC. 13. ENTRY INTO CUSTOMS TERRITORY OF THE UNITED STATES.

(a) IN GENERAL.—(1) The Secretary of the Treasury shall refuse entry into the customs territory of the United States (as defined in general note 2 of the Harmonized Tariff Schedule of the United States) of any chemical substance, mixture, or article containing a chemical substance or mixture offered for such entry if—

(A) it fails to comply with any rule in effect under this Act, or

(B) it is offered for entry in violation of section 5 [or 6], *6, or title IV*, a rule or order under section 5 [or 6], *6, or title IV*, or an order issued in a civil action brought under section 5 [or 7], *7 or title IV*.

* * * * * * *

SEC. 16. PENALTIES.

(a) CIVIL.—(1) Any person who violates a provision of section 15 *or 433* shall be liable to the United States for a civil penalty in an amount not to exceed $25,000 for each such violation. Each day such a violation continues shall, for purposes of this subsection, constitute a separate violation of section 15 *or 433*.

(2)(A) A civil penalty for a violation of section 15 *or 433* shall be assessed by the Administrator by an order made on the record after opportunity (provided in accordance with this subparagraph) for a hearing in accordance with section 554 of title 5, United States Code. Before issuing such an order, the Administrator shall give written notice to the person to be assessed a civil penalty under such order of the Administrator's proposal to issue such order and provide such person an opportunity to request, within 15 days of the date the notice is received by such person, such a hearing on the order.

(B) In determining the amount of a civil penalty, the Administrator shall take into account the nature, circumstances, extent, and gravity of the violation or violations and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require.

(C) The Administrator may compromise, modify, or remit, with or without conditions, any civil penalty which may be imposed under this subsection. The amount of such penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the United States to the person charged.

(3) Any person who requested in accordance with paragraph (2)(A) a hearing respecting the assessment of a civil penalty and who is aggrieved by an order assessing a civil penalty may file a petition for judicial review of such order with the United States Court of Appeals for the District of Columbia Circuit or for any other circuit in which such person resides or transacts business. Such a petition may only be filed within the 30-day period beginning on the date the order making such assessment was issued.

(4) If any person fails to pay an assessment of a civil penalty—

(A) after the order making the assessment has become a final order and if such person does not file a petition for judicial review of the order in accordance with paragraph (3), or

(B) after a court in an action brought under paragraph (3) has entered a final judgment in favor of the Administrator,

the Attorney General shall recover the amount assessed (plus interest at currently prevailing rates from the date of the expiration of the 30-day period referred to in paragraph (3) or the date of such final judgment, as the case may be) in an action brought in any

appropriate district court of the United States. In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review.

(b) CRIMINAL.—Any person who knowingly or willfully violates any provision of section 15 *or 433* shall, in addition to or in lieu of any civil penalty which may be imposed under subsection (a) of this section for such violation, be subject, upon conviction, to a fine of not more than $25,000 for each day of violation, or to imprisonment for not more than one year, or both.

SEC. 17. SPECIFIC ENFORCEMENT AND SEIZURE.

[(a) SPECIFIC ENFORCEMENT.—(1) The district courts of the United States shall have jurisdiction over civil actions to—

[(A) restrain any violation of section 15,

[(B) restrain any person from taking any action prohibited by section 5 or 6 or by a rule or order under section 5 or 6,

[(C) compel the taking of any action required by or under this Act, or

[(D) direct any manufacturer or processor of a chemical substance or mixture manufactured or processed in violation of section 5 or 6 or a rule or order under section 5 or 6 and distributed in commerce, (i) to give notice of such fact to distributors in commerce of such substance or mixture and, to the extent reasonably ascertainable, to other persons in possession of such substance or mixture or exposed to such substance or mixture, (ii) to give public notice of such risk of injury, and (iii) to either replace or repurchase such substance or mixture, whichever the person to which the requirement is directed elects.

[(2) A civil action described in paragraph (1) may be brought—

[(A) in the case of a civil action described in subparagraph (A) of such paragraph, in the United States district court for the judicial district wherein any act, omission, or transaction constituting a violation of section 15 occurred or wherein the defendant is found or transacts business, or

[(B) in the case of any other civil action described in such paragraph, in the United States district court for the judicial district wherein the defendant is found or transacts business.

[In any such civil action process may be served on a defendant in any judicial district in which a defendant resides or may be found. Subpoenas requiring attendance of witnesses in any such action may be served in any judicial district.]

(a) SPECIFIC ENFORCEMENT.—(1) The district courts of the United States shall have jurisdiction over civil actions to—

(A) restrain any violation of section 15 or 433,

(B) restrain any person from taking any action prohibited by section 5, 6, or 411, or by a rule or order under section 5, 6, or subtitle B of title IV,

(C) compel the taking of any action required by or under this Act, or

(D) direct any manufacturer or processor of a chemical substance, mixture, or product subject to subtitle B of title IV manufactured or processed in violation of section 5, 6, or subtitle B of title IV, or a rule or order under section 5, 6, or subtitle B of

title IV, and distributed in commerce, (i) to give notice of such fact to distributors in commerce of such substance, mixture, or product and, to the extent reasonably ascertainable, to other persons in possession of such substance, mixture, or product or exposed to such substance, mixture, or product, (ii) to give public notice of such risk of injury, and (iii) to either replace or repurchase such substance, mixture, or product, whichever the person to which the requirement is directed elects.

(b) SEIZURE.—Any chemical substance [or mixture], *mixture, or product subject to subtitle B of title IV* which was manufactured, processed, or distributed in commerce in violation of this Act or any rule promulgated or order issued under this Act or any article containing such a substance or mixture shall be liable to be proceeded against, by process of libel for the seizure and condemnation of such substance, mixture, *product,* or article, in any district court of the United States within the jurisdiction of which such substance, mixture, *product,* or article is found. Such proceeding shall conform as nearly as possible to proceedings in rem in admiralty.

* * * * * * *

SEC. 19. JUDICIAL REVIEW.

(a) IN GENERAL.—(1)(A) Not later than 60 days after the date of the promulgation of a rule under section 4(a), 5(a)(2), 5(b)(4), 6(a), 6(e), or 8, or under title II *or IV,* any person may file a petition for judicial review of such rule with the United States Court of Appeals for the District of Columbia Circuit or for the circuit in which such person resides or in which such person's principal place of business is located. Courts of appeals of the United States shall have exclusive jurisdiction of any action to obtain judicial review (other than in an enforcement proceeding) of such a rule if any district court of the United States would have had jurisdiction of such action but for this subparagraph.

* * * * * * *

(3) For purposes of this section, the term "rulemaking record" means—

(A) the rule being reviewed under this section;

(B) in the case of a rule under section 4(a), the finding required by such section, in the case of a rule under section 5(b)(4), the finding required by such section, in the case of a rule under section 6(a) the finding required by section 5(f) or 6(a), as the case may be, in the case of a rule under section 6(a), the statement required by section 6(c)(1), and in the case of a rule under section 6(e), the findings required by paragraph (2)(B) or (3)(B) of such section, as the case may be *and in the case of a rule under title IV, the finding required for the issuance of such a rule*;

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SEC. 20. CITIZENS' CIVIL ACTIONS.

(a) IN GENERAL.—Except as provided in subsection (b), any person may commence a civil action—

(1) against any person (including (A) the United States, and (B) any other governmental instrumentality or agency to the

extent permitted by the eleventh amendment to the Constitution) who is alleged to be in violation of this Act or any rule promulgated under section 4, 5, or 6, or title II *or IV*, or order issued under section 5 or title II *or IV* to restrain such violation, or

* * * * * * *

TITLE IV—LEAD EXPOSURE REDUCTION

Subtitle A—Findings, Policy, and Definitions

SEC. 401. FINDINGS AND POLICY.

(a) FINDINGS.—The Congress finds that—

(1) lead poisoning is the most prevalent disease of environmental origin among American children today, and children under six years of age are at special risk because of their susceptibility to the potency of lead as a neurologic toxin;

(2) the effects of lead on children may include permanent, significant neurologic and physiologic impairment, and additional health effects occur in adults;

(3) because of the practical difficulties of removing lead already dispersed into the environment, children and adults will continue to be exposed to such lead for years;

(4) as a result of decades of highly dispersive uses of lead in a variety of products, contamination of the environment with unacceptable levels of lead is widespread;

(5) the continued manufacture, import, processing, use, and disposal of some lead-containing products may cause further releases of lead to the environment, and such releases contribute to further environmental contamination and resultant exposure to lead; and

(6) methods to reduce existing lead exposure levels must be improved, especially through the development of more effective and affordable methods for abating lead-based paint, which continues to be a major cause of childhood lead poisoning.

(b) POLICY.—It is the policy of the United States that further releases of lead to the environment should be minimized, and means should be developed and implemented to reduce sources of lead that result in adverse human or environmental exposures.

SEC. 402. DEFINITIONS.

(a) IN GENERAL.—As used in this title—

(1) COVERED DAY CARE CENTER.—The term "covered day care center" means—

(A) the interior and exterior of any building constructed before 1980 which is used as a day care facility which regularly provides day care services for children in kindergarten or younger children, and

(B) any land and structures thereon and any related common grounds or playground area and playground structures which are under the same ownership as such building

and which would be regularly accessible to children in kindergarten or younger children.

(2) COVERED SCHOOL.—The term "covered school" means—

(A) the interior and exterior of any building constructed before 1980 which is used as an elementary school as defined in section 1471 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2891), or as a kindergarten, which regularly provides education for children in kindergarten or younger children, and

(B) any land and structures thereon and any related common grounds or playground area and playground structures which are under the same ownership as such building and which would be regularly accessible to children in kindergarten or younger children.

(3) DAY CARE FACILITY.—The term "day care facility" means any portion of a facility used for day care for children in kindergarten or younger children and owned or operated by a person that provides such day care for compensation and that—

(A) is licensed or regulated under State law for day care purposes; or

(B) receives Federal funds for day care purposes.

(4) DELEADER.—The term "deleader" means a person who offers to reduce or eliminate lead-based paint or lead hazards or to plan such activities. Where such activities are performed at any facility by employees of the owner or operator of such facility, such term includes such owner or operator.

(5) DISTRIBUTOR.—The term "distributor" means any individual, firm, corporation, or other entity which takes title to goods purchased for resale.

(6) FACILITY.—The term "facility" means any public or private dwelling constructed before 1980, public building constructed before 1980, commercial building, bridge, or other structure or superstructure.

(7) LEAD-BASED PAINT.—The term "lead-based paint" means any paint or surface coating that contains lead in excess of the action level described in "Interim Guidelines for Hazard Identification and Abatement for Public and Indian Housing" of the Department of Housing and Urban Development, as in effect on the date of enactment of this title.

(8) LEAD-BASED PAINT ABATEMENT ACTIVITIES.—The term "lead-based paint abatement activities" means the inspection, removal, encapsulation, in place management, lead hazard reduction, handling, transportation, or disposal of lead-based paint or materials containing lead from lead-based paint at or from any facility or the planning of any such activities. Such term shall not include renovation, remodeling, maintenance or repair activities that incidentally remove, encapsulate, manage in-place, handle, transport, or dispose of such paint or materials if such activities do not present more than a de minimis risk of exposure to lead.

(9) LEAD-BASED PAINT ABATEMENT CONTRACTOR.—The term "lead-based paint abatement contractor" means any contractor performing lead-based paint abatement activities for compensation. Where such activities are performed at any facility by em-

ployees of the owner or operator of such facility, such term includes such owner or operator.

(10) LEAD HAZARD.—The term "lead hazard" means—

(A) lead-based paint that is chipping, peeling, flaking, or chalking;

(B) any surface coated with lead-based paint which is subject to abrasion;

(C) any surface coated with lead-based paint that can be mouthed by a child under 6 years of age; and

(D) interior dust or exterior soil that contains a dangerous level of lead, as identified under section 423.

(11) LEAD INSPECTION.—The term "lead inspection" means an inspection to detect the presence of any lead-based paint or lead hazard.

(12) LOCAL EDUCATION AGENCY.—The term "local education agency" means—

(A) any local educational agency as defined in section 1471 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2891),

(B) the owner of any private nonprofit elementary or secondary school building, and

(C) the governing authority of any school operating under the defense dependent's education system provided for under the Defense Dependent's Education Act of 1978 (20 U.S.C. 921 and following).

(13) OWNER OR OPERATOR.—The term "owner or operator" when used with respect to a school means the local education agency with jurisdiction over that school.

(14) PACKAGE.—The term "package" means a container providing a means of marketing, protecting, or handling a product, and includes a unit package, an intermediate package, crate, pail, rigid foil, unsealed receptacle such as a carrying case, cup, and such other trays, wrappers and wrapping films, bags, tubs, and shipping or other containers, as the Administrator by regulation, may define.

(15) PACKAGING COMPONENT.—The term "packaging component" means any individual assembled part of a package such as any interior or exterior blocking, bracing, cushioning, weatherproofing, exterior strapping, coating, closure, ink, and label. For the purposes of this title, tin-plated steel that meets the American Society for Testing and Materials (ASTM) Specification A-623 shall be deemed an individual packaging component.

(16) PERSON.—The term "person" means an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or any interstate body and shall include each department, agency, or instrumentality of the United States.

(b) EXCEPTIONS.—For purposes of this title the terms "package" and "packaging component" shall not include—

(1) ceramic ware or crystal,

(2) a container used for radiation shielding,

(3) a foil on an alcohol beverage bottle,

(4) any casing for a lead-acid battery,

(5) steel strapping, or

(6) any package or packaging component containing lead which is regulated or subject to regulation under the Federal Food, Drug, and Cosmetic Act.

Subtitle B—Lead Containing Products and Packages

SEC. 411. RESTRICTIONS ON CONTINUING USES OF CERTAIN LEAD-CONTAINING PRODUCTS.

(a) GENERAL RESTRICTIONS.—Except as otherwise provided in this title, beginning on the date one year after the enactment of the Lead Exposure Reduction Act of 1992, no person may import, manufacture or process a product in any of the following product categories:

(1) INKS.—Inks containing more than 0.1 percent lead by dry weight used in printing newspapers, newspaper supplements, or magazines published more than once per month.

(2) PAINTS.—Paints containing more than 0.06 percent lead by dry weight (other than any paint covered by subsection (c), (d), or (e)).

(3) BRICK MORTAR.—Brick mortar containing more than 2 percent lead by dry weight.

(4) GLASS COATINGS.—(A) Architectural glass coatings containing more than 0.06 percent lead by dry weight.

(B) Automotive window coatings containing more than 0.06 percent lead by dry weight.

(C) Mirror backings containing more than 0.06 percent lead by dry weight.

In applying the prohibitions contained in this subsection in the case of items listed in paragraph (2), the date 3 years after the enactment of the Lead Exposure Reduction Act of 1992, and in the case of items listed in paragraph (4), the date 5 years after the enactment of such Act, shall be substituted for the date one year after the enactment of such Act. Nothing in this section shall prohibit the recycling of any product listed in this subsection where, following its original use, such product is reused as a raw material in the manufacture of any product not listed in this subsection.

(b) EPA AUTHORITY TO ISSUE EXEMPTIONS.—The Administrator shall, by rule, exempt from regulation under this section products used—

(1) for medical purposes (as defined by the Administrator in such rule, in consultation with the Secretary of Health and Human Services);

(2) for purposes in the paramount interest of the United States (as determined by the Administrator, in consultation with the Secretary of Defense);

(3) for radiation protection;

(4) in the mining industry to determine the presence of noble metals in geological materials; and

(5) as radiation shielding in electronic devices and in specialized electronics uses where the Administrator has determined that no appropriate substitutes for lead are available.

(c) CERTAIN PRIMER PAINTS.—

(1) PRIMER PAINTS SUITABLE FOR USE AS AN ELECTROCOAT OR ELECTRODEPOSITION PRIMER (OR BOTH) ON MOTOR VEHICLE PARTS.—(A) Five years after the enactment of the Lead Exposure Reduction Act of 1992, and every 5 years thereafter until the Administrator makes a determination under subparagraph (B), the Administrator shall determine, following public notice and opportunity for comment, whether there are 1 or more primer paints suitable for use as an electrocoat or electrodeposition primer (or both) on motor vehicle parts that—

(i) contain 0.06 percent lead by weight in dry film, or less

(ii) have corrosion inhibition and related performance characteristics substantially equivalent to primer paints in use for corrosion inhibition, as of the date of enactment of this section, and

(iii) do not pose a greater risk to human health and the environment than primer paints in use as of the date of enactment of this section for such corrosion inhibition.

(B) If the Administrator determines pursuant to subparagraph (A) that one or more such primer paints exist, and that use of any such primer paint is economically feasible at the time of such determination, the Administrator shall identify the lead content level of such primer paint. Three years after the Administrator makes such a determination, no person shall import, manufacture, or process any electrocoat or electrodeposition primer paint with a lead content that exceeds the level identified by the Administrator. Four years after the Administrator makes such a determination, no person shall distribute in commerce any electrocoat or electrodeposition primer paint (or import or manufacture any new motor vehicle or new motor vehicle part coated with such primer paint) with a lead content level that exceeds the level identified by the Administrator. In the case of such motor vehicles and parts, such prohibition shall not be effective until the beginning of the first motor vehicle model year which begins after such 4-year period. Whenever the Administrator makes a determination under this paragraph, the Administrator shall publish notice of the restrictions imposed under this subsection pursuant to such determination.

(C) If the Administrator determines pursuant to subparagraph (A) that there does not exist a primer paint suitable for use as an electrocoat or electrodeposition primer (or both) on motor vehicle parts with a lead content level of 0.06 percent lead by weight in dry film or less or that the use of all such primer paints is not economically feasible at the time of such determination, 13 years after the date of the enactment of the Lead Exposure Reduction Act of 1992, no person shall import, manufacture, or process any electrocoat or electrodeposition primer paint with a lead content level greater than 0.06 percent lead by weight in dry film, and 14 years after the date of such enactment, no person shall distribute in commerce any electrocoat or electrodeposition primer paint (or import, manufacture any new motor vehicle or new motor vehicle part coated with such primer paint) with a lead content level greater than 0.06 percent lead by weight in dry film. In the case of such motor

vehicles and parts, such prohibition shall not be effective until the beginning of the first motor vehicle model year which begins after such 14-year period.

(2) CERTAIN PAINTS AND PRIMERS FOR AGRICULTURAL, CONSTRUCTION, GENERAL PURPOSE INDUSTRIAL, AND FORESTRY EQUIPMENT.—(A) Five years after the enactment of the Lead Exposure Reduction Act of 1992, and every 5 years thereafter until the Administrator makes a determination under subparagraph (B), the Administrator shall determine, following public notice and opportunity for comment, whether there are 1 or more original equipment manufacturer paints and primers and service paints and primers for agricultural, construction, general purpose industrial and forestry equipment that—

(i) in the dry coating have a lead solubility of less than 60mg/liter ANSI standard Z66.1,

(ii) have corrosion inhibition and related performance characteristics substantially equivalent to original equipment manufacturer paints and primers and service paints and primers in use as of the date of enactment of this section for agricultural, construction, general purpose industrial and forestry equipment, and

(iii) do not pose a greater risk to human health and the environment than original equipment manufacturer paints and primers and service paints and primers in use as of the date of enactment of this section for agricultural, construction, general purpose industrial and forestry equipment.

(B) If the Administrator determines pursuant to subparagraph (A) that one or more such paints and primers exist, and that use of any such paint or primer is economically feasible at the time of such determination, the Administrator shall identify the lead content of such paint or primer. Three years after the Administrator makes such a determination, no person shall import, manufacture, or process any original equipment manufacturer paints and primers and service paints and primers for agricultural, construction, general purpose industrial and forestry equipment with a lead content that exceeds the level identified by the Administrator. Four years after the Administrator makes such a determination, no person shall distribute in commerce any original equipment manufacturer paints and primers and service paints and primers for agricultural, construction, general purpose industrial and forestry equipment (or import or manufacture any new equipment or new equipment part coated with such paint or primer) with a lead content that exceeds the level identified by the Administrator. Whenever the Administrator makes a determination under this paragraph, the Administrator shall publish a notice of any restriction imposed under this paragraph pursuant to such determination.

(C) If the Administrator determines pursuant to subparagraph (A) that there does not exist paint or primer suitable for use for original equipment manufacturer and service paints and primers for agricultural, construction, general purpose industrial and forestry equipment which in the dry coating has a lead solubility of less than 60mg/liter ANSI standard Z66.1 or that the use of all such paints and primers is not economically feasi-

ble at the time of such determination, 13 years after the date of the enactment of the Lead Exposure Reduction Act of 1992, no person shall import, manufacture, or process any original equipment manufacturer paint or primer or service paints and primers for agricultural, construction, general purpose industrial and forestry equipment which in the dry coating has a lead solubility greater than 60mg/liter ANSI standard Z66.1, and 14 years after the date of such enactment, no person shall distribute in commerce any original equipment manufacturer paints and primers or service paint or primer for agricultural, construction, general purpose industrial and forestry equipment (or import or manufacture any such new equipment or new equipment part coated with such paint or primer) which in the dry coating has a lead solubility greater than 60mg/liter ANSI standard Z66.1.

(D)(i) The Administrator may, after public notice and opportunity for comment, promulgate regulations to establish a percentage by dry weight of the allowable lead content for original equipment manufacturer paints and primers or service paint or primer for agricultural, construction, general purpose industrial and forestry equipment that is greater than the percentage applicable under subparagraph (C) if the Administrator establishes restrictions on the use of such paints and primers or group of paints and primers and determines (I) that substitutes are unavailable or do not have substantially similar performance characteristics and (II) that the regulation increasing the percentage of allowable lead content, together with such restrictions on use, will protect human health and the environment.

(ii) If the Administrator establishes by regulation an increased percentage of the allowable lead content under clause (i), the regulation establishing such percentage shall terminate on the date that is 6 years after the date such regulation becomes final, except that if, not later than 12 months prior to such termination, the Administrator determines pursuant to clause (i), that the extension of such regulation is appropriate, the Administrator may extend such regulation. Each such extension shall be for a 6-year period.

(iii) In promulgating any regulation or extension under this subparagraph with respect to the allowable lead content, the Administrator shall, prior to the promulgation of a final regulation or extension, consider and publish a statement that describes the effects on human health and the environment of the proposed allowable lead content level for original equipment manufacturer paints and primers or service paint or primer for agricultural, construction, general purpose industrial and forestry equipment.

(d) PAINTS CONTAINING LEAD CHROMATE PIGMENTS.—(1) Five years after the enactment of the Lead Exposure Reduction Act of 1992, following public notice and opportunity for comment, the Administrator shall determine if there is a substitute for paints containing lead chromate pigments for use in any class or category of uses that—

(A) contains 0.06 percent lead by weight in dry film or less,

(B) has performance characteristics substantially equivalent to paints containing lead chromate pigments in use, as of the date of enactment of this section, in such class or category of uses, and

(C) does not pose a greater risk to human health and the environment in such class or category of uses than paints containing lead chromate pigments in use as of the date of enactment of this section.

Unless the Administrator determines, that, for a particular class or category of uses, no such substitute exists or is economically feasible for use in such class or category of uses, 6 years after the date of the enactment of the Lead Exposure Reduction Act of 1992, the use of any paint containing lead chromate pigment in such class or category of uses shall be unlawful.

(2) If the Administrator determines under paragraph (1) that no substitute referred to in paragraph (1) exists for any class or category of uses, or that no substitute is economically feasible for use in any class or category of uses, the Administrator shall delay the effective dates of the prohibition under paragraph (1) for a period of 6 additional years for that class or category of uses. At 6-year intervals after making such determination, the Administrator shall make an additional determination under paragraph (1) and delay the effective dates of such prohibitions for additional 6-year periods for a particular class or category of uses if the Administrator determines under paragraph (1) that no substitute referred to in paragraph (1) exists for that class or category.

(3) This subsection shall not apply to any lead chromate pigments in original equipment manufacturer paints and primers or service paint or primer for agricultural, construction, general purpose industrial and forestry equipment.

(e) EXEMPTIONS FROM LEAD CONTENT REQUIREMENTS.—

(1) STATUTORY EXEMPTIONS.—The restrictions on lead content under this section shall not apply to the following:

(A) ARTIST PAINT.—Any paint for use by an artist in a work of art if such paint is sold or otherwise distributed in packages labeled as follows:

"CONTAINS LEAD—FOR USE BY ADULTS ONLY. DO NOT USE OR STORE AROUND CHILDREN OR IN AREAS ACCESSIBLE TO CHILDREN"

(B) CERTAIN ZINC ENRICHED INDUSTRIAL PAINT.—Zinc enriched industrial paint with an incidental presence of lead not greater than 0.19 percent lead by dry weight.

(2) LABELS.—

(A) SIZE AND PLACEMENT.—Unless the Administrator promulgates regulations within 24 months after the date of enactment of the Lead Exposure Reduction Act of 1992 specifying alternate type size and placement of the wording for labels referred to in paragraph (1), that wording shall be placed prominently on the package in letters the same size as the largest text letter (except for logos or brand markings) otherwise affixed to the label or packaging of the

product until the Administrator promulgates such regulations.

(B) OTHER LABELING REQUIREMENTS.—Compliance with the labeling provisions of paragraph (1) shall not constitute, in whole or in part, a defense to liability or a cause for reduction in damages in any suit, whether civil or criminal, brought under any law, whether Federal or State, other than suit for failure to comply with the labeling requirements of this section.

SEC. 412. RESTRICTION ON LEAD-CONTAINING PACKAGES.

(a) PROHIBITION ON INTENTIONAL INTRODUCTION OF LEAD.—Beginning on the date that is 48 months after the date of the enactment of the Lead Exposure Reduction Act of 1992—

(1) no package or packaging component shall be sold or distributed in commerce by a manufacturer or distributor, which includes, in the package, or in any packaging component, any ink, dye, pigment, adhesive, stabilizer, or other additive to which lead has been intentionally introduced as an element during manufacturing or distribution (as opposed to the incidental presence of lead); and

(2) no product shall be or distributed in commerce by its manufacturer or distributor in a package which includes, in the package itself or in any of its packaging components, any ink, dye, pigment, adhesive, stabilizer, or other additive to which any lead has been intentionally introduced as an element during manufacturing or distribution (as opposed to the incidental presence of lead).

Nothing in this section shall prohibit the recycling of any package or packaging component referred to in this subsection where, following its original use, such package or packaging component is reused as a raw material in the manufacture of any product. Nothing in this section shall be construed to prohibit the sale of any previously used package or packaging component to any person for reuse in the manner described in the preceding sentence.

(b) PROHIBITION ON INCIDENTAL PRESENCE OF LEAD.—No package or packaging component shall be sold or distributed in commerce by a manufacturer or distributor, and no product shall be by a manufacturer or distributor in a package, if the aggregate of the concentration levels, from any incidental presence of lead present in the package or packaging component, exceeds—

(1) for the fifth 12-month period following the date of the enactment of the Lead Exposure Reduction Act of 1992, 600 parts per million by weight (0.06 percent);

(2) for the sixth 12-month period following the date of the enactment of the Lead Exposure Reduction Act of 1992, 250 parts per million by weight (0.025 percent); and

(3) for the seventh 12-month period following the date of the enactment of the Lead Exposure Reduction Act of 1992, and for each 12-month period thereafter, 100 parts per million by weight (0.01 percent).

(c) EXEMPTION FROM PACKAGING REQUIREMENTS.—Prior to the expiration of the 84-month period following the date of the enactment of the Lead Exposure Reduction Act of 1992, upon receipt of an ap-

plication (in such form and containing such information as the Administrator may prescribe by regulation) the Administrator may exempt from the requirements of subsection (a) or (b)—

(1) a package or packaging component manufactured prior to the date of the enactment of the Lead Exposure Reduction Act of 1992, as determined by the Administrator; and

(2) a package or packaging component to which lead has been added in the manufacturing, forming, printing, or distribution process in order to comply with health or safety requirements of Federal law or the law of any State or political subdivision of a State.

(d) CERTIFICATE OF COMPLIANCE.—(1) A certificate of compliance stating that a package or packaging component is in compliance with the requirements of this section shall be prepared and retained by its manufacturer or distributor.

(2) In any case in which compliance with this section is based on an exemption under subsection (c), such certificate shall state the specific basis upon which the exemption is claimed.

(3) A certificate of compliance shall be signed by an authorized official of the manufacturer or distributor, as the case may be.

SEC. 413. MODIFICATION OF RESTRICTIONS IN SECTIONS 411 AND 412.

(a) IN GENERAL.—The Administrator may, after public notice and opportunity for comment, promulgate regulations to modify, pursuant to subsections (b) and (c) of this section, the percentage of the allowable lead content for—

(1) a product, or a group of products, within a product category described in paragraphs (1) through (4) of subsection (a) of section 411; or

(2) a package or packaging component the lead content of which is regulated under section 412.

(b) LESSER PERCENTAGE.—The Administrator may, pursuant to subsection (a), establish by regulation a percentage of the allowable lead content level that is less than that allowable under—

(1) subsection (a) of section 411 (including nondetectable levels) for a product, or a group of products, within any product category described in paragraphs (1) through (4) of such subsection (a), or

(2) subsection (b) of section 412 for a package or packaging component

if the Administrator determines that a reduction in the percentage of allowable lead content is necessary to protect human health or the environment.

(c) GREATER PERCENTAGE.—(1) The Administrator may, pursuant to subsection (a), establish by regulation a percentage by dry weight of the allowable lead content for a product, or a group of products, within any product category described in paragraphs (1) through (7) of subsection (a) of section 411 or for any package or packaging component regulated under section 412 that is greater than otherwise allowable under section 411 or 412 if the Administrator establishes restrictions on the use of such product or group of products or package or packaging component and determines—

(A) that substitutes are unavailable or do not have substantially similar performance characteristics, and

(B) that the regulation increasing the percentage of allowable lead content, together with such restrictions on use, will protect human health and the environment.

(2) If the Administrator establishes by regulation an increased percentage of the allowable lead content for a product, or a group of products, within a product category or for a package or packaging component, pursuant to this subsection, the regulation establishing such percentage shall terminate on the date that is 6 years after the date such regulation becomes final, except that if, not later than 12 months prior to such termination, the Administrator determines pursuant to paragraph (1), that extension of such regulation is appropriate, the Administrator may extend such regulation. Each such extension shall be for a 6-year period.

(d) STATEMENTS BY ADMINISTRATOR RELATING TO MODIFICATIONS OF RESTRICTIONS.—In promulgating or extending any regulation under this subsection with respect to the allowable lead content, the Administrator shall describe the effects of the proposed allowable lead content level on human health and the environment.

SEC. 414. INVENTORY OF LEAD-CONTAINING PRODUCTS AND NEW USE NOTIFICATION PROCEDURES.

(a) CREATION OF AN INVENTORY OF USES OF LEAD IN PRODUCTS IN COMMERCE.—(1) Within 60 days after the date of enactment of the Lead Exposure Reduction Act of 1992, the Administrator shall, with the active participation of all interested parties, initiate a survey of all lead-containing products sold or distributed in commerce in the United States.

(2) Based on the survey described in paragraph (1), the Administrator shall develop an inventory of all lead-containing products sold or distributed in commerce (hereinafter in this section referred to as the "Inventory"). In developing the Inventory, the Administrator may group together in product categories those products that are both functionally similar and that provide similar opportunities for lead exposure or release during manufacturing, processing, or use, or at the end of the product's useful life (taking into account other applicable regulations).

(3) The Administrator shall publish in the Federal Register in draft form the Inventory described in paragraph (2), and shall request public comment on the draft Inventory. Not later than 24 months following enactment of this section, and following public notice and opportunity to comment on the draft Inventory, the Administrator shall publish such Inventory in final form.

(4) For the purposes of this section, any product that contains lead-containing components included on the Inventory shall be deemed to be included on the Inventory.

(5) If the Administrator fails to publish the Inventory by the date required in paragraph (3), until such Inventory is published, the products referred to in subsection (c)(6) shall be deemed to comprise the Inventory.

(6) The Administrator may, from time to time, after notice and opportunity for comment, make modifications in the Inventory published under this subsection, and publish a modified Inventory.

(b) LIST OF USES OF LEAD IN PRODUCTS THAT POSE EXPOSURE CONCERNS.—(1) 36 months after the enactment of the Lead Exposure

Reduction Act of 1992, the Administrator shall promulgate, by rule, a list (hereinafter in this section referred to as the "List") of lead-containing products or categories of such products that the Administrator determines may reasonably be anticipated to present an unreasonable risk of injury to health or the environment due to exposure to lead during manufacturing, processing, distribution in commerce or use, or at the end of the product's useful life, taking into account other applicable regulations. Any such determination shall be based on exposure-related information pertaining to such products or categories of products, or to products or categories of products that pose similar exposure risks. For each product or category, the Administrator shall specify the concentration of lead (as a percentage of the dry weight of such product) which the Administrator determines to be the maximum concentration of lead found in such product or category of products.

(2)(A) After promulgating the List, the Administrator by rule may add products or categories of products to the List upon determining that they meet the standard set forth in paragraph (1), or may delete products or categories of products from the List upon determining that they do not meet the standard set forth in paragraph (1).

(B) Any person may petition the Administrator to make a determination to add products or categories of products to the List, or delete products or categories of products from the List. Within 90 days after receipt of a petition, the Administrator shall take one of the following actions:

(i) Grant the petition and initiate a rulemaking to add or delete products or product categories as requested.

(ii) Deny the petition and publish in the Federal Register an explanation of the basis for denying the petition.

If the Administrator grants the petition, he shall complete the rulemaking within 90 days after initiating it.

(c) NOTIFICATION OF NEW USES OF LEAD IN PRODUCTS IN COMMERCE.—(1) After publication of the Inventory in final form pursuant to subsection (a)(3), any person who manufactures, processes, or imports a lead-containing product shall submit to the Administrator a notice pursuant to paragraph (2) upon commencement of the manufacture, processing, or importation of such product, for any product which—

(A) is not on the Inventory, or

(B) is a product that is identified on the List, or that falls within one of the categories identified on the List,

and which utilizes a higher concentration of lead as a percentage of dry weight than that previously identified by the Administrator for such product or category under subsection (b)(1) (unless the concentration is exceeded on a percentage basis solely through efforts to reduce the size or weight of the product, rather than by the addition of larger quantities of lead into the product).

(2) The notice required by paragraph (1) shall include each of the following:

(A) A general description of the product.

(B) A description of the manner in which lead is used in the product.

(C) The quantity of such product manufactured, processed, or imported.

(D) The amount and percentage of lead used in the manufacturing of the product, or the amount and percentage of lead contained in the imported product.

(3) On an annual basis, the Administrator shall publish a report which provides a nonconfidential summary of new uses identified pursuant to this subsection, including aggregated information regarding the amount of lead associated with such new products.

(4) The notification requirement contained in this subsection shall not apply to research and development activities, as defined in regulations promulgated under section 5 of this Act.

(5) Following receipt of a notice under paragraph (1), the Administrator shall amend the Inventory as appropriate. The Administrator also shall evaluate whether any new products should be added to the List of lead-containing products under subsection (b)(1).

(6) If publication of the final List is delayed beyond the deadline set forth in subsection (b), the following provisions shall apply:

(A) Commencing on the date that the final List is required to be promulgated under subsection (b) and until such time as the final List is published, no person shall manufacture, process, or import a product that is one of the products or that falls within one of the product categories identified in subparagraph (B) if such product, or a substantially similar product, has not been distributed in commerce prior to enactment of this section, or if the product contains a greater percentage of lead than substantially similar products distributed in commerce before enactment of this section, unless such person has submitted a notice under paragraph (2).

(B) The list of products or categories of products referred to in subparagraph (A) are:

(i) Paints and coatings other than paints and coatings used as electrodeposition paints and coatings on motor vehicles.

(ii) Plastic additives other than polyvinyl chloride heat stabilizers.

(iii) Gasoline additives.

(iv) Foil wine wrappers.

(v) Rubber cure agents, protective agents, and pigments.

(vi) Solder other than solder used in original manufacture or in commercial servicing of electronic or electrical products.

(vii) Printing inks.

(viii) Sound-proofing shielding.

(ix) Roofing material.

(C) In any proceeding to enforce subparagraph (A) or (B), the manufacturer, processor, or importer shall have the burden of demonstrating that he had a reasonable basis for concluding that the product in question (or a substantially similar product) has been previously distributed in commerce.

(7) Not later than 36 months after enactment of the Lead Exposure Reduction Act of 1992 and 24 months thereafter, the Administrator shall submit a report to Congress describing (A) the rate of diversion of small sealed lead-acid batteries from the solid waste

stream, and (B) the quantity of lead entering the solid waste stream in the form of small sealed lead-acid batteries. In preparing such reports, the Administrator shall undertake such original investigation as may be necessary to generate the data needed to make the findings required in the reports, or may rely on data generated and compiled by industry and other concerned organizations. Any person submitting confidential information to the Administrator pursuant to the preceding sentence shall also submit data that is publicly available. If the Administrator finds that the relevant information is not available and certifies that such information cannot be readily obtained, small sealed lead-acid batteries shall be deemed to appear on the list established pursuant to subsection (b) (or that has taken effect pursuant to paragraph (6) if applicable) effective 90 days after the date on which such report is required to be submitted.

(d) EXEMPTIONS.—Subsections (b) and (c) shall not apply to any of the following:

(1) Stained glass products.

(2) Fishing weights and lures.

(3) Articles referred to in section 3(2)(B)(v) of this Act.

(4) Containers used for radiation shielding.

This section shall not apply for any metal, glass, paper, or textiles sold or distributed by the owner or operator of any automotive dismantler or recycling facility regulated by a State or by the Administrator.

SEC. 415. PRODUCT LABELING.

(a) IN GENERAL.—(1) Not later than 36 months after the date of the enactment of the Lead Exposure Reduction Act of 1992, the Administrator shall promulgate regulations that provide for the labeling of products which appear on the List of lead-containing products required to be published under section 414. Such regulations shall not apply to lead-acid batteries to the extent that the labeling of such batteries as to their lead content is regulated under other authority of Federal law or to products regulated under the Federal Food, Drug and Cosmetic Act. The regulations under this section may distinguish between the labels required for products which present a risk of exposure to lead during manufacture or processing and the labels required for products which present a risk of exposure to lead during distribution or use.

(2) The regulations promulgated pursuant to paragraph (1) shall take effect not later than 36 months after the date of enactment of the Lead Exposure Reduction Act of 1992.

(b) CONTENT OF REGULATIONS.—The regulations described in subsection (a) shall specify the wording, type size, and placement of the labels described in such subsection.

(c) OTHER LABELING REQUIREMENTS.—Compliance with the labeling provisions of this section shall not constitute, in whole or in part, a defense to liability or a cause for reduction in damages in any suit, whether civil or criminal, brought under any law, whether Federal or State, other than a suit for failure to comply with the labeling requirements of this section.

(d) PRODUCTS EXEMPT FROM LEAD CONTENT REQUIREMENTS.—For additional requirements relating to the labeling of certain exempt

articles and of packages containing certain exempt articles, see section 411(f).

Subtitle C—Lead-Based Paint Abatement

SEC. 421. LEAD-BASED PAINT ABATEMENT TRAINING AND CERTIFICATION.

(a) REGULATIONS.—

(1) IN GENERAL.—Not later than 18 months after the date of enactment of the Lead Exposure Reduction Act of 1992, the Administrator shall, in consultation with other appropriate Federal departments and agencies, promulgate final regulations governing lead-based paint abatement activities. The provisions of this section shall supersede the provisions set forth under the heading "Lead Abatement Training and Certification" and under the heading "Training Grants" in title III of the Act entitled "An Act making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, commissions, corporations, and offices for the fiscal year ending September 30, 1992, and for other purposes", Public Law 102–139, and upon the enactment of this section the provisions set forth in such public law under such headings shall cease to have any force and effect.

(2) ACCREDITATION OF TRAINING PROGRAMS.—Final regulations promulgated under paragraph (1) shall contain specific requirements for the accreditation of lead-based paint abatement training programs for workers, supervisors, inspectors and planners, and other individuals involved in lead-based paint abatement activities, including, but not limited, to each of the following:

(A) Minimum requirements for the accreditation of training providers.

(B) Minimum training curriculum requirements, which shall, to the extent appropriate for the category of individuals being trained, include training in—

(i) health effects of lead and sources of exposures;

(ii) worker protection practices and procedures;

(iii) abatement activities, lead hazard reduction, and in-place management;

(iv) prohibited abatement methods and practices;

(v) lead-based paint abatement waste clean-up and disposal requirements;

(vi) testing, risk assessment, and monitoring;

(vii) medical monitoring of abatement personnel;

(viii) lead-based paint encapsulation and maintenance practices;

(ix) recordkeeping;

(x) worker rights and responsibilities; and

(xi) insurance and bonding requirements.

(C) Minimum training hour requirements.

(D) Minimum hands-on training requirements.

(E) Minimum trainee competency and proficiency requirements.

(F) Minimum requirements for training program quality control.

(3) LICENSING REGULATIONS.—

(A) TIER 1 LICENSING CATEGORIES.—The regulations promulgated under paragraph (1) shall include a program to license lead-based paint abatement contractors who are deleaders or who are engaged in demolition, lead inspection, or in removing lead from bridges.

(B) ADDITIONAL CATEGORIES.—The Administrator may amend the regulations under paragraph (1) to require additional categories of lead-based paint abatement contractors to be licensed under the program referred to in subparagraph (A).

(C) ABILITY TO COMPLY WITH STANDARDS.—The regulations under paragraph (1) may provide for different types of licenses for different categories of lead-based paint abatement activities. Such regulations shall require that each applicant for a license under this section demonstrate the ability to comply with the standards referred to in paragraph (4) that are applicable to the category of lead-based paint activities engaged in by the license applicant.

(D) ISSUANCE OF LICENSE.—The Administrator (or the State in the case of an authorized State program) shall make license applications available under the licensing program and shall, within 6 months after a license application is submitted under a licensing program under this paragraph, issue the license or deny the application. No such application shall be denied until the applicant has been afforded the opportunity for an administrative hearing with respect to such denial.

(4) STANDARDS FOR CONDUCTING ACTIVITIES.—

(A) IN GENERAL.—The regulations under paragraph (1) shall contain standards for performing lead-based paint abatement activities, taking into account reliability, effectiveness, and safety. The regulations shall address a range of abatement and lead hazard reduction options, including those which are inexpensive and easily applicable.

(B) TRAINING.—Such standards shall require each lead-based paint abatement contractor subject to the licensing requirements of this subsection to ensure that all individuals engaged in lead-based paint abatement activities on behalf of such contractor have received, through a training program accredited under this section, appropriate training respecting the activities for which the contractor is required to be licensed. Such a training program may be conducted by the contractor or by any other person. Such training shall not be required for individuals whose participation in such activities is incidental and does not present more than a de minimis risk of exposure to lead. The Administrator may waive the requirement that individuals have received such training for a period not in excess of 1 year after the effective date of such standards in any area if the Administrator determines that accredited training programs are not sufficiently available in such area. The Administrator

shall publish an explanation of the reasons for such determination.

(5) COMPLIANCE WITH LICENSING REQUIREMENT AND STANDARDS.—Not later than 2 years after the establishment of a licensing program under paragraph (3) for any category of lead-based paint abatement contractors, no contractor in such category may carry out any lead-based paint abatement activity unless such contractor has applied for a license under such program and unless such contractor complies with the standards referred to in paragraph (4). After the date 6 months after the date on which a lead-based paint abatement contractor applies for such a license, it shall be unlawful for the contractor to carry out lead-based paint abatement activity unless the Administrator (or the State in the case of an authorized State program) has (A) issued the contractor a license under such program or (B) failed to act on the license application. Upon issuance of a license under such a program to any lead-based paint abatement contractor, such contractor shall comply with the terms of the license.

(6) INTERIM GUIDELINES.—Not later than 90 days after the enactment of this title, the Administrator shall issue interim worker protection guidelines for lead-based paint abatement contractors as recommended in the Department of Housing and Urban Development guidelines published at Federal Register 55, page 38973 (September 28, 1990) (Revised Chapter 8).

(7) RENOVATION AND REMODELING.—

(A) GUIDELINES.—In order to reduce the risk of exposure to lead in connection with renovation and remodeling, the Administrator shall, within 18 months after the enactment of the Lead Exposure Reduction Act of 1992, promulgate guidelines for the conduct of renovation and remodeling activities which may create a risk of exposure to dangerous levels of lead. The Administrator shall disseminate such guidelines to persons engaged in renovation and remodeling through hardware and paint stores, employee organizations, trade groups, State and local agencies, and through other appropriate means.

(B) STUDY OF LICENSING.—The Administrator shall conduct a study of the extent to which persons engaged in various types of renovation and remodeling activities are exposed to lead in the conduct of such activities or disturb lead and create a lead hazard on a regular or occasional basis. The Administrator shall complete such study and publish the results thereof within 30 months after the enactment of the Lead Exposure Reduction Act of 1992.

(C) LICENSING DETERMINATION.—Within 4 years after the enactment of the Lead Exposure Reduction Act of 1992, the Administrator shall take action under paragraph (3)(B) to require the licensing of lead-based paint abatement contractors engaged in renovation or remodeling that create lead hazards in the course of such activities. In determining who shall be required to be licensed the Administrator shall utilize the results of the study under subparagraph (B) and consult with the representatives of labor organiza-

tions, lead-based paint abatement contractors, persons engaged in remodeling and renovation, experts in lead health effects, and others. If the Administrator determines that any category of persons engaged in renovation or remodeling should not be licensed, the Administrator shall publish and explanation of the basis for that determination.

(8) REVIEW AND REVISION.—The Administrator shall review the regulations under paragraph (1) not less frequently than every 2 years after the initial promulgation thereof, and, as necessary, revise such regulations.

(9) ACCREDITATION AND LICENSE FEES.—The Administrator (or the State in the case of an authorized State program) shall impose a fee on—

(A) persons operating training programs accredited under this subtitle; and

(B) lead-based paint abatement contractors licensed under a licensing program established under paragraph (3).

The fees shall be established at such level as is necessary to cover the costs of administering and enforcing the standards and regulations under this section which are applicable to such programs and contractors. The fee shall not be imposed on any State, local government, or nonprofit training program. The Administrator (or the State in the case of an authorized State program) may waive the fee for lead-based paint abatement contractors under subparagraph (A) for the purpose of training their own employees.

(10) SUSPENSION OR REVOCATION.—The Administrator (or the State in the case of an authorized State program) may suspend or revoke any accreditation or license issued under this section whenever the Administrator (or State) determines, after notice and opportunity for hearing, that the holder of such accreditation or license has violated any requirement of this section.

(b) NIEHS RESPONSIBILITIES.—

(1) TRAINING GRANT PROGRAM.—(A) Grants for the training and education of workers and supervisors who are or may be directly engaged in lead-based paint abatement activities shall be administered by the National Institute of Environmental Health Sciences (hereinafter in this subsection referred to as the "NIEHS").

(B) Grants made under this section shall be awarded to nonprofit organizations—

(i) which are engaged in the training and education of workers and supervisors who are or who may be directly engaged in lead-based paint abatement activities,

(ii) which have demonstrated experience in implementing and operating health and safety lead-based paint abatement training and education programs, and

(iii) with a demonstrated ability to reach, and involve in lead-based paint training programs, target populations of individuals who are or will be engaged in lead-based paint abatement activities.

Grants shall be awarded only to those organizations that fund at least 30 percent of their lead-based paint abatement training programs from non-Federal sources, excluding in-kind contribu-

tions. Grants may also be made to municipalities to carry out such training and education for their employees.

(C) From the amounts authorized to be appropriated to carry out this title, at a minimum, $5,000,000 are authorized to be appropriated for each of the fiscal years 1994 through 1997 to make grants under this paragraph.

(2) CONSULTATION.—The Administrator shall consult with the NIEHS prior to proposing, establishing, or revising any accreditation requirements under this section.

(3) EVALUATION OF PROGRAMS.—NIEHS shall conduct periodic and comprehensive assessments of the efficacy of the worker and supervisor training programs developed and offered by the NIEHS training grantees. The Director shall prepare reports on the results of these assessments addressed to the Administrator to include recommendations as may be appropriate for the revision of these programs. From the amounts authorized to implement this title, $500,000 is authorized to be appropriated to the NIEHS for each of the fiscal years 1994 through 1997 to carry out this paragraph.

(c) ESTABLISHMENT OF ADVISORY COMMITTEE ON LEAD POISONING.—

(1) ESTABLISHMENT AND RESPONSIBILITIES; MEETINGS.—(A) The Administrator shall establish an Advisory Committee on Lead Poisoning Prevention comprised of 15 members appointed by the Administrator as follows: 2 representatives of lead-based paint abatement contractors; 3 representatives of employee organizations in the building and construction trades industry whose members have the greatest likelihood of exposure to lead-based paint in the residential and other abatement markets; 2 representatives of national public interest or health organizations with experience in lead-based paint poisoning prevention efforts; 2 representatives of cities, 1 representative of the housing industry; 1 representative of school boards; 1 representative of day care providers; 1 representative of an organization representing parents or teachers; and 2 representatives of State agencies charged with enforcement of lead-based paint poisoning prevention efforts. The Administrator may also appoint nonvoting members to the committee from other appropriate Federal agencies.

(B) The Advisory Committee shall advise the Administrator on all matters contained in sections 433 and 421. Such advice shall be solicited, to the maximum extent practicable, prior to the promulgation of any and all regulations, or the issuance of any guidance document pertaining to sections 433 and 421.

(C) The Advisory Committee shall meet no fewer than 3 times each calendar year, hold all meetings open to the public, require a transcript to be kept of the meetings and to be made available for public inspection, and set meeting agendas. The Administrator shall provide to the Advisory Committee such support and facilities as may be necessary for operation of the Advisory Committee.

(2) RECOMMENDATIONS.—The Administrator shall respond in writing to any formal recommendations made by a majority of

members of the Advisory Committee within 60 days of the Advisory Committee's issuance of such recommendation.

(3) TERM OF OFFICE; COMPENSATION.—(A) The term of office of each member shall be 3 years and the terms shall be staggered so that the term of office of no more than 1 representative of the same interest shall expire in the same year.

(B) Members shall, while serving on the Advisory Committee, be entitled to receive reasonable reimbursement for travel, food, and lodging expenses.

SEC. 422. LEAD CONTAMINATION IN SCHOOLS AND DAY CARE CENTERS.

(a) COVERED SCHOOLS.—

(1) INSPECTION.—Not later than 2 years after the date of enactment of the Lead Exposure Reduction Act of 1992, the Administrator shall promulgate a rule requiring the owner or operator of each covered school to conduct, within 2 years after such promulgation—

(A) an inspection of the covered school to detect lead-based paint that is chipping, peeling, flaking, or chalking, and

(B) an inspection of each room and playground area at the covered school in either daily or significant use by children in kindergarten or by younger children to detect any lead-based paint and to detect any interior dust in such rooms or any exterior soil in such playground areas at such school which dust or soil contains a dangerous level of lead, as identified under section 423,

and prepare a report containing the results of such inspections. For purposes of this subsection, "significant use" means use by more than 1 child at least twice per week, and at least for 2 hours per week.

(2) NOTIFICATION.—(A) In each case in which an inspection under paragraph (1) indicates the presence of lead-based paint, or interior dust or exterior soil containing a dangerous level of lead, as identified under section 423, at a covered school, the owner or operator of the covered school shall, within 120 days after receiving the report under paragraph (1), provide all teachers and other school personnel and parents (or guardians) of all children attending the covered school concerned with a copy of risk disclosure information meeting the requirements of subparagraph (B). The owner or operator of the covered school shall also provide such risk disclosure information to newly hired teachers and other personnel and parents (or guardians) of newly enrolled children for so long as lead-based paint, or interior dust or exterior soil containing a dangerous level of lead, as identified under section 423, continues to be present at the covered school.

(B) As part of the rule required under paragraph (1), the Administrator shall prescribe the contents of the risk disclosure information to be provided. Such information shall include each of the following:

(i) A summary of the results of the inspection under paragraph (1).

(ii) A description of the risks of lead exposure to children in kindergarten and younger children and teachers and other personnel at the school concerned, taking into account the accessibility of lead-based paint or interior or dust or exterior soil containing a dangerous level of lead, as identified under section 423, to children under 6 years of age and other appropriate factors.

(iii) A description of any lead abatement undertaken, or to be undertaken, by the owner or operator concerned.

(C) An owner or operator of a covered school may provide the risk disclosure information to the parents (or guardians) of the children attending the covered school concerned in the same manner as written materials are regularly delivered to such parents (or guardians).

(3) ABATEMENT IN LIEU OF NOTIFICATION.—An owner or operator of a covered school shall not be required to provide notification under paragraph (2) if, prior to the date on which such notification would be required, the owner or operator performs abatement, conducts a reinspection, and obtains a report showing that the lead-based paint, and any interior dust containing a dangerous level of lead, as identified under section 423, has been removed or encapsulated and any exterior soil containing a dangerous level of lead, as identified under section 423 has been abated to a condition such that the soil is no longer dangerous. An owner or operator that elects to perform abatement under this subsection in lieu of notification under paragraph (2) shall make a copy of the inspection reports available in its administrative offices and shall notify parent, teacher, and employee organizations of the availability of such reports.

(b) COVERED DAY CARE CENTERS.—

(1) INSPECTION.—Not later than 2 years after the date of enactment of the Lead Exposure Reduction Act of 1992, the Administrator shall promulgate a rule requiring the owner or operator of each covered day care center to conduct, within 2 years after such promulgation, an inspection of each room and playground area at the covered day care center in either daily or significant use by children in kindergarten or by younger children to detect any lead hazard in such rooms or playground areas, and prepare a report containing the results of such inspection. For purposes of this subsection, "significant use" means use by more than 1 child at least twice per week, and at least for 2 hours per week.

(2) NOTIFICATION.—(A) In each case in which an inspection under paragraph (1) indicates the presence of a lead hazard at a covered day care center, the owner or operator of the covered day care center shall, within 180 days after receiving the report under paragraph (1), provide all teachers and other day care center personnel and parents (or guardians) of all children attending the covered day care center concerned with a copy of risk disclosure information meeting the requirements of subparagraph (B). The owner or operator of the covered day care center shall also provide such risk disclosure information to newly hired teachers and other personnel and parents (or guard-

ians) of newly enrolled children for so long as the lead hazard continues to be present at the covered day care center.

(B) As part of the rule required under paragraph (1), the Administrator shall prescribe the contents of the risk disclosure information to be provided. Such information shall include each of the following:

(i) A summary of the results of the inspection under paragraph (1).

(ii) A description of the risks of lead exposure to children in kindergarten and younger children and teachers and other personnel at the day care center concerned, taking into account the accessibility of the lead hazard to children under 6 years of age and other appropriate factors.

(iii) A description of any lead abatement undertaken, or to be undertaken, by the owner or operator concerned.

(C) An owner or operator of a covered day care center may provide the risk disclosure information to the parents (or guardians) of the children attending the covered day care center concerned in the same manner as written materials are regularly delivered to such parents (or guardians).

(3) ABATEMENT IN LIEU OF NOTIFICATION.—An owner or operator of a covered day care center shall not be required to provide notification under paragraph (2) if, prior to the date on which such notification would be required, the owner or operator performs abatement, conducts a reinspection, and obtains a report showing that the lead hazard has been abated such that it no longer constitutes a lead hazard. An owner or operator that elects to perform abatement under this subsection in lieu of notification under paragraph (2) shall make a copy of the inspection reports available in its administrative offices and shall notify parent, teacher, and employee organizations of the availability of such reports.

(c) RENOVATED AREAS.—Effective for renovations commencing more than 2 years after the promulgation of a rule under subsection (a) or (b), for each covered school or covered day care center in which a renovation will be undertaken, the owner or operator of the covered school or covered day care center shall conduct, prior to such renovation, an inspection of the area to detect any lead-based paint that might be disturbed as a result of such renovation and shall take such actions as are necessary to ensure that such renovation does not result in a dangerous level of lead, as identified under section 423, in interior dust or exterior soil.

(d) FINANCIAL ASSISTANCE.—

(1) ASSISTANCE PROGRAM.—There is hereby established within the Environmental Protection Agency a Lead Hazard Abatement Assistance Program, which shall be administered in accordance with this subsection.

(2) APPLICATIONS FOR ASSISTANCE.—Applications for financial assistance for—

(A) testing for, and abating, lead-based paint, and interior dust or exterior soil containing a dangerous level of lead, as identified under section 423, in covered schools, and

(B) testing for, and abating, lead hazards at covered day care centers

shall be submitted by owners or operators of covered schools and covered day care centers to the Governor, or the Governor's designee.

(3) GOVERNOR'S SUBMISSION AND PRIORITY LIST.—Each year, in accordance with procedures established by the Administrator, the Governor of each State shall—

(A) forward to the Administrator all applications for financial assistance received by the Governor, and

(B) submit with such applications a priority list ranking, without regard to the public or private nature of the owner or operator involved, the applications for financial assistance.

In preparing the priority list, the Governor shall take into account financial need, the health risks involved, and other appropriate factors.

(4) AWARD OF FINANCIAL ASSISTANCE.—The Administrator shall award financial assistance to applicants under this subsection. In awarding such assistance, the Administrator shall take into account the priority lists of the Governors, financial need, the health risks involved, and other appropriate factors.

(5) AUTHORIZATION.—There are authorized to be appropriated for each of the 4 consecutive fiscal years commencing with fiscal year 1994, $30,000,000 to carry out this subsection.

(e) PUBLIC PROTECTION.—No owner or operator of a covered school or covered day care center may discriminate against a person in any way because the person provided information relating to a potential violation of this section to any other person, including a State or the Administrator.

(f) PENALTIES.—For purposes of enforcing this section, the penalties applicable under section 16 shall not be more than $5,000.

(g) USE OF PENALTIES.—The court in any action against an owner or operator of a covered school or covered day care center for violation of this section shall have discretion to order that all civil penalties collected be used, in lieu of payment to the United States, to reimburse the owner or operator for the costs of lead-based paint abatement activities undertaken by such owner or operator.

(h) INSPECTIONS.—The inspections required under this section and any abatement performed in lieu of notification shall be carried out by lead-based paint abatement contractors who are in compliance with the licensing requirements of section 421.

SEC. 423. IDENTIFICATION OF DANGEROUS LEVELS OF LEAD; SOIL INSPECTION AND ABATEMENT.

(a) IDENTIFICATION OF DANGEROUS LEVELS OF LEAD.—Within 2 years after the enactment of this title, the Administrator shall promulgate regulations which shall identify, for purposes of this title, dangerous levels of lead in interior dust and exterior soil, taking into account its accessibility to children under 6 years of age and other appropriate factors. For interior dust, such levels shall not exceed the recommended clearance criteria for dust lead in the "Interim Guidelines for Hazard Identification and Abatement for Public and Indian Housing" of the Department of Housing and Urban Development, as in effect on the date of enactment of this title.

(b) INSPECTION AND ABATEMENT REGULATIONS.—Not later than 2 years after the enactment of this title, the Administrator shall promulgate regulations applicable to contractors who inspect for, or abate, dangerous levels of lead in exterior soil for compensation at public or private dwellings, covered schools, or covered day care centers. Such regulations shall contain standards for performing such activities, including standards for in-place management, taking into account reliability, effectiveness, and safety. Such regulations shall also include licensing requirements for such contractors and appropriate training requirements. Such regulations shall be integrated, to the maximum extent practicable, with the regulations under section 421 governing lead-based paint abatement activities.

SEC. 424. AUTHORIZED STATE PROGRAMS.

(a) APPROVAL.—Any State which seeks to administer and enforce the standards, regulations, or other requirements established under section 421, 422, 423, or any combination thereof, may, after notice and opportunity for public hearing, develop and submit to the Administrator an application, in such form as the Administrator shall require, for authorization of such a State program. Any such State may also certify to the Administrator at the time of submitting such program that the State program meets the requirements of paragraphs (1) and (2) of subsection (b). Upon submission of such certification, the State program shall be deemed to be authorized under this section, and shall apply in such State in lieu of the corresponding Federal program under section 421, 422, 423, or any combination thereof, as the case may be, until such time as the Administrator disapproves the program or withdraws the authorization.

(b) APPROVAL OR DISAPPROVAL.—Within 180 days following submission of an application under subsection (a), the Administrator shall approve or disapprove the application. The Administrator may approve the application only if, after notice and after opportunity for public hearing, the Administrator finds that—

(1) the State program is at least as protective of human health and the environment as the Federal program under section 421, 422, 423, or any combination thereof, as the case may be, and

(2) such State program provides adequate enforcement.

Upon authorization of a State program under this section, it shall be unlawful for any person to violate or fail or refuse to comply with any requirement of such program.

(c) WITHDRAWAL OF AUTHORIZATION.—If a State is not administering and enforcing a program authorized under this section in compliance with standards, regulations, and other requirements of this subtitle, the Administrator shall so notify the State and, if corrective action is not completed within a reasonable time, not to exceed 180 days, the Administrator shall withdraw authorization of such program and establish a Federal program pursuant to this subtitle.

(d) MODEL STATE PROGRAM.—Within 18 months after the enactment of this title, the Administrator shall promulgate a model State program which may be adopted by any State which seeks to administer and enforce a State program under this subtitle. Such model program shall, to the extent practicable, encourage States to

utilize existing State and local licensing and accreditation programs and procedures. Such program shall encourage reciprocity among the States with respect to the licensing under section 421.

(e) OTHER STATE REQUIREMENTS.—Nothing in this subtitle shall be construed to prohibit any State or political subdivision thereof from imposing any requirements which are more stringent than those imposed by this subtitle.

(f) STATE AND LOCAL LICENSING.—The regulations under this subtitle shall, to the extent appropriate, encourage States to seek program authorization and to use existing State and local licensing and accreditation procedures, except that a State or local government shall not require more than 1 license under this section for any lead-based paint abatement contractor to carry out lead-based paint abatement activities in a category in the State or political subdivision thereof.

(g) GRANTS TO AUTHORIZED STATES.—The Administrator is authorized to make grants to States carrying out authorized State programs which have been approved by the Administrator under this section to assist the States in administering such programs. The grants shall be subject to such terms and conditions as the Administrator may establish to further the purposes of this title.

SEC. 425. LEAD ABATEMENT AND MEASUREMENT.

(a) PROGRAM TO PROMOTE LEAD EXPOSURE ABATEMENT.—(1) The Administrator, in cooperation with other appropriate Federal departments and agencies, shall conduct a comprehensive program to promote safe, effective, and affordable monitoring, detection and abatement of lead-based paint and other lead exposure hazards.

(2) The Administrator shall chair an Inter-Agency Coordinating Committee on Childhood Lead Poisoning Prevention (hereinafter in this paragraph referred to as "the Committee") comprised of the Administrator and the heads of such other Federal agencies and departments deemed appropriate by the Administrator. The Committee shall—

(A) identify obstacles to effective program implementation and priority research needs;

(B) coordinate responsibilities of each agency and department to prevent duplication of effort and to assure that critical actions are taken in a timely manner;

(C) review and coordinate agency budget requests to assure a coordinated, effective and comprehensive federal lead poisoning prevention program;

(D) make specific recommendations for the implementation of comprehensive, effective and enforceable lead poisoning prevention programs at the Federal, State and local levels (including recommendations concerning the feasibility of developing minimum uniform standards and procedures for incorporation into State and local programs); and

(E) actively solicit the participation of State and local lead poisoning prevention programs, nationally respected experts, and community-based lead poisoning education programs.

(b) STANDARDS FOR ENVIRONMENTAL SAMPLING LABORATORIES.—(1) The Administrator shall establish protocols, criteria, and minimum performance standards for laboratory analysis of lead in paint

films, soil and dust. Within 2 years after the enactment of this title, the Administrator, in consultation with the Secretary of Health and Human Services, shall establish a program to certify laboratories as qualified to test substances for lead content unless the Administrator determines, by the date specified in this paragraph, that effective voluntary accreditation programs are in place and operating on a nationwide basis at the time of such determination. To be certified under such program, a laboratory shall, at a minimum, demonstrate an ability to test substances accurately for lead content.

(2) Not later than 24 months after the date of the enactment of the Lead Exposure Reduction Act of 1992, and annually thereafter, the Administrator shall publish and make available to the public a list of certified or accredited environmental sampling laboratories.

(3) If the Administrator determines under paragraph (1) that effective voluntary accreditation programs are in place for environmental sampling laboratories, the Administrator shall review the performance and effectiveness of such programs within 3 years after such determination. If, upon such review, the Administrator determines that the voluntary accreditation programs are not effective in assuring the quality and consistency of laboratory analyses, the Administrator shall, not more than 12 months thereafter, establish a certification program that meets the requirements of paragraph (1).

(c) EXPOSURE STUDIES.—(1) The Secretary of Health and Human Services (hereafter in this subsection referred to as the "Secretary"), acting through the Director of the Centers for Disease Control, (CDC), and the Director of the National Institute of Environmental Health Sciences, shall jointly conduct a study of the sources of lead exposure in children who have elevated blood lead levels (or other indicators of elevated lead body burden), as defined by the Director of the Centers for Disease Control.

(2) The Secretary, in consultation with the Director of the National Institute of Environmental Health Sciences, shall conduct a comprehensive study of means to reduce hazardous occupational lead abatement exposures. This study shall include, at a minimum, each of the following—

(A) Surveillance and intervention capability in the States to identify and prevent hazardous exposures to lead abatement workers.

(B) Demonstration of lead abatement control methods and devices and work practices to identify and prevent hazardous lead exposures in the workplace.

(C) Evaluation of health effects of low and high levels of occupational lead exposures on reproductive, neurological, renal, and cardiovascular health.

(D) Identification of high risk occupational settings to which prevention activities and resources should be targeted.

(E) A study assessing the potential exposures and risks from lead to janitorial and custodial workers.

(3) The studies described in paragraphs (1) and (2) shall, as appropriate, examine the relative contributions to elevated lead body burden from each of the following:

(A) Drinking water.

(B) Food.

(C) Lead-based paint and dust from lead-based paint.

(D) Exterior sources such as ambient air and lead in soil.

(E) Occupational exposures, and other exposures that the Secretary determines to be appropriate.

(4) Not later than 30 months after the date of the enactment of the Lead Exposure Reduction Act of 1992, the Secretary shall submit a report to the Congress concerning the studies described in paragraphs (1) and (2).

(d) PUBLIC EDUCATION.—(1) The Administrator, in conjunction with the Secretary of Health and Human Services, acting through the Assistant Secretary for Health of the Department of Health and Human Services, shall sponsor public education and outreach activities to increase public awareness of—

(A) the scope and severity of lead poisoning from household sources;

(B) potential exposure to sources of lead in schools and childhood day care centers;

(C) the implications of exposures for men and women, particularly those of childbearing age;

(D) the need for careful, quality, abatement and management actions;

(E) the need for universal screening of children; and

(F) other components of a lead poisoning prevention program.

(2) The activities described in paragraph (1) shall be designed to provide educational services and information to—

(A) health professionals;

(B) the general public, with emphasis on parents of young children;

(C) homeowners, landlords, and tenants;

(D) consumers of home improvement products;

(E) the residential real estate industry; and

(F) the home renovation industry.

(3) In implementing the activities described in paragraph (1), the Administrator shall assure coordination with the President's Commission on Environmental Quality's education and awareness campaign on lead poisoning.

(4) The Administrator, in consultation with the chairman of the Consumer Product Safety Commission, shall develop information to be distributed by retailers of home improvement products to provide consumers with practical information related to the hazards of renovation and remodeling where lead-based paint may be present.

(e) TECHNICAL ASSISTANCE.—

(1) CLEARINGHOUSE.—Not later than 6 months after the enactment of this subsection, the Administrator shall establish, in consultation with the Secretary of Housing and Urban Development and the Director of the Centers for Disease Control, a National Clearinghouse on Childhood Lead Poisoning (hereinafter in this section referred to as "Clearinghouse"). The Clearinghouse shall—

(A) collect, evaluate, and disseminate current information on the assessment and reduction of lead hazards, adverse health effects, sources of exposure, detection and risk assessment methods, environmental hazards abatement, and clean-up standards;

(B) maintain a rapid-alert system to inform licensed lead-based paint abatement contractors of significant developments in research related to lead-based paint hazards; and

(C) perform any other duty that the Administrator determines necessary to achieve the purposes of this Act.

(2) HOTLINE.—Not later than 6 months after the enactment of this subsection, the Administrator, in cooperation with other Federal agencies and with State and local governments, shall establish a single lead hazard hotline to provide the public with answers to questions about lead poisoning prevention and referrals to the Clearinghouse for technical information.

(f) PRODUCTS FOR LEAD-BASED PAINT ABATEMENT ACTIVITIES.—Not later than 30 months after the date of enactment of the Lead Exposure Reduction Act of 1992, the President shall, after notice and opportunity for comment, establish by rule appropriate criteria, testing protocols, and performance characteristics as are necessary to ensure, to the greatest extent possible and consistent with the purposes and policy of the Lead Exposure Reduction Act of 1992, that deleading, encapsulating, testing, or similar lead-based paint abatement products introduced into commerce after a period specified in the rule are effective for the intended use described by the manufacturer. The rule shall identify the types or classes of products that are subject to such rule. The President, in implementation of the rule, shall, to the maximum extent possible, utilize independent testing laboratories, as appropriate, and consult with such entities and others in developing the rules. The President may delegate the authorities under this subsection to the Environmental Protection Agency or the Secretary of Commerce or such other appropriate agency.

Subtitle D—General Provisions

SEC. 431. REGULATIONS.

The regulations of the Administrator under this title shall include such recordkeeping and reporting requirements as may be necessary to insure the effective implementation of this title. The regulations may be amended from time to time as necessary.

SEC. 432. CONTROL OF LEAD HAZARDS AT FEDERAL FACILITIES.

Each department, agency, and instrumentality of executive, legislative, and judicial branches of the Federal Government (1) having jurisdiction over any property or facility, or (2) engaged in any activity resulting, or which may result, in a lead hazard, and each officer, agent, or employee thereof, shall be subject to, and comply with, all Federal, State, interstate, and local requirements, both substantive and procedural, (including any requirement for certification, licensing, recordkeeping, or reporting or any provisions for injunctive relief and such sanctions as may be imposed by a court to enforce such relief) respecting lead-based paint, lead-based paint abatement, and lead hazards in the same manner, and to the same extent as any nongovernmental entity is subject to such requirements, including the payment of reasonable service charges. The Federal, State, interstate, and local substantive and procedural requirements re-

ferred to in this subsection include, but are not limited to, all administrative orders and all civil and administrative penalties and fines regardless of whether such penalties or fines are punitive or coercive in nature, or whether imposed for past or continuing violations. The reasonable service charges referred to in this section include, but are not limited to, fees or charges assessed for certification and licensing, as well as any other nondiscriminatory charges that are assessed in connection with a Federal, State, interstate, or local lead-based paint, lead-based paint abatement, or lead hazard abatement program. For purposes of enforcing any such substantive or procedural requirement (including, but not limited to, any injunctive relief, administrative order, or civil or administrative penalty or fine) against any such department, agency, or instrumentality, the United States hereby expressly waives any immunity otherwise applicable to the United States. No agent, employee, or officer of the United States shall be personally liable for any civil penalty under any Federal, State, interstate, or local law relating to lead-based paint, lead-based paint abatement, or lead hazards with respect to any act or omission within the scope of his official duties.

SEC. 433. PROHIBITED ACTS.

It shall be unlawful for any person to fail or refuse to comply with a provision of this title or with any rule or order issued under this title.

SEC. 434. RELATIONSHIP TO OTHER FEDERAL LAW.

Nothing in this title shall affect the authority of other appropriate Federal agencies to establish or enforce any requirements which are at least as stringent as those established pursuant to this title regarding any product subject to regulation under this title.

SEC. 435. GENERAL PROVISIONS RELATING TO ADMINISTRATIVE PROCEEDINGS.

(a) APPLICABILITY.—This section applies to the promulgation or revision of any regulation issued under this title.

(b) RULEMAKING DOCKET.—Not later than the date of proposal of any action to which this section applies, the Administrator shall establish a rulemaking docket for such action (hereinafter in this subsection referred to as a "rule"). Whenever a rule applies only within a particular State, a second (identical) docket shall be established in the appropriate regional office of the Environmental Protection Agency.

(c) INSPECTION AND COPYING.—(1) The rulemaking docket required under subsection (b) shall be open for inspection by the public at reasonable times specified in the notice of proposed rulemaking. Any person may copy documents contained in the docket. The Administrator shall provide copying facilities which may be used at the expense of the person seeking copies, but the Administrator may waive or reduce such expenses in such instances as the public interest requires. Any person may request copies by mail if the person pays the expenses, including personnel costs to do the copying.

(2)(A) Promptly upon receipt by the agency, all written comments and documentary information on the proposed rule received from any person for inclusion in the docket during the comment period shall be placed in the docket. The transcript of public hearings, if any, on the proposed rule shall also be included in the docket

promptly upon receipt from the person who transcribed such hearings. All documents which become available after the proposed rule has been published and which the Administrator determines are of central relevance to the rulemaking shall be placed in the docket as soon as possible after their availability.

(B) The drafts of proposed rules submitted by the Administrator to the Office of Management and Budget for any interagency review process prior to proposal of any such rule, all documents accompanying such drafts, and all written comments thereon by other agencies and all written responses to such written comments by the Administrator shall be placed in the docket no later than the date of proposal of the rule. The drafts of the final rule submitted for such review process prior to promulgation and all such written comments thereon, all documents accompanying such drafts, and written responses thereto shall be placed in the docket no later than the date of promulgation.

(d) EXPLANATION.—(1) The promulgated rule shall be accompanied by an explanation of the reasons for any major changes in the promulgated rule from the proposed rule.

(2) The promulgated rule shall also be accompanied by a response to each of the significant comments, criticisms, and new data submitted in written or oral presentations during the comment period.

(3) The promulgated rule may not be based (in part or whole) on any information or data which has not been placed in the docket as of the date of such promulgation.

(e) JUDICIAL REVIEW.—The material referred to in subsection (c)(2)(B) shall not be included in the record for judicial review.

(f) EFFECTIVE DATE.—The requirements of this section shall take effect with respect to any rule the proposal of which occurs after 90 days after the date of the enactment of this section.

SEC. 436. NOTICE OF CERTAIN REQUIREMENTS.

Six months after the date of enactment of the Lead Exposure Reduction Act of 1992, the Administrator shall publish notice of the restrictions imposed under section 411 and 412.

SEC. 437. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to carry out the purposes of this title such sums as may be necessary.

TITLE XIV OF THE PUBLIC HEALTH SERVICE ACT (COMMONLY REFERRED TO AS THE SAFE DRINKING WATER ACT)

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TITLE XIV—SAFETY OF PUBLIC WATER SYSTEMS

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PART B—PUBLIC WATER SYSTEMS

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SEC. 1417. PROHIBITION ON USE OF LEAD PIPES, SOLDER, AND FLUX.

(a) IN GENERAL.—

(1) PROHIBITION.—Any pipe, *pipe or plumbing fitting,* solder, or flux, which is used after the enactment of the Safe Drinking Water Act Amendments of 1986, in the installation or repair of—

(A) any public water system, or

(B) any plumbing in a residential or nonresidential facility providing water for human consumption which is connected to a public water system,

shall be lead free (within the meaning of subsection (d)). This paragraph shall not apply to leaded joints necessary for the repair of cast iron pipes.

(2) PUBLIC NOTICE REQUIREMENTS.—

(A) IN GENERAL.—Each public water system shall identify and provide notice to persons that may be affected by lead contamination of their drinking water where such contamination results from either or both of the following:

(i) The lead content in the construction materials of the public water distribution system.

(ii) Corrosivity of the water supply sufficient to cause leaching of lead.

The notice shall be provided in such manner and form as may be reasonably required by the Administrator. Notice under this paragraph shall be provided notwithstanding the absence of a violation of any national drinking water standard.

(B) CONTENTS OF NOTICE.—Notice under this paragraph shall provide a clear and readily understandable explanation of—

(i) the potential sources of lead in the drinking water,

(ii) potential adverse health effects,

(iii) reasonably available methods of mitigating known or potential lead content in drinking water,

(iv) any steps the system is taking to mitigate lead content in drinking water, and

(v) the necessity for seeking alternative water supplies, if any.

Effective 2 years after the enactment of the Lead Contamination Control Act Amendments of 1991, it shall be unlawful (I) for any person to introduce into commerce any pipe or pipe or plumbing fitting that is not lead free, (II) for persons engaged in the business of selling plumbing supplies to sell solder or flux which is not lead free, or (III) for any person to introduce into commerce any solder or flux which is not lead free unless such solder or flux bears a prominent label stating that it is illegal to use such solder or flux in the installation or repair of any plumbing providing water for human consumption.

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(c) PENALTIES.—*(1)* If the Administrator determines that a State is not enforcing the requirements of subsection (a) as required pursuant to subsection (b), the Administrator may withhold up to 5 percent of Federal funds available to that State for State program grants under section 1443(a).

(2) Any person who violates any requirement of this section, including any requirement of any regulation, order, or certification issued under this section, shall be in violation of this section and shall be liable to the United States for a civil penalty in an amount not to exceed $10,000 for each such violation.

(3) The Administrator may commerce a civil action to enjoin any violation of this section or to assess and recover any civil penalty under paragraph (2). Any action under this paragraph may be brought in the district court of the United States for the district in which the violation is alleged to have occurred or in which the defendant resides or has its principal place of business, and the court shall have jurisdiction to issue injunctive relief and to assess a civil penalty.

(4) The Administrator may issue an order to any person requiring such person to comply with any requirement of this section and the Administrator may, after notice and opportunity for hearing on the record in accordance with sections 554 and 556 of title 5 of the United States Code, issue an order assessing a civil penalty for violation of this section.

(d) DEFINITION OF LEAD FREE.—For purposes of this section, the term "lead free"—

(1) when used with respect to solders and flux refers to solders and flux containing not more than 0.2 percent lead, and

(2) when used with respect to pipes and pipe *and plumbing* fittings refers to pipes and pipe *and plumbing* fittings containing not more than 8.0 percent lead.

Not later than 2 years from the date of enactment of the Lead Exposure Reduction Act of 1992, the Administrator shall promulgate regulations setting a health-effects based performance standard establishing minimal leaching levels of lead from new plumbing fittings conveying drinking water. At a minimum, such plumbing fittings shall not cause lead concentration in drinking water to increase by more than 15 ppb when in prolonged contact with such fittings as determined by such performance standard. Such standard shall be effective 5 years after the date of enactment. Effective 5 years from the date of enactment of the Lead Exposure Reduction Act of 1992, when used with respect to new plumbing fittings, the term 'lead free' refers only to plumbing fittings that meet such health effects based performance standard. If the regulations required to be promulgated under this subsection have not been promulgated by the date that is 48 months after the date of enactment of the Lead Exposure Reduction Act of 1992, no person may import, manufacture, process, or distribute in commerce a plumbing fitting that contains more than 7 percent lead by dry weight. If the regulations required to be promulgated under this subsection have not been promulgated by the date that is 60 months after the date of enactment of the Lead Exposure Reduction Act of 1992, no person may import, manufacture, process, or distribute in commerce a plumbing fitting that contains more than 6 percent lead by dry weight. If the regulations required to be promulgated under this subsection have not been promulgated by the date that is 72 months after the date of enactment of the Lead Exposure Reduction Act of 1992, no person may import, manufacture, process, or distribute in commerce a plumbing fitting that contains more than 5 percent lead by dry weight. If the regula-

tions required to be promulgated under this subsection have not been promulgated by the date that is 84 months after the date of enactment of the Lead Exposure Reduction Act of 1992, no person may import, manufacture, process, or distribute in commerce a plumbing fitting that contains more than 4 percent lead by dry weight.

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PART E—GENERAL PROVISIONS

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RECORDS AND INSPECTIONS

SEC. 1445. (a)(1) [Every person who is a supplier of water, who is or may be otherwise subject to a primary drinking water regulation prescribed under section 1412 or to an applicable underground injection control program (as defined in section 1422(c)), who is or may be subject to the permit requirement of section 1424 or to an order issued under section 1441, or who is a grantee,] *Every person who is subject to any requirement of this title* shall establish and maintain such records, make such reports, conduct such monitoring, and provide such information as the Administrator may reasonably require [by regulation] to assist him in establishing regulations under this title, in determining whether such person has acted or is acting in compliance with this title, in administering any program of financial assistance under this title, in evaluating the health risks of unregulated contaminants, or in advising the public of such risks. In requiring a public water system to monitor under this subsection, the Administrator may take into consideration the system size and the contaminants likely to be found in the system's drinking water.

* * * * * * *

(b)(1) Except as provided in paragraph (2), the Administrator, or representatives of the Administrator duly designated by him, upon presenting appropriate credentials and a written notice to [any supplier of water or other person subject to (A) a national primary drinking water regulation prescribed under section 1412, (B) an applicable underground injection control program, or (C) any requirement to monitor an unregulated contaminant pursuant to subsection (a), or person in charge of any of the property of such supplier or other person referred to in clause (A), (B), or (C),] *any person who is subject to any requirement of this title or any person who is in charge of any property of such person,* is authorized to enter any establishment, facility, or other property of such supplier or other person in order to determine whether such supplier or other person has acted or is acting in compliance with this title, including for this purpose, inspection, at reasonable times, of records, files, papers, processes, controls, and facilities, or in order to test any feature of a public water system, including its raw water source. The Administrator or the Comptroller General (or any representative designated by either) shall have access for the purpose of audit and examination to any records, reports, or information of a grant-

ee which are required to be maintained under subsection (a) or which are pertinent to any financial assistance under this title.

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PART F—ADDITIONAL REQUIREMENTS TO REGULATE THE SAFETY OF DRINKING WATER

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SEC. 1462. RECALL OF DRINKING WATER COOLERS WITH LEAD-LINED TANKS.

For purposes of the Consumer Product Safety Act, all drinking water coolers identified by the Administrator on the list under section 1463 as having a lead-lined tank shall be considered to be imminently hazardous consumer products within the meaning of section 12 of such Act (15 U.S.C. 2061). After notice and opportunity for comment, including a public hearing, the Consumer Product Safety Commission shall issue an order requiring the manufacturers and importers of such coolers to repair, replace, or recall and provide a refund for such coolers within 1 year after the enactment of the Lead Contamination Control Act of 1988. For purposes of enforcement, such order shall be treated as an order under section 15(d) of that Act (15 U.S.C. 2064(d)). *In the case of coolers separately identified under the second sentence of section 1463(a), the Commission shall immediately give notice to the manufacturers and importers of such coolers for the purposes of providing an opportunity to comment on such identification and the finding of the Administrator of the Environmental Protection Agency. The Commission shall, within 1 year after such notice to the manufacturers and importers thereof and after notice and an opportunity for a public hearing in accordance with section 2064(f) of title 15, United States Code, issue an order that such coolers are considered imminently hazardous consumer products and such order shall require such manufacturers and importers to repair, replace, or recall or provide a refund in the case of such coolers which are located in elementary, junior, or high schools, or day care facilities. In the case of all other such identified coolers, wherever located, the Commission shall, within 2 years of the notice to the manufacturers and importers as called for above, issue a final order (after such notice and opportunity for a hearing) to the manufacturers to require such manufacturers and importers to repair, replace, or recall such coolers or provide a refund or discount for such coolers, after taking into consideration, for purposes of fashioning the final order, the age, condition, and location of the coolers, lead time, and other relevant factors, including the actions of such manufacturers and importers to take voluntary actions and their financial and other resources.*

SEC. 1463. DRINKING WATER COOLERS CONTAINING LEAD.

(a) PUBLICATION OF LISTS.—The Administrator shall, after notice and opportunity for public comment, identify each brand and model of drinking water cooler which is not lead free, including each brand and model of drinking water cooler which has a lead-lined tank. For purposes of identifying the brand and model of drinking water coolers under this subsection, the Administrator shall use the best information available to the Environmental Pro-

tection Agency. *After notice and opportunity for public comment, the Administrator shall also separately identify those brands and models, or portions thereof, of drinking water coolers imported or manufactured before the enactment of the Lead Contamination Control Act of 1988 which the Administrator finds contribute 20 parts per billion or more of lead to drinking water from such coolers, based on the results of appropriate, reliable, and representative samples and tests using, to the extent appropriate, the EPA sampling protocol set forth in the January 1989 EPA publication entitled "Lead in School's Drinking Water" (taking into consideration relevant factors that may affect the testing and sampling and the test and sample results) and relying to the extent possible on tests conducted since 1988 in schools and elsewhere by school officials, by such manufacturers, and by the Administrator. Such tests and sampling shall specifically evaluate lead contamination originating from such coolers and not from sedimentation or other external sources. A list of such separately identified coolers shall be published as soon as practicable after the enactment of this sentence, but not later than 30 months after such enactment.* Within 100 days after the enactment of this section, the Administrator shall publish a list of each brand and model of drinking water cooler identified under this subsection. Such list shall separately identify each brand and model of cooler which has a lead-lined tank. The Administrator shall continue to gather information regarding lead in drinking water coolers and shall revise and republish the list from time to time as may be appropriate as new information or analysis becomes available regarding lead contamination in drinking water coolers.

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SEC. 1464. LEAD CONTAMINATION IN SCHOOL DRINKING WATER.

(a) * * *

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(d) REMEDIAL ACTION PROGRAM.—

(1) TESTING AND REMEDYING LEAD CONTAMINATION.—Within 9 months after the enactment of this section, each State shall establish a program, consistent with this section, to assist local educational agencies in testing for, and remedying, lead contamination in drinking water from coolers and from other sources of lead contamination at schools under the jurisdiction of such agencies. *Within 24 months after the enactment of the Lead Exposure Reduction Act of 1992, each local education agency shall complete testing, in accordance with the protocol under subsection (b), for lead contamination in drinking water from coolers and other drinking water outlets (including outlets used in food preparation) at schools under the jurisdiction of such agency. In the case of a day care facility (not covered by the testing under the preceding sentence) for kindergarten or younger children which is owned or operated by a person who provides day care for compensation and who is licensed or regulated for day care purposes under State law or who receives Federal funding for day care purposes, the Administrator shall publish notice within 6 months after enactment of the Lead Ex-*

posure Reduction Act of 1992 that each such person shall complete testing, in accordance with the protocol under subsection (b) modified as appropriate for such facilities, for lead contamination in drinking water from coolers and other drinking water outlets (including outlets used in food preparation) at such facilities. Such testing of such facilities shall be completed within 24 months after the publication of such notice. The Administrator shall work with the States, local education agencies, and such owners or operators in the development and publication of such notice and in the identification of such facilities and in ensuring that the testing, including analysis thereof, is as inexpensive as possible. Within 18 months after the date of the enactment of the Lead Exposure Reduction Act of 1992, the Administrator shall publish notice of when such 24-month period will expire.

(2) PUBLIC AVAILABILITY.—A copy of the results of any testing under paragraph (1) shall be available in the administrative offices of the local educational agency *or day care facility* for inspection by the public, including teachers, other school *or day care facility* personnel, and parents. The local educational agency *or day care facility* shall notify parent, teacher, and employee organizations of the availability of such testing results *and, if the testing results show any tap water lead concentrations in excess of 15 parts per billion, the local education agency or the owner or operator of the day care facility shall, within 90 days after completion of such testing, provide to all teachers and other school or day care personnel at the school or day care facility and to parents (and guardians) of children enrolled in the school or day care facility risk disclosure information meeting the requirements established by the Administrator under this paragraph. The local education agency or the owner or operator of the day care facility shall simultaneously provide a copy of such materials to the agency with primary enforcement responsibility for the public water system which serves the school or day care facility. Such agency with primary enforcement responsibility shall promptly (but not later than 3 months after receipt of such materials) transmit to the Administrator a summary of such materials. The Administrator, in consultation with the Centers for Disease Control, shall, within 18 months after the enactment of the Lead Exposure Reduction Act of 1992, promulgate a rule prescribing the contents of the risk disclosure information to be provided by local education agencies or by owners or operators of day care facilities. Such rule shall require such information to include each of the following:*

(A) A summary of the testing results.

(B) A description of the risks of lead exposure to children and teachers and other personnel at the school or day care facility concerned.

(C) A description of any abatement action undertaken, or to be undertaken, by the local education agency or by the owner or operator of the day care facility.

(e) ENFORCEMENT.—Effective 1 year after publication of notice under subsection (a)(1), any local education agency and any owner or operator of a day care facility which fails or refuses to comply with the requirements of subsections (d) (1) and (2) shall be subject to a civil penalty in the amount of $5,000 for each such violation. The Administrator may bring an action in the appropriate United States district court to assess and collect such penalty or to enjoin any such violation. The court in any action against a local education agency or against any owner or operator of a day care facility under this section or section 1449 shall have discretion to order that all civil penalties collected be used, in lieu of payment to the United States, to reimburse the local education agency or the owner or operator of the day care facility for the costs of testing and remedying lead contamination in drinking water.

[SEC. 1465. FEDERAL ASSISTANCE FOR STATE PROGRAMS REGARDING LEAD CONTAMINATION IN SCHOOL DRINKING WATER.

[(a) SCHOOL DRINKING WATER PROGRAMS.—The Administrator shall make grants to States to establish and carry out State programs under section 1464 to assist local educational agencies in testing for, and remedying, lead contamination in drinking water from drinking water coolers and from other sources of lead contamination at schools under the jurisdiction of such agencies. Such grants may be used by States to reimburse local educational agencies for expenses incurred after the enactment of this section for such testing and remedial action.

[(b) LIMITS.—Each grant under this section shall be used as by the State for testing water coolers in accordance with section 1464, for testing for lead contamination in other drinking water supplies under section 1464, or for remedial action under State programs under section 1464. Not more than 5 percent of the grant may be used for program administration.

[(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section not more than $30,000,000 for fiscal year 1989, $30,000,000 for fiscal year 1990, and $30,000,000 for fiscal year 1991.]

SEC. 1465. FEDERAL ASSISTANCE REGARDING LEAD CONTAMINATION IN SCHOOL DRINKING WATER.

(a) ASSISTANCE PROGRAM.—There is hereby established within the Environmental Protection Agency a Lead in School and Day Care Drinking Water Assistance Program, which shall be administered in accordance with this section.

(b) APPLICATIONS FOR ASSISTANCE.—Applications for financial assistance for testing for, and remedying, lead contamination in drinking water from drinking water coolers and from other sources of lead contamination at schools under the jurisdiction of local education agencies and at day care facilities shall be submitted by such agencies and by the owners and operators of day care facilities to the Governor, or the Governor's designee.

(c) GOVERNOR'S SUBMISSION AND PRIORITY LIST.—Each year, in accordance with procedures established by the Administrator, the Governor of each State shall—

(1) forward to the Administrator all applications for financial assistance received by the Governor, and

(2) submit with such applications a priority list ranking without regard to the public or private nature of the agency or owner or operator involved, the applications for financial assistance.

In preparing the priority list, the Governor shall take into account financial need, the health risks involved, and other appropriate factors.

(d) AWARD OF FINANCIAL ASSISTANCE.—The Administrator shall award financial assistance to applicants. In awarding such assistance, the Administrator shall take into account the priority lists of the Governors, financial need, the health risks involved, and other appropriate factors.

(e) AUTHORIZATION.—There are authorized to be appropriated for each of the 4 consecutive fiscal years commencing with fiscal year 1994, $30,000,000 to carry out this section.

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FEDERAL FOOD, DRUG, AND COSMETIC ACT

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CHAPTER III—PROHIBITED ACTS AND PENALTIES

PROHIBITED ACTS

SEC. 301. The following acts and the causing thereof are hereby prohibited:

(a) * * *

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(u) Effective 6 months after the promulgation of regulations under section 413(a), the introduction or delivery into interstate commerce of any ceramic ware that is not in compliance with regulations under section 413.

(v) Effective 6 months after the promulgation of regulations under section 413(b), the introduction or delivery into interstate commerce of any crystal ware that is not in compliance with regulations under section 413.

(w) Effective 6 months after promulgation of regulations under section 413(c), the introduction, or delivery for introduction, into commerce of any processed food, or other action, in violation of section 413(c).

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CHAPTER IV—FOOD

* * * * * * *

ADULTERATED FOOD

SEC. 402. A food shall be deemed to be adulterated—

(a) * * *

(f) For the third 12-month period following the date of enactment of the Lead Exposure Reduction Act of 1992 and thereafter, if any package or packaging component (including any solder or flux) used in packaging such food contains any lead that has been intentionally introduced into such package or component.

(g) If the incidental presence of lead in any package or packaging component (including any solder or flux) used in packaging such food exceeds—

(1) for the third 12-month period following the date of enactment of the Lead Exposure Reduction Act of 1992, 600 parts per million (0.06 percent);

(2) for the fourth 12-month period following the date of enactment of the Lead Exposure Reduction Act of 1992, 250 parts per million (0.025 percent); and

(3) for the fifth 12-month period following the date of enactment of the Lead Exposure Reduction Act of 1992 and thereafter, 100 parts per million (0.01 percent).

* * * * * * *

SEC. 413. LEAD REGULATIONS.

(a) CERAMIC WARES.—Not later than 18 months after the date of enactment of the Lead Exposure Reduction Act of 1992, the Secretary shall promulgate regulations to establish such standards and testing procedures with respect to lead in ceramic wares as are necessary to make food that contacts such ware not adulterated as containing an added substance under section 402(a)(1).

(b) CRYSTAL WARES.—Not later than 30 months after the date of enactment of the Lead Exposure Reduction Act of 1992, the Secretary shall promulgate regulations to establish such standards and testing procedures with respect to lead in crystal wares as are necessary to make food that contacts such ware not adulterated as containing an added substance under section 402(a)(1).

(c) FOODS.—Not later than 24 months after enactment of the Lead Exposure Reduction Act of 1992, the Secretary shall promulgate regulations to reduce lead in processed food. Such regulations shall determine the processed foods and related manufacturing practices that are significant sources of lead in the diet and require the greatest degree of reduction of lead in such foods that is achievable in practice.

ADDITIONAL VIEWS

We are writing to express our views on H.R. 5730, the Lead Exposure Reduction Act of 1992.

We voted to report H.R. 5730 favorably because we agree that the Federal Government has an important role to play in reducing exposure to harmful levels of lead, especially among children. H.R. 5730 contains many useful provisions which will serve to educate the public about the dangers of exposure to lead-based paint, develop cost-effective and reliable means to reduce lead hazards in homes, and provide training for professionals to inspect homes for lead hazards and use reliable and cost-effective techniques to reduce those hazards.

However, we have concerns with the bill in three areas. First, we are opposed to the provisions of the bill that would subject owners and operators of schools and day care facilities—including in-home day care providers—to new Federal mandates and the possibility of Federal penalties under the Toxic Substances Control Act (TOSCA). Second, we are opposed to the provisions that (1) would require EPA to compile a massive inventory of all lead-containing products sold in the U.S. and (2) would require manufacturers to register new uses or increased amounts of lead in products. Finally, we note significant improvements in the section that requires licenses for certain lead-based paint abatement contractors. Nevertheless, we remain concerned about the scope of this licensing requirement and the workability of the program, particularly if States are unable or unwilling to administer the program.

SCHOOLS AND DAY CARE PROVIDERS

Under proposed Section 422, schools with kindergartens and day care providers are required to inspect their facilities—including surrounding playground areas—for lead-based paint, lead-contaminated dust and lead-contaminated soils. If lead-based paint or lead hazards are discovered, the school or day care provider must notify parents and school or day care facility employees and provide risk disclosure information. In addition, the school or day care provider is required to notify all new students and new employees for as long as the lead-based paint or lead hazards remain in the facility. A school or day care provider can avoid notifying students, parents and school employees only by removing or abating the lead-based paint or lead hazards. The section also requires inspections prior to and following any renovation.

The requirements of Section 422 apply to a large universe of schools and day care providers. EPA estimates that there are approximately 70,000 schools with kindergartens that would be subject to Section 422.

The universe of affected day care providers is many times larger. The requirements of Section 422 apply to any day care provider that is licensed, regulated, or which "receives Federal funding" for day care purposes. According to the National Association for the Education of Young Children's 1991 report entitled "The Demand and Supply of Child Care in 1990," there were approximately 80,000 licensed early education and child care centers and 118,000 regulated family day care providers in 1990. All of these facilities—including those located in homes—would be covered by Section 422.

In addition, the National Association for the Education of Young Children's 1991 report estimates that there may be anywhere from 550,000 to 1.1 million nonregulated family day care homes in the United States. These facilities would be covered by Section 422 if they became regulated in any manner by the State in which they are located or if they receive some sort of Federal funding, such as certificates or vouchers issued under the Child Care Development Block Grant Act that Congress adopted in 1990.

Section 422 makes schools and day care providers liable under the Federal Toxic Substances Control Act. Under this Act, day care providers could be ordered by a court to conduct the required inspections and notifications and could be assessed civil penalties of up to $5,000 per violation. We believe there are several ways in which such liability could have a profoundly negative effect on the availability and affordability of day care services.

First, such liability could drive up the cost of providing day care services, including the cost of insurance, and force some providers to go out of business or "underground."

Second, such liability could prompt landlords to discriminate against tenant day care providers. Under Section 422, liability applies to both the owner and operator of the day care facility. The owner of an apartment building or a commercial building in which a day care facility is located may decide he or she does not want the risk of liability under Federal law and may prohibit or discourage day care services in these buildings.

Third, the prospect of liability under Federal law may discourage States from attempting to regulate day care providers for necessary and appropriate purposes. As described above, a day care provider becomes subject to the requirements of Section 422 once it is "regulated" by the State for day care purposes. A State that is considering regulating day care providers for a necessary and appropriate purpose, such as background checks on prospective day care operators or State-mandated health and safety standards, may decide not to impose such regulations if it recognizes that such regulation will trigger Federal liability under Section 422.

During Full Committee consideration of H.R. 5730, an amendment was offered that would have provided a more rational approach to the problem of lead contamination in schools and day care facilities. The amendment would have required EPA to publish guidelines and protocols for testing for lead in schools and day facilities and would have required EPA to make these materials widely available. The amendment also would have modified the grant program contained in Section 422 to require States and EPA to give priority to grant applications from schools and day care providers with more than 20 percent of their students from homes

below the national poverty level. The amendment would assign the States responsibility to identify this latter category of schools and day care providers and facilities applications from this group.

The major difference between the provisions of Section 422 and the amendment offered in Full Committee is that the amendment would not have made the owners and operators of schools and day care facilities liable under Federal law. We believe that the bill takes too narrow a view of the problem of lead contamination in homes and makes artificial distinctions between homes that may be "regulated" for day care purposes and those that are not. School officials, day care providers, and parents all share the same concern for minimizing lead exposure for children. We believe the best answer to addressing the widespread problem of lead contamination in older homes is to disseminate information as widely as possible. The approach embodied in the amendment offered in Full Committee is preferable because it provides information to a much broader population of concerned individuals and because it avoids Federal penalties which would be a significant disincentive to affordable and widely available day care.

In 1990, Congress adopted the Child Care Development Block Grant Act for the purpose of expanding the availability of affordable day care choices. The Department of Health and Human Services has just issued final regulations under the Child Care Development Block Grant which will allow parents or guardians of qualified children to receive vouchers or certificates for use at the licensed or registered day care provider of their choice. It is our understanding that these regulations provide for assuring that day care providers participating in the program meet necessary health and safety standards established by the State. We think it is important that the inspection and notification requirements of Section 422 do not disrupt these provisions and create significant disincentives to the provision of affordable day care services.

We understand that the provisions of Section 422 are the result of negotiations among the National Parent-Teacher Association, the National Education Association, and the National School Boards Association. We are concerned that no representatives of day care providers were involved in these negotiations. We hope that representatives of day care providers will be a part of future discussions of the effects of this section of H.R. 5730.

INVENTORY AND REGISTRATION OF LEAD-CONTAINING PRODUCTS

We are also concerned with Section 414 which requires EPA to compile an "inventory" of all lead-containing products sold in the United States and requires manufacturers, importers and processors to notify EPA of any "new uses" of lead.

Lead has many uses in modern economy. Lead is in brass, bronze, and other metal alloys. Zinc is mined with lead; thus, all zinc-galvanized materials, zinc coatings and zinc alloys contain small amounts of lead. Lead is used to quench high-tensile steel to give it extra strength and to give metal alloys additional flexibility. Lead provides stability from ultraviolet light in plastics and is necessary for thermal and radiation shielding. Lead provides for corrosion protection in chemical reaction vessels and processing equip-

ment. Lead solder is also present in virtually every electronics component.

Given the widespread uses of lead, the compilation of an inventory of lead-containing products is an enormous task. Because very few of these uses of lead present any real risk of exposure to lead, the benefits of this effort will be minuscule.

Lead is particularly critical to a number of developing technologies including (1) electroceramic devices essential to ultrasound technology, sonar and sensors; (2) radiation shielding for industrial, military, medical, and power generation applications; (3) high performance glass for lasers, telescopes, fiberoptics, low does x-ray equipment, and night vision military uses; (4) aerospace engineering of jet turbine blades; (5) infrared detectors used in military tracking; (6) innovative photonic technologies; (7) new batteries; and (8) new superconductor technologies. Indeed, lead is in twenty-two of the developing technologies identified in the 1991 report of the White House Critical Technologies Panel as essential to national defense, competitiveness, public health and energy independence.

EPA review of these uses and the attendant paperwork will do nothing to foster the development of these new technologies. Instead, the "new use" provision will create new barriers to the development of technology in the U.S. This complex section will require that each product designer consult a lawyer and fill out new forms for no reasonable purpose. America will continue to lose competitive advantage as otherwise confidential information goes to competitors and more and more of income goes to filling out forms instead of developing product.

Section 414 also is objectionable because the product registration provision has many expansive and ambiguous terms. Oil, coal, and many minerals contain small quantities of lead and are "sold in commerce." Accordingly, these are products that EPA would be required to list on the inventory of lead-containing products and which EPA could decide "may reasonably be anticipated to pose an unreasonable risk of injury to human health or the environment." If additional regulation of these products is necessary, such regulation is best conducted under other laws.

Products containing lead have been regulated by the Consumer Product Safety Commission through the Federal Hazardous Substances Act. This law has been effective in protecting consumers from exposure to lead. The new language places substantial and duplicative regulatory responsibility over products in the Environmental Protection Agency which has minimal expertise over issues of product manufacture, processing, use, or distribution. Moreover, it is thoroughly unclear how EPA can enforce these requirements on imported products, resulting in competitive disadvantage for American manufacturing, and problems of enforcement for those who subsequently process a product or part manufactured in a foreign country. In addition, because the "new use" notification requirements apply to any person who manufacturers or processes a product, there will either be significant duplication of notifications or confusion between the complex relationships of those who manufacture and those who may subsequently process a product. Noncompliance will mean the imposition of penalties under the Toxic

Substances Control Act which can be as high as $25,000 per violation.

Military applications in ships, submarines, planes, and weaponry are also covered by the inventory and "new use" provision. Like all environmental laws, TOSCA has a waiver provision for national security purposes. However, this provision has seldom been used and requires both specific determinations by the President as well as justifications which will distinguish security applications from other new lead technologies. It is unclear whether each new use would need an independent finding.

The inventory and "new use" provision appears to have no useful impact on the issue of lead exposure to children. Given the fact that EPA already has the authority to survey uses of lead, its new authorities would be better focused on efforts to reduce significant sources of lead exposure, especially lead-based paint.

LICENSING AND TRAINING FOR LEAD-BASED PAINT ABATEMENT CONTRACTORS

Finally, we continue to have some concerns with the provisions of Section 421 which require licensing for certain lead-based paint abatement contractors and EPA-certified training for contractor employees.

In the course of negotiations on this bill, many significant improvements were adopted. However, we remain concerned that the licensing scheme could be expanded to all professionals that disturb paint in housing, including electricians, plumbers, heating and cooling installers, insulators, carpenters, and painters. According to recent data, there are more than 2.4 million tradesmen working in the general remodeling industry. In its letter opposing these provisions, EPA wrote that "an attempt to accredit all manner of craftsmen and others involved in building renovation, remodeling or demolition may be neither feasible, given the size and diversity of this work force, nor necessary to protect health."

Typically, and more appropriately, professional licensing and regulation of construction craftsmen have been conducted at the State and local level. The Federal licensing scheme in this bill sets out Federal mandates over hundreds of thousands of workers and provides EPA licensing authority over millions of others in the construction trades. This Federal approach is unprecedented. Our preference is an approach where the Federal Government provides protocols and guidelines but leaves to the States or local government actual licensing and regulation.

SUMMARY OF CONCERNS

As we indicated earlier, we concur that the Federal Government has an important role to play in reducing exposure to harmful levels of lead, especially among children. However, we also believe that role should be met in a reasonable and balanced manner, and we hope that the concerns outlined in these views can be addressed as this bill moves forward.

NORMAN F. LENT.
DON RITTER.
TOM BLILEY.
JACK FIELDS.
MICHAEL G. OXLEY.
MIKE BILIRAKIS.
JOE BARTON.
SONNY CALLAHAN.
ALEX MCMILLAN.
J. DENNIS HASTERT.

ADDITIONAL VIEWS OF HON. ALEX McMILLAN

I have signed the "Additional Views" along with a number of Republican Members who supported reporting H.R. 5730 out of Full Committee but still have concerns about several important provisions. I would like to emphasize a few additional points.

The problem of lead contamination for children under age six is widespread, potentially covering over 3 million residences and hundreds of thousands of day care facilities. The problem is more acute at the younger ages because of the hand-to-mouth activity of these children. It will take a great amount of national resources to address this problem. However, several provisions in this bill do not focus on the risks to children under age six.

The inventory and "new use" registration system in the proposed new Section 414 will cover all manner of industrial and commercial uses of lead in equipment, electronics, military applications, industrial applications, and hundreds of thousands of products which pose no credible risk of lead ingestion by young children. It is an unnecessary and burdensome requirement for manufacturing America that adds to the ever growing red tape that stifles innovation and growth. Equally important, the task diverts national resources away from the central problem—lead poisoning of children in homes.

The licensing provisions in the proposed new Section 421 also fail to focus on the problem. This provision requires Federal licensing of bridge workers and demolition workers. These issues are best addressed by the Occupational Health and Safety Administration (OSHA) under existing programs. Again, the failure to focus Federal resources and the needless duplication of OSHA regulation will make it more difficult for EPA to facilitate the development of an abatement infrastructure that would help the priority homes with children under the age of six. I also note that the licensing section not only covers residences, schools, and day care facilities but also commercial and industrial buildings. Again, work on these latter buildings does not involve significant risks to children under the age of six.

Finally, I am disturbed that there are no credible cost estimates concerning the legislation. This makes it extremely difficult to evaluate whether the bill is practical and provides no credible guidance to the Appropriations Committee. We cannot continue to avoid the hard choices concerning the budget in the authorizing committees. Unfortunately, this bill continues the practice of avoiding choices and, thus, contributes to a budget that is out of control.

ALEX MCMILLAN.

ADDITIONAL VIEWS OF HON. J. DENNIS HASTERT, HON. MICHAEL G. OXLEY, AND HON. JIM COOPER

While we support the overall objectives of H.R. 5730, the Lead Exposure Reduction Act of 1992, we have concerns with the provisions of the bill that pertain to the testing and recall of certain drinking water coolers.

H.R. 5730 would amend the Safe Drinking Water Act to require EPA, within 30 months after the date of enactment, to identify existing brands and models of drinking water coolers manufactured before 1988 that contribute 20 parts per billion (ppb) or more of lead to drinking water. EPA must forward this list of brands and models of drinking water coolers to the Consumer Product Safety Commission (CPSC). Within one year after receiving the list from EPA, and after providing notice and an opportunity for a public hearing in accordance with Section 15(f) of the Consumer Product Safety Act, CPSC must issue an order declaring such coolers to be "imminently hazardous consumer products" and requiring manufacturers or importers of such coolers located in schools and day care facilities to repair, replace or recall the coolers and provide a refund to the purchaser. Within two years of receiving the list from EPA, CPSC must issue an order requiring the manufacturers or importers of all other coolers (those located in places other than schools and day care facilities) to repair, replace or recall those coolers and provide a refund to the purchaser.

We agree that drinking water coolers that contribute significant amounts of lead to drinking water should be repaired or taken out of service. However, we feel strongly that EPA's list and CPSC's order should affect only those coolers that themselves contribute 20 ppb or more of lead to drinking water, and not coolers in which the lead comes from other sources.

H.R. 5730 requires EPA to "specifically evaluate lead contamination originating from such coolers and not from sedimentation or other external sources." EPA's job is made difficult by the fact that lead in drinking water can come from many sources. Lead can come from the components in the cooler itself, from lead solder elsewhere in the building plumbing, from lead service lines in the drinking water supply system, and from lead in the original source water.

Recent research into the source of lead in drinking water on Capitol Hill suggests that organic matter that settles out of drinking water into water supply pipes or into the reservoirs of drinking water coolers may also be the source of lead in drinking water. Such organic sedimentation apparently absorbs lead in the water; when the sedimentation is disturbed (by repair work on the water supply pipes, by unusual use patterns, or possibly by the starting or stopping of a drinking water cooler compressor), lead may be released into the drinking water.

We do not believe that it is fair to require drinking water cooler manufacturers or importers to repair, replace, or recall and provide a refund for drinking water coolers that are not themselves the source of 20 ppb or more of lead in drinking water. Therefore, we believe it is critical for EPA devise testing procedures that will allow it to determine whether lead in drinking water is from the drinking water cooler itself or from other sources.

We also think it is important for EPA to consider the fact that the amount of lead leaching from lead-containing components in drinking water coolers depends on many factors, including the quality of the water in the area the cooler is located and the manner in which that water is treated by the public water supplier. The corrosivity of drinking water can vary widely. The more corrosive the water, the more likely that lead will leach from lead-containing components in the drinking water system. Under EPA's new lead in drinking water regulation, many water suppliers will be treating drinking water supplies to control the quality of the water and, ultimately, the amount of lead that leaches into the water. Thus, two identical drinking water coolers with lead-containing components located in different water supply systems may leach significantly different amounts of lead in drinking water. We do not believe that a manufacturer should be required to repair, replace, or recall and provide a refund for a cooler that is not contributing 20 ppb or more of lead to drinking water simply because another version of the same model is found to be contributing 20 ppb or more of lead to drinking water. We expect EPA to take these factors into account as it develops the "appropriate, reliable, and representative samples and tests" that are required by H.R. 5730.

These considerations compel us to add our views to this Report. We believe the objectives of this bill will be advanced if these concerns are addressed.

J. DENNIS HASTERT.
MICHAEL G. OXLEY.
JIM COOPER.

DISSENTING VIEWS

We are writing to express our opposition to H.R. 5730, the Lead Exposure Reduction Act of 1992.

We share the concerns over ingestion of lead dust or paint by young children and the objectives of this legislation in that regard. However, we believe the flaws in this legislation are too serious to merit our support.

First, we oppose mandates on schools and day care providers with legal penalties under the Toxic Substances Control Act (TOSCA). Second, we oppose Federal registration requirements for those who manufacture, process, and distribute products which contain minute amounts of lead, including brass, bronze, plastics, electronics, industrial ceramics and other important components in American manufacturing. Finally, we oppose a licensing and registration scheme for construction contractors that will displace the traditional—and more effective—regulation of construction craftsmen at the State and local level.

FEDERAL MANDATES AND PENALTIES FOR SCHOOLS AND DAY CARE PROVIDERS

We are concerned that the Committee's answer to the problem of possible lead contamination in schools and day care facilities is Federal regulation of schools and day care providers. These regulations would subject owners and operators of schools and day care facilities to Federal penalties up to $5,000 per violation. We think more Federal regulation will not help to protect children from lead contamination. Instead, it will have intended consequences that will ultimately harm the welfare of children by driving up the cost of day care services and making reliable day care difficult to find.

As discussed in the "Additional Views" signed by a number of Republican Members, the legal mandates produce counterproductive results. First, because the mandates apply to those who receive any Federal funding, there will be new disincentives for those otherwise eligible to receive the recent Child Care and Development Block Grant of 1990. Second, there will also be new disincentives for owners of apartment buildings and low-cost housing to allow day care facilities on their premises. As "owners" of day care facilities, building owners will be subject to penalties for actions that will be difficult for them to track. Finally, day care providers may avoid registration with the State particularly if they are not planning a long-term operation. This may discourage necessary regulation such as background checks for such day care providers. These are important issues which the bill simply does not address.

In a letter dated July 31, 1992, the Environmental Protection Agency stated that:

> EPA has serious concerns about the impact of the mandatory lead inspection program on the general availability and quality of day care services. While well intended, the amendment could significantly increase the cost and administrative hurdles associated with smaller community-based day care services.

This statement does not even reflect the large impact on in-home day care providers who are clearly subject to mandates under this bill.

In addition, cities with extensive public housing in which day care facilities are located will carry new Federal liabilities. This is one reason why the National League of Cities, the U.S. Conference of Mayors, the Association of Local Housing Finance Agencies, the National Community Development Association, and the National Association of Counties wrote to oppose H.R. 5730. Cities and other public housing operators need the flexibility to address and balance the many concerns over the safety and availability of low-cost housing and day care.

Furthermore, we have acted here without the benefit of knowing how much the regulations will cost. Specifically, there are no reliable estimates of the costs that Section 422 will impose on covered schools and day care providers. In its 1990 report to Congress, the Department of Housing and Urban Development (HUD) estimated that the cost of lead inspections could range between $375 and $400. The HUD estimates did not take into account the detailed requirements for lead inspections set out in Section 422. For example, Section 422 requires, in addition to an overall inspection, an inspection after each renovation activity.

Moreover, the HUD estimates do not include the costs for testing of soils in adjacent play areas as required by Section 422. The HUD report states that the chance of having levels of lead in exterior soils which exceeds EPA guidelines is at least 4 to 5 times greater if a house has exterior lead-based paint, than if it does not. The bill requires soil testing for all schools and day care centers regardless of whether there is lead-based paint on the exterior of the building or any other nearby source of lead contamination. EPA is still awaiting results of its "Three City Study" which will help address whether abatement of soils has a significant impact on lowering blood lead levels in children. The mandate may be particularly useless for schools attended by children of kindergarten age or above. The extent of hand-to-mouth activities which may result in any ingestion of soils is very low in this age group. The Federal Government should provide information concerning these factors, not mandate soil testing in every instance.

Another factor to consider is the cost of leaded-based paint abatements in schools and day care facilities. HUD's 1990 report estimates that the average cost of abatement per public housing unit based on the existing HUD guidelines would be between $5,500 and $7,700. Priority units with non-intact lead paint or excessive levels of dust would range between $8,900–$11,900. None of these figures reflect the cost of abating lead in exterior soils.

For poor schools and low-cost day care providers, the ability to comply with Federal mandates and avoid penalties under TOSCA

of up to $5,000 per violation will depend on at least two occurrences that this Committee cannot guarantee or even reasonably predict. First, the grants authorized in this bill may not be appropriated. Even if they are, there are no estimates that the grants will cover the costs of the mandates or increases in liability insurance.

Second, there is no assurance that qualified inspectors will be available in all locations within the next four years. Indeed, the bill requires hundreds of thousands of schools and day care providers to inspect within four years of enactment. Given that there is at present only a small fraction of the necessary inspectors, both the cost and availability of this service could vary greatly depending on location. Small and rural communities across America may need to import inspectors and licensed abatement workers from other towns at great expense to these communities.

We are also concerned that Section 422 fails to heed the lessons of EPA's asbestos program. In that program, many unnecessary abatements were conduced, in some instances creating greater risks in the process. Although Section 422 does not explicitly mandate abatements, it will likely lead to many unnecessary abatements because parents and school employees will demand that lead-based paint be removed from a facility, regardless of whether or not the lead-based paint is presenting a risk. We think it is imperative that schools and day care providers present parents and other school officials with accurate information on the risks from lead-based paint. The formal notifications required in this bill may mislead parents without providing an overall assessment of lead risks throughout the homes as well as schools. We should provide complete information about the problem before requiring a series of individual notifications.

School boards, parents, private kindergartens, day care providers, and parents all share the concerns over the health of children. The Federal government can help by providing protocols and guidance for inspection and abatement activities and by trying to develop methods which reduce the cost of testing and abatement. There is no reason, however, for mandates and Federal causes of action under TOSCA. A more productive approach would be to make certain inspection and notification requirements conditions of receiving funding, not new mandates of Federal law subject to Federal penalties law.

We note that representatives of day care providers were not involved in the negotiations that led to the inspection and notification requirements contained in H.R. 5730. We hope that, as this bill moves forward, these organizations will have an opportunity to express their concerns.

REGISTRATION SCHEME FOR PRODUCTS CONTAINING ANY AMOUNT OF LEAD

The proposed new Section 414 would require EPA to compile an "inventory" of all lead-containing products in the United States. Section 414 also would require manufacturers, importers, and processors to notify EPA of any "new uses" of lead. We have a number of concerns with this section.

First, we believe that requiring EPA to compile an inventory of all lead-containing products is a huge undertaking without commensurate environmental benefits. Lead is present in brass, bronze, and a number of other metal alloys that do not present a significant risk of exposure to lead. We are concerned that if EPA is required to compile such a list, its scarce resources will be diverted from more important lead exposure reduction efforts. In its July 31, 1992, letter opposing this section, EPA wrote:

> [A]n inordinate amount of resources would be lost from current federal actions addressing the largest exposure sources (lead-based paint, dust, soil and drinking water) to accommodate the requirements of the new legislation. The draft bill, for example, could require nearly twenty new rule making efforts to control various lead products. We strongly feel that EPA has sufficient authority to deal with current and future uses of lead which may present an unreasonable risk.

We think EPA should use its resources to focus on the most significant problem, that is, helping States and localities limit the risk of exposure to children from lead-based paint.

Second, we are concerned that Section 414 will inhibit the development of many important products. Lead is a small but important component in many emerging technologies. Indeed, lead is in twenty-two of the developing technologies identified in the 1991 report of the White House Critical Technologies Panel as essential to national defense, competitiveness, public health and energy independence. The "new use" registration mandate in Section 414 could delay the development of important new products by creating liability under Federal law for failing to comply with the detailed reporting requirements. The registration requirement also could make product development more expensive (and therefore less competitive) by requiring innovators to consult with lawyers at virtually every turn.

Third, the registration requirement will have a disproportionate effect on U.S. manufacturers because the provision is virtually unenforceable against importers. Section 414 requires manufacturers, importers, and processors to notify EPA when a product contains a "new use" of lead. However, there is no plausible enforcement mechanism to use against importers. U.S. manufacturers face additional uncertainty if they use parts manufactured outside the U.S.

Fourth, the provision will cause needless duplication with the efforts of the Consumer Product Safety Commission. The Commission already regulates hazards in products, including hazards posed by exposure from lead.

Fifth, because of the vague definition of the term "products", Section 414 could unnecessarily require analysis of oil, coal or mineral processing in an EPA office with little expertise in this area.

We do not believe there is sufficient evidence to justify this massive registration scheme which simply places another administrative burden and an expansive new Federal legal framework on hundreds of thousands of manufacturing, processing, and distribution decisions in the American economy.

FEDERAL LICENSING FOR THOSE WHO DISTURB PAINT DURING PROFESSIONAL ACTIVITIES

We also strongly opposed the Federal licensing scheme for lead-based paint abatement contractors, especially for renovators and remodelers. We are concerned that this provision preempts a traditional area of State and local regulation and will be virtually unenforceable if EPA is required to administer the program in a given State.

Under Section 421, EPA is required within 18 months to issue license requirements for four categories of lead-based paint abatement contractors: "deleaders," and contractors engaged in lead inspection, demolition, and removing lead paint from bridges. Within four years after enactment, EPA is required to issue license requirements for a fifth category of lead-based paint abatement contractors: renovators and remodelers. Moreover, EPA would have authority to require licensing of any contractor whose activities disturb paint and cause more than a "de minimis risk."

We are concerned that the license requirements for renovators and remodelers could result in EPA regulating hundreds of thousands of contruction craftsmen who engage in renovation or remodeling activities. Regrettably, the bill does not contain a definition of the term "renovation and remodeling." Thus, EPA could interpret these terms to require licensing for any craftsman who conducts even the smallest home improvement project or, in the words of the bill, any contractor whose activities disturb enough lead-based paint to create more than a "de minimis" risk of exposure to lead-based paint or lead hazards. Overall, EPA would have licensing authority over millions in the building and construction trades.

Under the bill, any contractor who is required to be licensed must ensure that his or her employees who are engaged in the licensed activity have been trained in an EPA-accredited training program. Under the EPA asbestos program, training programs can cost several hundred dollars to over a thousand dollars. Although it is unclear what the cost of lead abatement training will be, these costs will no doubt be passed on in the form of higher labor costs. This requirement will have two negative effects. First, it will impose a significant barrier to employment for many construction workers, especially seasonal, part-time and entry level workers among the working poor.

Second, this requirement will raise the cost of labor and, as a result, the cost of construction work and affordable housing.

States and localities have successfully regulated all manner of safety concerns such as electrical work, proper plumbing and sanitation, structural soundness, and all other manner of building codes. This bill proposes a major Federal licensing program and Federal penalties of up to $25,000 per violation on what has typically been the prerogative of State and local law.

Moreover, contractors for bridge work and the construction trades who typically looked to standards under the Occupational Health and Safety Administration (OSHA) would now be subject to duplicative regulations from EPA's Office of Pesticides and Toxic Substances. We fail to see what expertise EPA carries in either the area of standards for workers or the availability of low cost hous-

ing. Moreover, OSHA has vigorously enforced its standards. In FY '91, OSHA issued 1,799 citations to employers concerning violations of the lead standards.

Furthermore, while the States are given an opportunity to administer the licensing program in the bill, States with diminishing financial resources and little incentive may simply not choose to administer the licensing scheme. Can you imagine the Environmental Protection Agency issuing licenses for tens of thousands of contractors in the construction trades in Texas, California, Florida, New York, or any other State for that matter? The bill sets up a scheme that is destined for failure and will result in massive noncompliance. EPA has ten regional offices. The Federal government cannot administer directly, or by default, a licensing program for every part of a State.

If this scheme fails to provide reasonable and affordable training and licensing, then large segments of the working poor will simply be out of work. EPA has provided for a model accreditation program for State and local governments. Our preference is for EPA to issue the model accreditation program with no new Federal causes of action.

SUMMARY OF OPPOSITION

We agree that lead contamination is a serious problem, especially among children and other sensitive populations. We also agree that the Federal Government has an important role to play in helping States and localities deal with this largely preventable problem. However, we cannot support legislation that supplants the traditional role of State and local governments in regulating real property and that subjects in-home family day care providers and thousands of manufacturers of products containing lead to new Federal regulations and penalties. We hope that these problems can be resolved as this legislation moves forward.

CARLOS J. MOORHEAD.
BILL DANNEMEYER.
DAN SCHAEFER.
CLYDE C. HOLLOWAY.

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102D CONGRESS
2d Session
HOUSE OF REPRESENTATIVES
REPT. 102-852
Part 2

LEAD EXPOSURE REDUCTION ACT OF 1992

SEPTEMBER 22, 1992.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. FORD of Michigan, from the Committee on Education and Labor, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany H.R. 5730]

[Including cost estimate of the Congressional Budget Office]

The Committee on Education and Labor, to whom was referred the bill (H.R. 5730) to amend the Toxic Substances Control Act to reduce the levels of lead in the environment, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments (stated in terms of the bill as reported by the Committee on Energy and Commerce) are as follows:

AMENDMENTS RELATING TO LEAD-BASED PAINT ABATEMENT TRAINING AND CERTIFICATION

(References are to section 421 of the Toxic Substances Control Act, as added by section 2 of the amendment)

(1) In section 421, strike subsection (a)(6) and renumber the succeeding paragraphs accordingly.

(2) In section 421, strike subsection (b) and redesignate the succeeding subsections accordingly.

(3) In section 421(b)(1) (as redesignated by amendment (2)) strike "15" and insert "the Director of the National Institute of Occupational Safety and Health and" and strike "2 representatives of

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lead-based paint abatement contractors" and insert "3 representatives of lead-based paint abatement contractors".

AMENDMENTS RELATING TO LEAD CONTAMINATION IN SCHOOLS AND DAY CARE FACILITIES

(References are to section 422 of the Toxic Substances Control Act, as added by section 2 of the amendment)

(1) In the section heading for section 422, strike "**CENTERS**" and insert "**FACILITIES**".

(2) Amend section 422 as follows:

(A) Amend subsection (a) as follows:

(i) Insert "AND COVERED DAY CARE FACILITIES" after "SCHOOLS".

(ii) In paragraph (1)—

(I) strike "Not" and insert "Except as provided in subsection (c)(4), not";

(II) strike "the owner or operator of each covered school" and insert "each State";

(III) strike "such promulgation" and insert "the date on which regulations are promulgated under section 421 and section 423 or the date on which amounts are allotted under subsection (c)(2), whichever is later";

(IV) in subparagraph (A), strike "the covered school" and insert "each covered school and covered day care facility";

(V) in subparagraph (B), strike "the covered school" and insert "each covered school and covered day care facility", and insert "or day care facility" after "such school"; and

(VI) in the matter following subparagraph (B), strike "inspections." and insert the following: "inspections and recommendations as to whether any lead hazard found should be alleviated through abatement, encapsulation, or in place management.".

(iii) Redesignate paragraphs (2) and (3) as paragraphs (3) and (4), respectively.

(iv) Insert after paragraph (1) the following new paragraph:

"(2) PRIORITY FOR INSPECTION.—In conducting the inspection of covered schools and covered day care facilities required by paragraph (1), the State shall rank areas in the State in order of the severity of their suspected lead hazard, in accordance with procedures established by the Administrator. Such procedures, established by the Administrator, shall use factors such as—

"(A) medical evidence regarding the extent of lead poisoning (as determined through lead screening) in children in the area,

"(B) the age of children in the area,

"(C) the age and condition of school buildings in the area, and

"(D) the age and condition of the housing in the area,

in order to determine which areas in the State are most likely to have a lead hazard. The State shall place a priority on inspecting covered schools and covered day care facilities located in areas with the highest suspected lead hazard."

(v) In paragraph (3) (as redesignated by clause (iii) of this amendment)—

(I) in subparagraph (A), insert "The State shall provide to the owner or operator of each covered school and covered day care facility a copy of the report required under paragraph (1) with respect to the inspection of such school or day care facility." after (A), insert "that poses an imminent lead hazard" after "of lead-based paint", and insert "or covered day care facility" after "covered school" each place it appears;

(II) in subparagraph (B)(ii), insert "or day care facility" after "school", and strike "or" where it appears after "interior"; and

(III) in subparagraph (C), insert "or covered day care facility" after "covered school" each place it appears.

(vi) Amend paragraph (4) (as redesignated by clause (iii) of this amendment) as follows:

(I) Strike "ABATEMENT" and insert "ABATEMENT, ENCAPSULATION, OR IN PLACE MANAGEMENT".

(II) Insert "or covered day care facility" after "covered school" in the first sentence.

(III) Strike "paragraph (2)" the first place it appears and insert "paragraph (3)".

(IV) Strike "required" the second place it appears and all that follows through "such reports." and insert the following: "required—

"(A) the owner or operator performs abatement, encapsulation, or in place management,

"(B) the State conducts a reinspection, and

"(C) the owner or operator obtains a report from the State showing that the lead-based paint that poses an imminent lead hazard, and any interior dust containing a dangerous level of lead, as identified under section 423, has been removed, encapsulated, or managed in place, and any exterior soil containing a dangerous level of lead, as identified under section 423, has been abated to a condition such that the soil is no longer dangerous.

An owner or operator that elects to perform abatement, encapsulation, or in place management under this subsection in lieu of notification under paragraph (3) shall make a copy of the inspection reports available in its administrative offices and shall notify parent, teacher, and employee organizations of the availability of such reports.".

(B) Strike subsection (b) and redesignate subsections (c) through (h) as subsections (b) through (g), respectively.

(C) Amend subsection (b) (as redesignated by subparagraph (B) of this amendment) as follows:

(i) Strike "or (b)".

(ii) Strike "center" and insert "facility" each place it appears.

(D) Amend subsection (c) (as redesignated by subparagraph (B) of this amendment) to read as follows:

"(c) FEDERAL ASSISTANCE.—

"(1) GRANTS TO STATES.—The Administrator shall make grants to States for purposes of testing for, and abating, lead-based paint that poses an imminent health hazard, and interior dust or exterior soil containing a dangerous level of lead, as identified under section 423, in covered schools and covered day care facilities. The grants may only be used by the States for expenses incurred after the enactment of this title for lead hazard inspection and abatement in covered schools and covered day care facilities. The State shall, based on the inspections conducted as required by subsection (a)(1), place a priority on carrying out abatement activities in covered schools and covered day care facilities that the State determines are most in need.

"(2) ALLOCATION TO STATES.—In each fiscal year, from amounts appropriated pursuant to the authorization contained in paragraph (1), the Administrator shall allot to each State for purposes of making grants under this subsection an amount which bears the same ratio to such appropriated amounts as the number of children age 0 to 6 in the State bears to the number of such children in all States. If the Administrator determines that the amount of any State's allotment under this paragraph for any fiscal year will not be required for carrying out the program for which such amount has been allotted, the Administrator shall make such amount available for reallotment.

"(3) USE OF FUNDS.—In each fiscal year, from amounts allotted to a State under paragraph (2), such State shall—

"(A) reserve not more than 5 percent for administrative costs; and

"(B) of amounts remaining after making the reservation described in subparagraph (A)—

"(i) use not less than 50 percent of such remaining amounts for purposes of conducting inspections as described in subsection (a)(1) and reinspections as described in subsection (a)(4); and

"(ii) use not more than 50 percent of such remaining amounts for purposes of abating

lead hazards at covered schools and covered day care centers.

"(4) SCOPE OF MANDATE.—Except as provided in paragraph (5), the Administrator shall require States to conduct inspections under subsection (a)(1) only to the extent that assistance under this section is available to defray the costs of such inspections.

"(5) MAINTENANCE OF EFFORT.—No payments shall be made under this section for any fiscal year to a State unless the Administrator determines that the aggregate expenditures of such State for comparable lead inspection and abatement programs for such year equalled or exceeded such expenditures for the most recent fiscal year for which data is available.".

(E) In subsections (d) and (f) (as redesignated by subparagraph (B) of this amendment) strike "center" and insert "facility" each place it appears.

(F) After subsection (g) (as redesignated by subparagraph (B) of this amendment), insert the following new subsections:

"(h) ANNUAL REPORTS TO ADMINISTRATOR.—Each State shall submit to the Administrator annual reports. Each such report shall include—

"(1) a description of how the State used assistance provided under this section;

"(2) the number of covered schools and covered day care facilities affected;

"(3) an estimate of the number of children served by such covered schools and covered day care facilities;

"(4) an estimate of future efforts required; and

"(5) any other information the Administrator may require.

"(i) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for purposes of carrying out this section $30,000,000 for the fiscal year 1994, $240,000,000 for the fiscal year 1995, and such sums as may be necessary for each of the fiscal years 1996 and 1997.".

AMENDMENTS RELATING TO LEAD ABATEMENT AND MEASUREMENT

(References are to section 425 of the Toxic Substances Control Act, as added by section 2 of the amendment)

(1) In section 425(c)(2)—

(A) strike "National Institute of Environmental Health Sciences" and insert "National Institute of Occupational Safety and Health"; and

(B) in subparagraph (C), after "Evaluation" insert ", in consultation with the National Institute of Environmental Health Sciences,".

AMENDMENT RELATING TO WORKER PROTECTION AND TRAINING

(1) After section 2 insert the following new sections and renumber the succeeding sections accordingly:

SEC. 3. WORKER PROTECTION.

Not later than 180 days after the enactment of this Act, the Secretary of Labor shall issue an interim final regulation regulating occupational exposure to lead in the construction industry. Such interim final regulation shall provide employment and places of employment to employees which are as safe and healthful as those which would prevail under the Department of Housing and Urban Development guidelines published at Federal Register 55, page 38973 (September 28, 1990) (Revised Chapter 8). Such interim final regulations shall take effect upon issuance and shall apply until a final standard becomes effective under section 6 of the Occupational Safety and Health Act of 1970.

SEC. 4. COORDINATION BETWEEN ENVIRONMENTAL PROTECTION AGENCY AND DEPARTMENT OF LABOR.

The Administrator of the Environmental Protection Agency and the Secretary of Labor, in promulgating regulations relating to lead-based paint abatement activities (as defined in title IV of the Toxic Substances Control Act) shall coordinate with each other and shall avoid duplication of requirements imposed under title IV of the Toxic Substances Control Act and under the Occupational Safety and Health Act of 1970.

SEC. 5. NIOSH RESPONSIBILITIES.

Section 22 of the Occupational Safety and Health Act of 1970 is amended by adding the following new subsection at the end thereof:

"(g) LEAD-BASED PAINT ABATEMENT ACTIVITIES.—

"(1) TRAINING GRANT PROGRAM.—(A) The Institute may make grants for the training and education of workers and supervisors who are or may be directly engaged in lead-based paint abatement activities.

"(B) Grants referred to in subparagraph (A) shall be awarded to nonprofit organizations—

"(i) which are engaged in the training and education of workers and supervisors who are or who may be directly engaged in lead-based paint abatement activities (as defined in title IV of the Toxic Substances Control Act),

"(ii) which have demonstrated experience in implementing and operating health and safety lead-based paint abatement training and education programs, and

"(iii) with a demonstrated ability to reach, and involve in lead-based paint training programs, target populations of individuals who are or will be engaged in lead-based paint abatement activities.

Grants under this subsection shall be awarded only to those organizations that fund at least 30 percent of their lead-based paint abatement training programs from non-Federal sources, excluding in-kind contributions. Grants may also be made to municipalities to carry out such training and education for their employees.

"(C) From the amounts authorized to be appropriated to carry out title IV of the Toxic Substances Control Act, at a minimum, $5,000,000 are authorized to be appropriated to the Institute for each of the fiscal years 1994 through 1997 to make grants under this paragraph.

"(2) CONSULTATION.—The Administrator of the Environmental Protection Agency shall consult with the Director of the Institute prior to proposing, establishing, or revising any accreditation requirements under section 421 of the Toxic Substances Control Act.

"(3) EVALUATION OF PROGRAMS.—The Institute shall conduct periodic and comprehensive assessments of the efficacy of the worker and supervisor training programs developed and offered by Institute training grantees. The Director shall prepare reports on the results of these assessments addressed to the Administrator of the Environmental Protection Agency to include recommendations as may be appropriate for the revision of these programs. From the amounts authorized to implement title IV of the Toxic Substances Control Act, the sum of $500,000 is authorized to be appropriated to the the Institute for each of the fiscal years 1994 through 1997 to carry out this paragraph.".

AMENDMENTS RELATING TO SAFE DRINKING WATER

(References are to section 7 of the amendment (as redesignated by the preceding amendment))

(1) In the amendatory matter contained in section 7(a)(1) (as redesignated)—

(A) in the first sentence—

(i) strike "the enactment" and all that follows through "agency" the first place it appears and insert "amounts are made available pursuant to the authorization of appropriations contained in section 1465(a), each State"; and

(ii) strike "under the jurisdiction of such agency" and insert "within the State";

(B) in the second sentence, strike "enactment of the Lead Exposure Reduction Act of 1992" and insert "amounts are appropriated pursuant to the authorization contained in section 1465(a)";

(C) in the third sentence, strike "the publication of such notice" and insert "amounts are appropriated pursuant to the authorization contained in section 1465(a)";

(D) in the fourth sentence, strike ", local education agencies, and such owners or operators";

(E) insert after the fourth sentence the following new sentence: "Within 90 days of completing the testing, the State shall inform local educational agencies and owners or operators of day care facilities of the results of the testing."; and

(F) in the last sentence, strike "the date of the enactment of the Lead Exposure Reduction Act of 1992" and insert the following: "amounts are appropriated pursuant to the authorization contained in section 1465(a)".

(2) Amend the amendatory matter contained in section 7(a)(2) (as redesignated)—

(A) by striking "education" each place it appears and inserting "educational";

(B) by striking "completion of such testing" and inserting "receiving the testing results from the State";

(C) by inserting "States to" after "provided by"; and

(D) in subparagraph (C), by striking "abatement action" and inserting "action or recommended action with respect to remedying any high lead concentration".

(3) Amend the amendatory matter contained in section 7(a)(5) to read as follows:

"SEC. 1465. FEDERAL ASSISTANCE REGARDING LEAD CONTAMINATION IN SCHOOL AND DAY CARE FACILITY DRINKING WATER.

"(a) ASSISTANCE FOR TESTING AND REMEDYING.—

"(1) GRANTS TO STATES.—The Administrator shall make grants to States for purposes of testing for, and remedying, high lead concentrations in drinking water in schools and day care facilities. The grants may only be used by the States for expenses incurred after the enactment of this section for testing of drinking water supplies in schools and day care facilities and remediation of high lead concentrations in such water supplies. The State shall, based on the testing required by section 1464(d)(1), place a priority on carrying out remediation activities in schools and day care facilities that the State determines are most in need.

"(2) ALLOCATION TO STATES.—In each fiscal year, from amounts appropriated pursuant to the authorization contained in this section, the Administrator shall allot to each State an amount which bears the same ratio to such appropriated amounts as the number of children aged 0 to 17 in the State bears to the number of such children in all States. If the Administrator determines that the amount of any State's allotment under this paragraph for any fiscal year will not be required for carrying out the program for which such amount has been allotted, the Administrator shall make such amount available for reallotment.

"(3) USE OF FUNDS.—In each fiscal year, from amounts allotted to a State under paragraph (2), such State shall—

"(A) reserve not more than 5 percent for administrative costs; and

"(B) of amounts remaining after making the reservation described in subparagraph (A)—

"(i) use not less than 50 percent of such remaining amounts for purposes of conducting testing as required by section 1464(d)(1); and

"(ii) use not more than 50 percent of such remaining amounts for purposes of remedying high lead concentrations in drinking water at covered schools and covered day care centers.

"(4) SCOPE OF MANDATE.—Except as provided in paragraph (5), the Administrator shall require States to carry out testing as required by section 1464(d)(1) only to the extent that assistance is available under this section to defray the costs of such testing.

"(5) MAINTENANCE OF EFFORT.—No payments shall be made under this section for any fiscal year to a State unless the Administrator determines that the aggregate expenditures of such State for comparable lead testing and remediation programs for such year equalled or exceeded such expenditures for the most recent fiscal year for which data is available.

"(b) ANNUAL REPORTS TO ADMINISTRATOR.—Each State shall submit to the Administrator annual reports. Each such report shall include—

"(1) a description of how the State used assistance provided under this section;

"(2) the number of covered schools and covered day care facilities affected;

"(3) an estimate of the number of children served by such covered schools and covered day care facilities;

"(4) an estimate of future efforts required; and

"(5) any other information the Administrator may require.

"(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $60,000,000 for the fiscal year 1994 and such sums as may be necessary for each of the 3 succeeding fiscal years for purposes of carrying out this section.".

EXPLANATION OF AMENDMENTS

The explanation of the Committee amendments is contained hereafter in this report.

COMMITTEE ACTION

H.R. 5730 was introduced on July 31, 1992, and referred to the Committee on Energy and Commerce. On August 14, 1992, that committee favorably reported the bill with an amendment in the nature of a substitute. The bill and the amendment were sequen-

tially referred to the Committee on Education and Labor for a period ending September 23, 1992.

On September 10, 1992, the Subcommittee on Elementary, Secondary, and Vocational Education held a hearing on the bill (serial No. 102–116). Testimony was received from the Honorable Henry A. Waxman, Chairman, Subcommittee on Health and the Environment, Committee on Energy and Commerce, U.S. House of Representatives; Mr. George A. Kupfer, Vice President and Chief Operating Officer, NSF International, Ann Arbor, MI; Mr. James Murphy, Superintendent of Schools, Bayonne, New Jersey; Mr. Vaughn Barber, Attorney, Law Department, Chicago Board of Education; Ms. Arlene Zielke, Vice President for Legislative Activities, National PTA, Washington, D.C.; Mr. Robert F. Chase, Vice President, National Education Association, Washington, D.C. Written comments were received from representatives of labor organizations, a joint health and safety fund and an industry trade association.

On September 17, 1992, the Committee on Education and Labor considered H.R. 5730 and by a voice vote, with a quorum being present, ordered the bill favorably reported, with amendments.

Lead in Schools and Day Care Facilities

Background

Young children under six are the most frequent victims of lead poisoning. Their exposure is greater than that of adults, because they often swallow lead dust from deteriorated paint or contaminated soils during normal mounting activities. Moreover, their developing bodies absorb lead more readily than adults and are especially vulnerable to its toxic effects.

Lead can adversely affect virtually every system in a child's body. Low levels of lead exposure can shorten physical stature, impair kidney development, and alter red blood cell metabolism and vitamin D synthesis. Lead is also a probable human carcinogen.

The most significant effects, however, affect the development of the central nervous system. Low levels of lead exposure in young children can: reduce intelligence; impair perception, hearing, and speech; and cause behavior disorders like hyperactivity.

The adverse effects of lead exposure on children are being detected at lower and lower levels. In 1970, the Centers for Disease Control (CDC) regarded a blood lead level of 60 micrograms per deciliter (μg/dl) as the threshold for childhood lead poisoning. Since then the threshold of lead poisoning has been lowered four times. Most recently, CDC announced in October 1991 a new "level of concern" for lead in the blood stream, replacing the single, all-purpose childhood lead poisoning definition with a multi-tiered approach that included lowering the old level of concern to 10 micrograms per deciliter (μg/dl). The CDC said in its 1991 report entitled "Preventing Lead Poisoning in Young Children":

> Community prevention activities should be triggered by blood lead levels [greater than or equal to] 10 μg/dl. Medical evaluation and environmental investigation and reme-

diation should be done for all children with blood lead levels [greater than or equal to] 20 μg/dl. All children with blood lead levels [greater than or equal to] 15 μg/dl require individual case management, including nutritional and educational interventions and more frequent screening. Furthermore, depending on the availability of resources, environmental investigation (including home inspection) and remediation should be done for children with blood lead levels of 15–19 μg/dl, if such levels persist. The highest priority should continue to be the children with the highest blood lead levels.

CDC took this action because of what it called "overwhelming and compelling" scientific evidence showing adverse health effects on young children at blood lead levels "at least as low as" 10 μg/dl.

During the Subcommittee on Elementary, Secondary, and Vocational Education hearing on H.R. 5730, the Subcommittee heard compelling testimony on the tragic effects that lead poisoning has on children, especially very young children. The Committee is very much concerned about this entirely preventable health hazard because it directly impacts on a child's ability to learn. If lead poisoning were eradicated as a heath threat, it is likely that schools across the Nation would have fewer children receiving remedial educational services.

The Subcommittee also heard testimony from school administrators and school board members who, through their experience with the Asbestos Hazard Emergency Response Act, were greatly concerned about the cost of the unfunded mandate in H.R. 5730 that is placed upon their school systems and day care facilities to inspect for lead hazards. They were also concerned that they would once again be placed in the position of making judgments about abating environmental hazards. James H. Murphy, representing the American Association of School Administrators, recommended in his testimony that the responsibility for inspecting for lead hazards should be placed at the State level where State departments concerned with the environment or health are staffed with experts in such matters.

The Committee concurs with the recommendation from Mr. Murphy, and the Committee amendment places the responsibility for the inspections at the State level. However, the Committee views it as unfair to require either a State, a school, or a day care facility to undertake a costly inspection, and perhaps abatement, without providing financial assistance. With the declaration by the Centers for Disease Control that lead poisoning is the number one health threat to children, the Federal government should be about to provide substantial resources to assist in eradicating lead poisoning. The Committee amendment, therefore, requires the availability of actual appropriations before States are mandated to undertake the required inspections.

Explanation of the Education and Labor Committee Amendment

Lead Paint, Soil and Dust Inspection and Abatement

The Committee amendment removes the requirement for inspection for lead paint, soil and dust from local educational agencies

and child care facilities and places the responsibility at the State level, where trained experts are better equipped than day care providers or school administrators to conduct the activities required under this Act and make informed judgments about lead hazards. The Committee amendment requires States to inspect for lead paint, soil and dust when Federal funding is available for such activities. The States must only inspect and provide assistance for abatement to the extent funding is available to cover the entire cost of such activity. In other words, if a State receives $1 million under this provision, then the State is required to do $1 million worth of inspection and abatement. Also, the EPA regulations regarding lead paint, soil and dust inspection and abatement procedures must be in effect before States are required to take action. In conducting the inspection for lead paint, soil and dust, the State is required to give priority to areas within the State, according to criteria developed by EPA, that are more likely to have lead poisoning problems, and to conduct inspections in these areas first. It is the Committee's intention that these areas be defined narrowly, such as a neighborhood, a block, or even an individual school or building housing a covered day care facility. Funds are distributed to the States by way of a formula based on the number of children age birth to six who reside in that State. These funds are for the inspection and abatement of the buildings housing covered schools and covered day care facilities regardless of whether they are public or private. In any fiscal year where funds are not appropriated, then States are not required to inspect for lead paint, soil or dust.

It is also the Committee's intention that funds distributed to the States under this section may be used to perform the inspections required and any necessary abatement under section 422(c) covering planned renovations of covered schools and covered day care facilities.

Testing and Remedying of Drinking Water

Similar to the provisions regarding paint, soil, and dust, the Committee amendment removes the requirement for testing for high levels of lead in drinking water from schools and day care facilities, and places the requirement at the State level. States are required to conduct such testing in drinking water when appropriations are made available for this provision, and States are only required to conduct testing and remedying activities to the extent that the funding is available to cover the entire cost of such activities. Funds are distributed to States by way of a formula based on the number of children aged birth to 17 that reside within the State. These funds are for the testing and remediation of the buildings housing covered schools and covered day care facilities regardless of whether they are public or private. In any fiscal year where funds are not appropriated, then States are not required to test.

Abatement

The bill, as reported from the Committee on Energy and Commerce, requires schools and day care facilities to inspect for lead hazards and to notify parents and employees of any lead hazard that exists. The bill, as reported by that committee, does not re-

quire abatement or remedying of lead hazards, but funds are authorized to assist schools and day care facilities in inspecting for and abating lead hazards. Similarly, the Committee amendment does not require abatement, but allows States to expend funds for abatement activity. The Committee envisions that States would first conduct abatement activities in schools and day care facilities with the worst lead hazards, as determined through the inspection and testing provisions.

Notification

The Committee amendment clarifies that a school or a day care facility would not be required to notify parents of the results of the inspection for lead paint, soil, and dust if the entity takes appropriate action to address the lead hazard through abatement, encapsulation, or in-place management and then conducts a reinspection. While the bill, as reported from the Committee on Energy and Commerce, refers to "abatement" (which, as defined, includes encapsulation and in-place management), the Committee felt it was necessary to clearly state that, in certain situations, encapsulation and in-place management are viable and safe options in mitigating a lead hazard.

Report

The Committee amendment requires States to submit an annual report to the Administrator of EPA describing how States used the funds provided; a count of the number of day care facilities and schools that are affected; an estimate of the number of children served by the affected schools and day care facilities; and an estimate of the future efforts required.

Public Information Campaign

The Committee believes that the Environmental Protection Agency should mount an immediate and aggressive campaign to generally inform the public of the dangers of lead hazards. The campaign should be multi-lingual and multi-media and should inform the public of where potential lead hazards exist, who is most vulnerable, what steps can be taken to mitigate the hazard. Such campaign should also provide written material to every school and day care facility that will be affected by this Act, informing the owners and operators of such facilities of the dangers of lead ingestion by young children. The Committee believes that a public information campaign that is particularly designed to educate parents about the dangers of lead would be a first and important step in eradicating lead as the number one health threat to children.

Worker Protection

Background

Since the passage of the Occupational Safety and Health Act of 1970 (OSH Act), the Secretary of Labor (Secretary) has regulated worker exposure to inorganic lead. In 1971, pursuant to section 6(a) of the OSH Act, the Occupational Safety and Health Administration (OSHA) adopted a permissible exposure limit (PEL) for lead of

200 micrograms per cubic meter of air ($\mu g/m^3$); this limit was applicable to all employers covered by the OSH Act.

In 1975, OSHA proposed to lower the PEL for lead from 200 $\mu g/m^3$ to 100 $\mu g/m^3$. 40 Fed. Reg. 45934 (Oct. 3, 1975). Based on the record from that rule making, OSHA concluded that the hazards of lead were so severe that a PEL substantially lower than 100 $\mu g/m^3$ was warranted to protect employee health.

On November 14, 1978, OHSA promulgated a final standard governing occupational exposure to lead. The standard limited employee exposure to lead to 50 $\mu g/m^3$, required that the PEL be achieved through reliance on a combination of engineering, work practice and administrative controls, and included provisions relating to medical surveillance and medical removal protection for lead exposed workers, mandated separate change rooms and lunch rooms to prevent lead contamination, and required hygiene facilities and exposure monitoring. See generally, 43 Fed. Reg. 52952 (Nov. 14, 1978); 29 CFR § 1910.1025 (1992).

OSHA's lead standard was based on extensive evidence that occupational exposure to lead at levels above 50 $\mu g/m^3$ could result in "profoundly adverse effects on the health of workers in the lead industry." 43 Fed. Reg. 52954. Workers are exposed to lead dust, fumes and mist when they breathe work place air contaminated with lead or when they ingest food, beverages or tobacco products on which lead dust has settled. Overexposure to lead can damage the nervous, urinary and reproductive systems and inhibit synthesis of heme, the molecule which transports oxygen through the bloodstream. See generally, 43 Fed. Reg. 52954-52960 (Nov. 14, 1978) (describing the health effects of lead among occupationally exposed workers).

But, the construction industry was exempt from OSHA's 1978 lead standard. See 29 C.F.R. § 1910.1025(a)(2). While the PEL for lead in general industry was reduced to 50 $\mu g/m^3$ in 1978, today the PEL in construction remains at 200 $\mu g/m^3$. Furthermore, medical surveillance programs which monitor the lead intake of general industry workers and require that workers with elevated blood lead levels be removed from jobs involving lead exposure do not apply in the construction industry.

OSHA's decision to exempt the construction industry from the 1978 lead standard was challenged by the Oil, Chemical and Atomic Workers Union. See *United Steelworkers of America* v. *Marshall*, 647 F.2d 1189, 1309 (D.C. Cir. 1980). The United States Court of Apppeals for the District of Columbia Circuit agreed that "OSHA would be shirking its statutory responsibilities if it made no effort to protect workers in the construction industry from lead exposure." 647 F.2d at 1310. The Court was persuaded, however, by "OSHA's assurance that it will take reasonably prompt steps to fashion this protection." Id.

Fourteen years have now passed since OSHA assured the Court that it would promptly protect construction workers from the health hazards associated with occupational lead exposure, but OSHA has failed to promulgate a lead standard applicable to construction work. Indeed, while OSHA has repeatedly acknowledged the need for increased protection against lead hazards in the construction industry, there is little chance that a proposed lead stand-

ard will be published until late spring of 1993. A final standard likely would not be issued before 1996.

No one seriously disputes the fact that exposure to lead at exposures of 200 $\mu g/m^3$ can cause irreversible health impairment among construction workers. Since 1978, reports of severe lead poisoning among general industry workers are infrequent, but reports of lead poisoning among construction workers have risen at alarming rates. The National Institute of Occupational Safety and Health (NIOSH) recently received reports that 42 construction workers at 8 sites were suffering from lead poisoning, Lead Poisoning in Construction Workers (NIOSH 1992), but NIOSH believes far more construction workers suffer from lead poisoning. Chronic health damage from lead is far more extensive than acute lead poisoning.

In the absence of a comprehensive OSHA lead standard protecting workers in the construction industry, several efforts have been made to provide alternate forms of protection to construction workers. The most significant of these are guidelines, published by the Department of Housing and Urban Development, to guide HUD contractors in providing protection to lead-based paint abatement workers. The HUD guidelines are "intended to provide, at a minimum, the level of protection afforded by the [OSHA] general industry lead standard." OSHA actively assisted HUD in drafting these guidelines. Under current policy, OSHA may cite employers who fail to comply with the HUD guidelines under the general duty clause. 29 U.S.C. § 654(a)(1).

Interim Standard

The Committee believes that OSHA has delayed publication of a revised, comprehensive standard regulating occupational exposure to lead in the construction industry for far too long. Accordingly, the amendment requires the Secretary of Labor to promulgate an interim final regulation governing the exposure of construction workers to lead within six months after enactment. The interim final regulation published by the Secretary must provide safety and health protection for employees that is at least as protective as that which would prevail if affected employers complied with the Department of Housing and Urban Development guidelines published in volume 55 of the Federal Register at page 38973 on September 28, 1990. The amendment provides that the interim final regulation will be effective immediately upon publication.

The Committee requires that the lead abatement guidelines developed by HUD serve as the basis for OSHA's interim final regulation. In developing the interim final regulation, the Secretary may alter the provisions of the HUD guidelines, so long as the interim regulation provides workers with health and safety protections which are equally as effective.

The HUD guidelines are based on, and in most respects mirror, OSHA's general industry lead standard at 29 CFR § 1910.1025. Where the guidelines differ from OSHA's standard, the differences are intended to reflect the unique circumstances of the construction industry. By relying on the HUD guidelines as the basis for the Secretary's interim final regulation, the Committee expects that construction workers will gain the same benefits available to

general industry workers under the lead standard, i.e., a PEL of 50 $\mu g/m^3$, medical surveillance, medical removal protection, etc. The Committee recognizes, however, that construction work sites differ from factories and that far fewer feasible engineering controls are available to control lead emissions in construction work than can be employed at fixed work sites. The HUD guidelines recognize that compliance with a 50 $\mu g/m^3$ PEL in the construction industry likely will require greater reliance on respirator use than is accepted in general industry.

The Committee amendment provides the Secretary six months to promulgate the interim final regulation. This timetable is intended to ensure that a revised lead standard is quickly put into place—after a fourteen year delay—in the construction industry. During this six month period, the Secretary will have an opportunity to evaluate whether modifications to the HUD guidelines are appropriate. So long as the interim final regulations adopted by the Secretary require employment and places of employment as protective of employee health and safety and those which would prevail under the HUD guidelines, the Secretary is free to make modifications to the provisions of the guidelines.

The Committee amendment creates a new provision, not a part of either the OSH Act or the Toxic Substances Control Act, which directs the Secretary of Labor to issue an interim final regulation governing lead. The interim regulation is not an occupational safety and health standard as that term is defined in section 3(8) of the Occupational Safety and Health Act of 1970. As the Secretary has previously recognized, the distinction between an interim regulation and an occupational safety and health standard is legally significant because it means that the procedural requirements of section 6 of the OSH Act do not apply to the promulgation of the interim final regulation. Nor, as the Secretary has previously recognized in publishing an interim final regulation governing hazardous waste operations, do the notice and comment provisions of the Administrative Procedures Act apply. See Fed. Reg. 45654, 45663 (Dec. 19, 1986).

Although the Secretary is not required to follow any specific notice and comment procedures before issuing the interim final regulation, it is the Committee's hope that the Secretary solicit input from and consider the views of affected industry and labor representatives as well as public health and industrial hygiene experts in fashioning an interim lead regulation for the construction industry. The Secretary is free to select whatever method she feels is best suited to obtain public input into the development of the interim final regulation, so long as the procedures she selects do not have the effect of delaying publication of the regulation. The six month deadline for promulgation of the interim final regulation leaves the Secretary plenty of time in which to seek input from the public.

H.R. 5730 also requires the Administrator of the Environmental Protection Agency to publish regulations governing lead-based paint abatement activities and these regulations may overlap with OSH Act requirements. The Committee believes that EPA and OSHA must coordinate their regulatory activities to avoid the imposition of duplicative or conflicting regulatory obligations.

NIOSH Responsibilities

The National Institute for Occupational Safety and Health (NIOSH) has a long history of conducting research into the effects of occupational exposure to lead and substantial experience with occupational safety and health training programs. Section 20 of the OSH Act designates NIOSH as the lead Federal research agency for occupational health and safety. Section 21 of the OSH Act gives NIOSH a primary role in occupational safety and health training activities. NIOSH has been carrying out these statutory responsibilities for more than 20 years.

NIOSH has been actively involved in research on the health effects of lead exposure on construction workers. In 1992, NIOSH issued an "alert" providing notice and recommendations to employees, employers, health and labor departments and others for preventing lead poisoning in construction workers. The recommendations specifically address the occupational hazards of lead-based paint abatement activities. More generally, since the mid-1970's NIOSH has conducted extensive research into the health effects of occupational exposure to lead and issued a criteria document recommending a reduction in exposures before OSHA published its revised lead standard in 1978.

NIOSH also administers occupational safety and health training programs for the benefit of workers and health and safety professionals. Currently, NIOSH supports construction worker safety and health training in three states. Over 5,000 workers have received this training, which addresses lead hazards such as welding. NIOSH also has experience conducting worker training on confined space hazards affecting the construction industry, on hazards of video display terminals, hospital hazards affecting health care workers, and other issues.

Based on this experience, the Committee believes that NIOSH is the appropriate Federal agency to conduct the study of occupational exposures to lead among lead-based paint abatement workers mandated under section 425(c)(2) of H.R. 5730 as reported by the Committee on Energy and Commerce. The Committee on Energy and Commerce would have required that the National Institute of Environmental Health Sciences (NIEHS) conduct this occupational exposure study. In the Committee's view, section 20 of the OSH Act creates a mandate for NIOSH to conduct the type of occupational exposure study called for in H.R. 5730.

Likewise, the Committee believes that NIOSH's experience in conducting worker training programs and the training mandate of section 21 of the OSH Act make NIOSH the appropriate Federal agency to administer the worker training grant program mandated under section 421(b) of H.R. 5730 as reported by the Committee on Energy and Commerce. The Committee on Energy and Commerce would have required that NIEHS conduct this training program as well. In the Committee's view, NIOSH has the experience to administer an effective worker training program and the statutory mandate to do so.

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Committee Approval

In compliance with clause 2(l)(2)(B) of rule XI of the Rules of the House of Representatives, the Committee states that on September 17, 1992, a quorum being present, the Committee favorably ordered reported H.R. 5730 by voice vote.

Oversight Statement

In compliance with clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, this report embodies the findings and recommendations of the Subcommittee on Elementary, Secondary, and Vocational Education, established pursuant to clause 2(b)(1) of rule X of the House of Representatives and rule 18(a) of the Rules of the Committee on Education and Labor. Pursuant to its responsibilities, the Committee has determined that legislation should be enacted as set forth in H.R. 5730.

Inflationary Impact Statement

In compliance with clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that the enactment into law of H.R. 5730 will have little inflationary impact on prices and costs in the operation of the national economy. It is the judgment of the Committee that the inflationary impact of this legislation as a component of the Federal budget is negligible.

Oversight Findings and Recommendations of the Committee on Government Operations

In compliance with clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, the Committee states that no findings or recommendations of the Committee on Government Operations were submitted to the Committee.

Cost of This Legislation

A. Congressional Budget Office Estimate

In compliance with clause 2(l)(3) (B) and (C) of rule XI of the Rules of the House of Representatives, the estimate prepared by the Congressional Budget Office pursuant to section 403 of the Congressional Budget Act of 1974, submitted prior to the filing of this report, is set forth as follows:

U.S. Congress,
Congressional Budget Office,
Washington, DC, September 22, 1992.

Hon. William D. Ford,
Chairman, Committee on Education and Labor, House of Representatives, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the attached cost estimate for H.R. 5730, the Lead Exposure Reduction Act of 1992.

Enactment of H.R. 5730 could affect receipts and thus would be subject to pay-as-you-go procedures under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985. As a

result, the estimate required under clause 8 of House Rule XXI is attached.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

ROBERT D. REISCHAUER.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: H.R. 5730.

2. Bill title: Lead Exposure Reduction Act of 1992.

3. Bill status: As ordered reported by the House Committee on Education and Labor on September 17, 1992.

4. Bill purpose: The Lead Exposure Reduction Act of 1992 would amend the Toxic Substances Control Act in an attempt to reduce the levels of lead present in certain products and product packaging, and in schools and day care facilities. The bill would require the Environmental Protection Agency (EPA) to develop training and licensing programs for individuals and firms involved in remedying problems with lead-based paint. H.R. 5730 would authorize appropriations of $30 million in 1994, $240 million in 1995, and such sums as are necessary in 1996 and 1997 for grants to states to conduct testing for the presence of lead in paint, dust, or soil at elementary schools and day care facilities, and to remedy lead hazards that are identified.

The bill also would amend the Safe Drinking Water Act to require testing for the presence of lead in drinking water at schools and day care facilities. The legislation would authorize appropriations for $60 million in 1994 and such sums as are necessary over the 1995–1997 period to test for lead in the drinking water of these facilities and to correct contamination problems.

Finally, H.R. 5730 would amend the Food, Drug and Cosmetic Act to require the Department of Health and Human Services (HHS) to establish regulations on the lead content of food packaging and other food contact materials.

5. Estimated cost to the Federal Government:

[By fiscal year, in millions of dollars]

	1993	1994	1995	1996	1997
Authorizations:					
Estimated authorization level	20	104	249	54	9
Estimated outlays	16	11	175	200	31
Revenues:					
Estimated revenues	(1)	(1)	(1)	(1)	(1)

1 Less than $500,000

The costs of this bill fall within budget function 300.

Basis of estimate: CBO assumes that the bill will be enacted by early in fiscal year 1993, that amounts authorized will be appropriated for each fiscal year, and that spending will occur at historical rates for similar activities. For the cost of activities where no specified amounts were authorized by the bill, we based our estimates on information from EPA and HHS.

Lead testing at schools and day care facilities

Section 5 of this bill would require states to test for the presence of lead in drinking water in the nation's 110,000 primary and secondary schools and in approximately 190,000 child day care facilities. H.R. 5730 would authorize $60 million in 1994 and such sums as may be necessary in the following three years for grants to states to conduct such testing and to correct any lead hazards identified. EPA estimates that approximately half of the states currently have programs to test for lead in school drinking water. This type of test costs $100 to $200 per school and less than half this amount to test for lead in the water systems of day care centers and homes. Completing testing of all public schools could cost as much as $5 million to $10 million. We estimate that testing day care facilities would cost about $10 million. We do not have sufficient information to determine whether the remaining $40 million to $45 million authorized by this bill would be sufficient to correct all of the lead hazards identified as a result of these tests.

Section 2 of H.R. 5730 would require states to conduct inspections of paint, dust, and exterior soil for the presence of lead in approximately 70,000 elementary schools built before 1980. Based on limited experience with soil testing, EPA estimates these tests for the presence of lead in paint, dust, and exterior soil could cost $3,600 per school. In addition, states would be required to test for the presence of lead in paint, dust, and exetrior soil at about 55,000 child care centers built before 1980 and about 95,000 private homes licensed as day care facilities and built before 1980. We estimate that the cost of these inspections would average about $750 for child care centers and about $250 for child care homes. In sum, these inspections of elementary schools, child care facilities, and their related outdoor play areas would cost about $315 million.

H.R. 5730 authorizes $270 million over the 1994–1995 period to test for the presence of lead in paint, dust, and exterior soil at elementary schools and day care facilities and to correct any lead hazards identified. CBO estimates that states would need an additional $45 million in 1996 to complete testing in all elementary schools and day care facilities.

Certification of training programs

H.R. 5730 would require EPA to establish a program to certify training programs for workers involved in abating lead-based paint problems, and to issue licenses to contractors engaged in this work. Based on information from EPA regarding its experience with an asbestos training program, CBO estimates that this provision would cost about $30 million annually. The bill specifies that the costs to administer and enforce this certification and licensing program are to be covered by fees on persons operating training programs and on contractors receiving licenses. Hence, CBO assumes that the operating costs of this program would be covered by such fees. H.R. 5730 authorizes appropriations of $5.5 million annually over the 1994–1997 period for grants (and the evaluation of such grants) to nonprofit organizations offering training to workers involved in remedying lead-based paint problems.

Lead inventory and regulations

The bill would require EPA to establish an inventory of products containing lead and to update it for new products. We estimate this would cost about $0.5 million annually. The bill calls for EPA to develop a number of regulations, including rules to: prohibit lead in product packaging, require the labeling of products containing lead, establish standards for laboratories performing lead sampling analysis, establish standards for the performance of lead-based paint abatement products, and set minimum leaching levels of lead from new plumbing fittings. CBO estimates that promulgating these rules would cost $10 million over the 1993–1995 period. In addition, we estimate that EPA would spend about $6 million over the 1993–1994 period to develop the required regulations concerning lead testing in schools, in child day care centers, and in dust and soil. H.R. 5730 also would require EPA to sponsor public outreach programs on lead contamination. We estimate this activity could cost $2 million annually.

Studies

The Centers for Disease Control (CDC) and the National Institute of Environmental Health Sciences would be directed by this bill to conduct two major studies on the sources of lead exposure and on the means to reduce occupational lead exposure. Based on information from the CDC, we estimate these studies would cost a total of $5 million. In addition, the bill would require the Secretary of Health and Human Services to issue regulations on the lead content of ceramic ware, crystal ware, and processed food. We estimate that promulgating these rules would cost $2 million over the 1993–1995 period.

6. Pay-as-you-go-considerations: The Budget Enforcement Act of 1990 sets up pay-as-you-go procedures for legislation affecting direct spending or receipts through 1995. H.R. 5730 contains provisions that provide for new civil penalties, which could result in additional receipts to the federal government. We estimate that any additional receipts would be less than $500,000 per year.

7. Estimated cost to State and local governments: H.R. 5730 requires states to test for the presence of lead in paint, dust, water, and exterior soil at schools and day care facilities; however, the bill makes this requirement contingent on the availability of federal assistance to defray the costs of these inspections. Consequently, CBO estimates that this testing requirement would not significantly increase costs to state and local governments.

While H.R. 5730 would not require state and local governments to abate any lead hazards they identify, the bill would require them to notify teachers and parents of children in the affected facilities. As a result, in many cases, states or localities will incur costs for remedial action. The bill authorizes such sums as may be necessary in 1996–1997 to pay for remedial actions; however, we cannot estimate the cost of remedying lead hazards at school and day care facilities, because there is no comprehensive information on the incidence or seriousness of lead hazards at these institutions.

8. Estimate comparison: None.

9. Previous CBO estimate: On August 12, 1992, CBO provided a cost estimate for H.R. 5730 to the House Committee on Energy and Commerce. The estimate cost of the Education Committee version of the bill exceeds that of the Energy Committee version by a total of $135 million, because it includes the cost of grants for states to test for lead in private elementary schools and in day care facilities. The Energy Committee version of this bill would authorize a total of $240 million over the 1994–1997 period for grants to owners and operators of elementary schools and day care facilities to test for the presence of lead in water, paint, dust, and exterior soil. The Education Committee version of H.R. 5730 would authorize a total of $330 million over the 1994–1995 period, and we estimate an additional $45 million would be necessary in 1996 for federal grants to states to complete testing in all elementary schools and day care facilities. In the Energy Committee version of the bill, lead testing at private schools and day care facilities was assumed to involve private, not government costs.

10. Estimate prepared by: Kim Cawley, Julia Isaacs and Connie Takata.

11. Estimate approved by: C.G. Nuckols, Assistant Director for Budget Analysis.

CONGRESSIONAL BUDGET OFFICE ESTIMATE [1]

The applicable cost estimate of this act for all purposes of sections 252 and 253 of the Balanced Budget and Emergency Deficit Control Act of 1985 shall be as follows:

[By fiscal year, in millions of dollars]

	1992	1993	1994	1995
Change in outlays	(1)	(1)	(1)	(1)
Change in receipts	0	0	0	0

[1] Not applicable.

B. Committee Estimate

With reference to the statement required by clause 7(a)(1) of rule XIII of the Rules of the House of Representatives, the Committee accepts the estimate prepared by the Congressional Budget Office.

CHANGES IN EXISTING LAW (AS AMENDED BY THE COMMITTEE ON ENERGY AND COMMERCE) MADE BY THE BILL, AS REPORTED

The bill was referred for a period ending not later than September 23, 1992, to this Committee for consideration of such provisions of the bill and amendment reported by the Committee on Energy and Commerce, as fall within the respective jurisdiction of this Committee pursuant to rule X of the Rules of the House of Representatives. The changes made to existing law by the amendment

[1] An estimate of H.R. 57030 as ordered reported by the House Committee on Education and Labor on September 17, 1992. This estimate was transmitted by the Congressional Budget Office on September 22, 1992.

reported by the Committee on Energy and Commerce are shown in the report filed by that Committee (Rept. No. 102-852, Part 1).

For the information of the Members of the House of Representatives, the changes made by this Committee to existing law (as amended by the Committee on Energy and Commerce) are shown as follows (matter proposed to be omitted is shown in black brackets, new matter is printed in italic, and matter in which no change is proposed is shown in roman):

TOXIC SUBSTANCES CONTROL ACT

* * * * * * *

TITLE IV--LEAD EXPOSURE REDUCTION

* * * * * * *

Subtitle C--Lead-Based Paint Abatement

SEC. 421. LEAD-BASED PAINT ABATEMENT TRAINING AND CERTIFICATION.

(a) REGULATIONS.—

(1) * * *

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(6) RENOVATION AND REMODELING.—

(A) GUIDELINES.—In order to reduce the risk of exposure to lead in connection with renovation and remodeling, the Administrator shall, within 18 months after the enactment of the Lead Exposure Reduction Act of 1992, promulgate guidelines for the conduct of renovation and remodeling activities which may create a risk of exposure to dangerous levels of lead. The Administrator shall disseminate such guidelines to persons engaged in renovation and remodeling through hardware and paint stores, employee organizations, trade groups, State and local agencies, and through other appropriate means.

(B) STUDY OF LICENSING.—The Administrator shall conduct a study of the extent to which persons engaged in various types of renovation and remodeling activities are exposed to lead in the conduct of such activities or disturb lead and create a lead hazard on a regular or occasional basis. The Administrator shall complete such study and publish the results thereof within 30 months after the enactment of the Lead Exposure Reduction Act of 1992.

(C) LICENSING DETERMINATION.—Within 4 years after the enactment of the Lead Exposure Reduction Act of 1992, the Administrator shall take action under paragraph (3)(B) to require the licensing of lead-based paint abatement contractors engaged in renovation or remodeling that create lead hazards in the course of such activities. In determining who shall be required to be licensed the Administrator shall utilize the results of the study under subparagraph (B) and consult with the representatives of labor organiza-

tions, lead-based paint abatement contractors, persons engaged in remodeling and renovation, experts in lead health effects, and others. If the Administrator determines that any category of persons engaged in renovation or remodeling should not be licensed, the Administrator shall publish an explanation of the basis for that determination.

(7) REVIEW AND REVISION.—The Administrator shall review the regulations under paragraph (1) not less frequently than every 2 years after the initial promulgation thereof, and, as necessary, revise such regulations.

(8) ACCREDITATION AND LICENSE FEES.—The Administrator (or the State in the case of an authorized State program) shall impose a fee on—

(A) persons operating training programs accredited under this subtitle; and

(B) lead-based paint abatement contractors licensed under a licensing program established under paragraph (3).

The fees shall be established at such level as is necessary to cover the costs of administering and enforcing the standards and regulations under this section which are applicable to such programs and contractors. The fee shall not be imposed on any State, local government, or nonprofit training program. The Administrator (or the State in the case of an authorized State program) may waive the fee for lead-based paint abatement contractors under subparagraph (A) for the purpose of training their own employees.

(9) SUSPENSION OR REVOCATION.—The Administrator (or the State in the case of an authorized State program) may suspend or revoke any accreditation or license issued under this section whenever the Administrator (or State) determines, after notice and opportunity for hearing, that the holder of such accreditation or license has violated any requirement of this section.

(b) ESTABLISHMENT OF ADVISORY COMMITTEE ON LEAD POISONING.—

(1) ESTABLISHMENT AND RESPONSIBILITIES; MEETINGS.—(A) The Administrator shall establish an Advisory Committee on Lead Poisoning Prevention comprised of the Director of the National Institute of Occupational Safety and Health and members appointed by the Administrator as follows: 3 representatives of lead-based paint abatement contractors; 3 representatives of employee organizations in the building and construction trades industry whose members have the greatest likelihood of exposure to lead-based paint in the residential and other abatement markets; 2 representatives of national public interest or health organizations with experience in lead-based paint poisoning prevention efforts; 2 representatives of cities; 1 representative of the housing industry; 1 representative of school boards; 1 representative of day care providers; 1 representative of an organization representing parents or teachers; and 2 representatives of State agencies charged with enforcement of lead-based paint poisoning prevention efforts. The Administrator may also appoint nonvoting members to the committee from other appropriate Federal agencies.

(B) The Advisory Committee shall advise the Administrator on all matters contained in sections 433 and 421. Such advice shall be solicited, to the maximum extent practicable, prior to the promulgation of any and all regulations, or the issuance of any guidance document pertaining to sections 433 and 421.

(C) The Advisory Committee shall meet no fewer than 3 times each calendar year, hold all meetings open to the public, require a transcript to be kept of the meetings and to be made available for public inspection, and set meeting agendas. The Administrator shall provide to the Advisory Committee such support and facilities as may be necessary for operation of the Advisory Committee.

(2) RECOMMENDATIONS.—The Administrator shall respond in writing to any formal recommendations made by a majority of members of the Advisory Committee within 60 days of the Advisory Committee's issuance of such recommendation.

(3) TERM OF OFFICE; COMPENSATION.—(A) The term of office of each member shall be 3 years and the terms shall be staggered so that the term of office of no more than 1 representative of the same interest shall expire in the same year.

(B) Members shall, while serving on the Advisory Committee, be entitled to receive reasonable reimbursement for travel, food, and lodging expenses.

SEC. 422. LEAD CONTAMINATION IN SCHOOLS AND DAY CARE FACILITIES.

(a) COVERED SCHOOLS AND COVERED DAY CARE FACILITIES.—

(1) INSPECTION.—Except as provided in subsection (c)(4), not later than 2 years after the date of enactment of the Lead Exposure Reduction Act of 1992, the Administrator shall promulgate a rule requiring each State to conduct, within 2 years after the date on which regulations are promulgated under section 421 and section 423 or the date on which amounts are allotted under subsection (c)(2), whichever is later—

(A) an inspection of each covered school and covered day care facility to detect lead-based paint that is chipping, peeling, flaking, or chalking, and

(B) an inspection of each room and playground area at each covered school and covered day care facility in either daily or significant use by children in kindergarten or by younger children to detect any lead-based paint and to detect any interior dust in such rooms or any exterior soil in such playground areas at such school or day care facility which dust or soil contains a dangerous level of lead, as identified under section 423,

and prepare a report containing the results of such inspections and recommendations as to whether any lead hazard found should be alleviated through abatement, encapsulation, or in place management. For purposes of this subsection, "significant use" means use by more than 1 child at least twice per week, and at least for 2 hours per week.

(2) PRIORITY FOR INSPECTION.—In conducting the inspection of covered schools and covered day care facilities required by paragraph (1), the State shall rank areas in the State in order of the severity of their suspected lead hazard, in accordance

with procedures established by the Administrator. Such procedures, established by the Administrator, shall use factors such as—

(A) medical evidence regarding the extent of lead poisoning (as determined through lead screening) in children in the area,

(B) the age of children in the area,

(C) the age and condition of school buildings in the area, and

(D) the age and condition of the housing in the area,

in order to determine which areas in the State are most likely to have a lead hazard. The State shall place a priority on inspecting covered schools and covered day care facilities located in areas with the highest suspected lead hazard.

(3) NOTIFICATION.—(A) The State shall provide to the owner or operator of each covered school and covered day care facility a copy of the report required under paragraph (1) with respect to the inspection of such school or day care facility. In each case in which an inspection under paragraph (1) indicates the presence of lead-based paint that poses an imminent lead hazard, or interior dust or exterior soil containing a dangerous level of lead, as identified under section 423, at a covered school or covered day care facility, the owner or operator of the covered school or covered day care facility shall, within 120 days after receiving the report under paragraph (1), provide all teachers and other school personnel and parents (or guardians) of all children attending the covered school or covered day care facility concerned with a copy of risk disclosure information meeting the requirements of subparagraph (B). The owner or operator of the covered school or covered day care facility shall also provide such risk disclosure information to newly hired teachers and other personnel and parents (or guardians) of newly enrolled children for so long as lead-based paint, or interior dust or exterior soil containing a dangerous level of lead, as identified under section 423, continues to be present at the covered school or covered day care facility.

(B) As part of the rule required under paragraph (1), the Administrator shall prescribe the contents of the risk disclosure information to be provided. Such information shall include each of the following:

(i) A summary of the results of the inspection under paragraph (1).

(ii) A description of the risks of lead exposure to children in kindergarten and younger children and teachers and other personnel at the school or day care facility concerned, taking into account the accessibility of lead-based paint or interior dust or exterior soil containing a dangerous level of lead, as identified under section 423, to children under 6 years of age and other appropriate factors.

(iii) A description of any lead abatement undertaken, or to be undertaken, by the owner or operator concerned.

(C) An owner or operator of a covered school or covered day care facility may provide the risk disclosure information to the parents (or guardians) of the children attending the covered

school or covered day care facility concerned in the same manner as written materials are regularly delivered to such parents (or guardians).

(4) ABATEMENT, ENCAPSULATION, OR IN PLACE MANAGEMENT IN LIEU OF NOTIFICATION.—An owner or operator of a covered school or covered day care facility shall not be required to provide notification under paragraph (3) if, prior to the date on which such notification would be required—

(A) the owner or operator performs abatement, encapsulation, or in place management,

(B) the State conducts a reinspection, and

(C) the owner or operator obtains a report from the State showing that the lead-based paint that poses an imminent lead hazard, and any interior dust containing a dangerous level of lead, as identified under section 423, has been removed, encapsulated, or managed in place, and any exterior soil containing a dangerous level of lead, as identified under section 423, has been abated to a condition such that the soil is no longer dangerous.

An owner or operator that elects to perform abatement, encapsulation, or in place management under this subsection in lieu of notification under paragraph (3) shall make a copy of the inspection reports available in its administrative offices and shall notify parent, teacher, and employee organizations of the availability of such reports.

(b) RENOVATED AREAS.—Effective for renovations commencing more than 2 years after the promulgation of a rule under subsection (a), for each covered school or covered day care facility in which a renovation will be undertaken, the owner or operator of the covered school or covered day care facility shall conduct, prior to such renovation, an inspection of the area to detect any lead-based paint that might be disturbed as a result of such renovation and shall take such actions as are necessary to ensure that such renovation does not result in a dangerous level of lead, as identified under section 423, in interior dust or exterior soil.

(c) FEDERAL ASSISTANCE.—

(1) GRANTS TO STATES.—The Administrator shall make grants to States for purposes of testing for, and abating, lead-based paint that poses an imminent health hazard, and interior dust or exterior soil containing a dangerous level of lead, as identified under section 423, in covered schools and covered day care facilities. The grants may only be used by the States for expenses incurred after the enactment of this title for lead hazard inspection and abatement in covered schools and covered day care facilities. The State shall, based on the inspections conducted as required by subsection (a)(1), place a priority on carrying out abatement activities in covered schools and covered day care facilities that the State determines are most in need.

(2) ALLOCATION TO STATES.—In each fiscal year, from amounts appropriated pursuant to the authorization contained in paragraph (1), the Administrator shall allot to each State for purposes of making grants under this subsection an amount which bears the same ratio to such appropriated amounts as the number of children age 0 to 6 in the State bears to the

number of such children in all States. If the Administrator determines that the amount of any State's allotment under this paragraph for any fiscal year will not be required for carrying out the program for which such amount has been allotted, the Administrator shall make such amount available for reallotment.

(3) USE OF FUNDS.—In each fiscal year, from amounts allotted to a State under paragraph (2), such State shall—

(A) reserve not more than 5 percent for administrative costs; and

(B) of amounts remaining after making the reservation described in subparagraph (A)—

(i) use not less than 50 percent of such remaining amounts for purposes of conducting inspections as described in subsection (a)(1) and reinspections as described in subsection (a)(4); and

(ii) use not more than 50 percent of such remaining amounts for purposes of abating lead hazards at covered schools and covered day care centers.

(4) SCOPE OF MANDATE.—Except as provided in paragraph (5), the Administrator shall require States to conduct inspections under subsection (a)(1) only to the extent that assistance under this section is available to defray the costs of such inspections.

(5) MAINTENANCE OF EFFORT.—No payments shall be made under this section for any fiscal year to a State unless the Administrator determines that the aggregate expenditures of such State for comparable lead inspection and abatement programs for such year equalled or exceeded such expenditures for the most recent fiscal year for which data is available.

(d) PUBLIC PROTECTION.—No owner or operator of a covered school or covered day care facility may discriminate against a person in any way because the person provided information relating to a potential violation of this section to any other person, including a State or the Administrator.

(e) PENALTIES.—For purposes of enforcing this section, the penalties applicable under section 16 shall not be more than $5,000.

(f) USE OF PENALTIES.—The court in any action against an owner or operator of a covered school or covered day care facility for violation of this section shall have discretion to order that all civil penalties collected be used, in lieu of payment to the United States, to reimburse the owner or operator for the costs of lead-based paint abatement activities undertaken by such owner or operator.

(g) INSPECTIONS.—The inspections required under this section and any abatement performed in lieu of notification shall be carried out by lead-based paint abatement contractors who are in compliance with the licensing requirements of section 421.

(h) ANNUAL REPORTS TO ADMINISTRATOR.—Each State shall submit to the Administrator annual reports. Each such report shall include—

(1) a description of how the State used assistance provided under this section;

(2) the number of covered schools and covered day care facilities affected;

(3) an estimate of the number of children served by such covered schools and covered day care facilities;

(4) an estimate of future efforts required; and

(5) any other information the Administrator may require.

(i) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for purposes of carrying out this section $30,000,000 for the fiscal year 1994, $240,000,000 for the fiscal year 1995, and such sums as may be necessary for each of the fiscal years 1996 and 1997.

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SEC. 425. LEAD ABATEMENT AND MEASUREMENT.

(a) * * *

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(c) EXPOSURE STUDIES.—(1) The Secretary of Health and Human Services (hereafter in this subsection referred to as the "Secretary"), acting through the Director of the Centers for Disease Control, (CDC), and the Director of the National Institute of Environmental Health Sciences, shall jointly conduct a study of the sources of lead exposure in children who have elevated blood lead levels (or other indicators of elevated lead body burden), as defined by the Director of the Centers for Disease Control.

(2) The Secretary, in consultation with the Director of the National Institute of Occupational Safety and Health, shall conduct a comprehensive study of means to reduce hazardous occupational lead abatement exposures. This study shall include, at a minimum, each of the following—

(A) Surveillance and intervention capability in the States to identify and prevent hazardous exposures to lead abatement workers.

(B) Demonstration of lead abatement control methods and devices and work practices to identify and prevent hazardous lead exposures in the workplace.

(C) Evaluation, in consultation with the National Institute of Environmental Health Sciences, of health effects of low and high levels of occupational lead exposures on reproductive, neurological, renal, and cardiovascular health.

(D) Identification of high risk occupational settings to which prevention activities and resources should be targeted.

(E) A study assessing the potential exposures and risks from lead to janitorial and custodial workers.

(3) The studies described in paragraphs (1) and (2) shall, as appropriate, examine the relative contributions to elevated lead body burden from each of the following:

(A) Drinking water.

(B) Food.

(C) Lead-based paint and dust from lead-based paint.

(D) Exterior sources such as ambient air and lead in soil.

(E) Occupational exposures, and other exposures that the Secretary determines to be appropriate.

(4) Not later than 30 months after the date of the enactment of the Lead Exposure Reduction Act of 1992, the Secretary shall

submit a report to the Congress concerning the studies described in paragraphs (1) and (2).

(d) PUBLIC EDUCATION.—(1) The Administrator, in conjunction with the Secretary of Health and Human Services, acting through the Assistant Secretary for Health of the Department of Health and Human Services, shall sponsor public education and outreach activities to increase public awareness of—

(A) the scope and severity of lead poisoning from household sources;

(B) potential exposure to sources of lead in schools and childhood day care centers;

(C) the implications of exposures for men and women, particularly those of childbearing age;

(D) the need for careful, quality, abatement and management actions;

(E) the need for universal screening of children; and

(F) other components of a lead poisoning prevention program.

(2) The activities described in paragraph (1) shall be designed to provide educational services and information to—

(A) health professionals;

(B) the general public, with emphasis on parents of young children;

(C) homeowners, landlords, and tenants;

(D) consumers of home improvement products;

(E) the residential real estate industry; and

(F) the home renovation industry.

(3) In implementing the activities described in paragraph (1), the Administrator shall assure coordination with the President's Commission on Environmental Quality's education and awareness campaign on lead poisoning.

(4) The Administrator, in consultation with the chairman of the Consumer Product Safety Commission, shall develop information to be distributed by retailers of home improvement products to provide consumers with practical information related to the hazards of renovation and remodeling where lead-based paint may be present.

(e) TECHNICAL ASSISTANCE.—

(1) CLEARINGHOUSE.—Not later than 6 months after the enactment of this subsection, the Administrator shall establish, in consultation with the Secretary of Housing and Urban Development and the Director of the Centers for Disease Control, a National Clearinghouse on Childhood Lead Poisoning (hereinafter in this section referred to as "Clearinghouse"). The Clearinghouse shall—

(A) collect, evaluate, and disseminate current information on the assessment and reduction of lead hazards, adverse health effects, sources of exposure, detection and risk assessment methods, environmental hazards abatement, and clean-up standards;

(B) maintain a rapid-alert system to inform licensed lead-based paint abatement contractors of significant developments in research related to lead-based paint hazards; and

(C) perform any other duty that the Administrator determines necessary to achieve the purposes of this Act.

(2) HOTLINE.—Not later than 6 months after the enactment of this subsection, the Administrator, in cooperation with other Federal agencies and with State and local governments, shall establish a single lead hazard hotline to provide the public with answers to questions about lead poisoning prevention and referrals to the Clearinghouse for technical information.

(f) PRODUCTS FOR LEAD-BASED PAINT ABATEMENT ACTIVITIES.—Not later than 30 months after the date of enactment of the Lead Exposure Reduction Act of 1992, the President shall, after notice and opportunity for comment, establish by rule appropriate criteria, testing protocols, and performance characteristics as are necessary to ensure, to the greatest extent possible and consistent with the purposes and policy of the Lead Exposure Reduction Act of 1992, that deleading, encapsulating, testing, or similar lead-based paint abatement products introduced into commerce after a period specified in the rule are effective for the intended use described by the manufacturer. The rule shall identify the types or classes of products that are subject to such rule. The President, in implementation of the rule, shall, to the maximum extent possible, utilize independent testing laboratories, as appropriate, and consult with such entities and others in developing the rules. The President may delegate the authorities under this subsection to the Environmental Protection Agency or the Secretary of Commerce or such other appropriate agency.

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SECTION 22 OF THE OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

NATIONAL INSTITUTE FOR OCCUPATIONAL SAFETY AND HEALTH

SEC. 22. (a) * * *

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(g) LEAD-BASED PAINT ABATEMENT ACTIVITIES.—

(1) TRAINING GRANT PROGRAM.—(A) The Institute may make grants for the training and education of workers and supervisors who are or may be directly engaged in lead-based paint abatement activities.

(B) Grants referred to in subparagraph (A) shall be awarded to nonprofit organizations—

(i) which are engaged in the training and education of workers and supervisors who are or who may be directly engaged in lead-based paint abatement activities (as defined in title IV of the Toxic Substances Control Act),

(ii) which have demonstrated experience in implementing and operating health and safety lead-based paint abatement training and education programs, and

(iii) with a demonstrated ability to reach, and involve in lead-based paint training programs, target populations of individuals who are or will be engaged in lead-based paint abatement activities.

Grants under this subsection shall be awarded only to those organizations that fund at least 30 percent of their lead-based paint abatement training programs from non-Federal sources, excluding in-kind contributions. Grants may also be made to municipalities to carry out such training and education for their employees.

(C) From the amounts authorized to be appropriated to carry out title IV of the Toxic Substances Control Act, at a minimum, $5,000,000 are authorized to be appropriated to the Institute for each of the fiscal years 1994 through 1997 to make grants under this paragraph.

(2) CONSULTATION.—The Administrator of the Environmental Protection Agency shall consult with the Director of the Institute prior to proposing, establishing, or revising any accreditation requirements under section 421 of the Toxic Substances Control Act.

(3) EVALUATION OF PROGRAMS.—The Institute shall conduct periodic and comprehensive assessments of the efficacy of the worker and supervisor training programs developed and offered by Institute training grantees. The Director shall prepare reports on the results of these assessments addressed to the Administrator of the Environmental Protection Agency to include recommendations as may be appropriate for the revision of these programs. From the amounts authorized to implement title IV of the Toxic Substances Control Act, the sum of $500,000 is authorized to be appropriated to the Institute for each of the fiscal years 1994 through 1997 to carry out this paragraph.

TITLE XIV OF THE PUBLIC HEALTH SERVICE ACT (COMMONLY REFERRED TO AS THE SAFE DRINKING WATER ACT)

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TITLE XIV—SAFETY OF PUBLIC WATER SYSTEMS

* * * * * * *

PART F—ADDITIONAL REQUIREMENTS TO REGULATE THE SAFETY OF DRINKING WATER

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SEC. 1464. LEAD CONTAMINATION IN SCHOOL DRINKING WATER.

(a) * * *

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(d) REMEDIAL ACTION PROGRAM.—

(1) TESTING AND REMEDYING LEAD CONTAMINATION.—Within 9 months after the enactment of this section, each State shall establish a program, consistent with this section, to assist local educational agencies in testing for, and remedying, lead contamination in drinking water from coolers and from other sources of lead contamination at schools under the jurisdiction of such agencies. *Within 24 months after amounts are made*

available pursuant to the authorization of appropriations contained in section 1465(a), each State shall complete testing, in accordance with the protocol under subsection (b), for lead contamination in drinking water from coolers and other drinking water outlets (including outlets used in food preparation) at schools within the State. In the case of a day care facility (not covered by the testing under the preceding sentence) for kindergarten or younger children which is owned or operated by a person who provides day care for compensation and who is licensed or regulated for day care purposes under State law or who receives Federal funding for day care purposes, the Administrator shall publish notice within 6 months after amounts are appropriated pursuant to the authorization contained in section 1465(a) that each such person shall complete testing, in accordance with the protocol under subsection (b) modified as appropriate for such facilities, for lead contamination in drinking water from coolers and other drinking water outlets (including outlets used in food preparation) at such facilities. Such testing of such facilities shall be completed within 24 months after amounts are appropriated pursuant to the authorization contained in section 1465(a). The Administrator shall work with the States in the development and publication of such notice and in the identification of such facilities and in ensuring that the testing, including analysis thereof, is as inexpensive as possible. Within 90 days of completing the testing, the State shall inform local educational agencies and owners or operators of day care facilities of the results of the testing. Within 18 months after amounts are appropriated pursuant to the authorization contained in section 1465(a), the Administrator shall publish notice of when such 24-month period will expire.

(2) PUBLIC AVAILABILITY.—A copy of the results of any testing under paragraph (1) shall be available in the administrative offices of the local educational agency *or day care facility* for inspection by the public, including teachers, other school *or day care facility* personnel, and parents. The local educational agency *or day care facility* shall notify parent, teacher, and employee organizations of the availability of such testing results *and, if the testing results show any tap water lead concentrations in excess of 15 parts per billion, the local educational agency or the owner or operator of the day care facility shall, within 90 days after receiving the testing results from the State, provide to all teachers and other school or day care personnel at the school or day care facility and to parents (and guardians) of children enrolled in the school or day care facility risk disclosure information meeting the requirements established by the Administrator under this paragraph. The local educational agency or the owner or operator of the day care facility shall simultaneously provide a copy of such materials to the agency with primary enforcement responsibility for the public water system which serves the school or day care facility. Such agency with primary enforcement responsibility shall promptly (but not later than 3 months after receipt of such materials) transmit to the Administrator a summary of such materials. The Administrator, in consultation with the Centers for Disease Control,*

shall, within 18 months after the enactment of the Lead Exposure Reduction Act of 1992, promulgate a rule prescribing the contents of the risk disclosure information to be provided by States to local educational agencies or by owners or operators of day care facilities. Such rule shall require such information to include each of the following:

(A) A summary of the testing results.

(B) A description of the risks of lead exposure to children and teachers and other personnel at the school or day care facility concerned.

(C) A description of any action or recommended action with respect to remedying any high lead concentration undertaken, or to be undertaken, by the local educational agency or by the owner or operator of the day care facility.

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(e) ENFORCEMENT.—Effective 1 year after publication of notice under subsection (a)(1), any local education agency and any owner or operator of a day care facility which fails or refuses to comply with the requirements of subsections (d) (1) and (2) shall be subject to a civil penalty in the amount of $5,000 for each such violation. The Administrator may bring an action in the appropriate United States district court to assess and collect such penalty or to enjoin any such violation. The court in any action against a local education agency or against any owner or operator of a day care facility under this section or section 1449 shall have discretion to order that all civil penalties collected be used, in lieu of payment to the United States, to reimburse the local education agency or the owner or operator of the day care facility for the costs of testing and remedying lead contamination in drinking water.

[SEC. 1465. FEDERAL ASSISTANCE FOR STATE PROGRAMS REGARDING LEAD CONTAMINATION IN SCHOOL DRINKING WATER.

[(a) SCHOOL DRINKING WATER PROGRAMS.—The Administrator shall make grants to States to establish and carry out State programs under section 1464 to assist local educational agencies in testing for, and remedying, lead contamination in drinking water from drinking water coolers and from other sources of lead contamination at schools under the jurisdiction of such agencies. Such grants may be used by States to reimburse local educational agencies for expenses incurred after the enactment of this section for such testing and remedial action.

[(b) LIMITS.—Each grant under this section shall be used as by the State for testing water coolers in accordance with section 1464, for testing for lead contamination in other drinking water supplies under section 1464, or for remedial action under State programs under section 1464. Not more than 5 percent of the grant may be used for program administration.

[(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section not more than $30,000,000 for fiscal year 1989, $30,000,000 for fiscal year 1990, and $30,000,000 for fiscal year 1991.]

SEC. 1465. FEDERAL ASSISTANCE REGARDING LEAD CONTAMINATION IN SCHOOL AND DAY CARE FACILITY DRINKING WATER.

(a) ASSISTANCE FOR TESTING AND REMEDYING.—

(1) GRANTS TO STATES.—The Administrator shall make grants to States for purposes of testing for, and remedying, high lead concentrations in drinking water in schools and day care facilities. The grants may only be used by the States for expenses incurred after the enactment of this section for testing of drinking water supplies in schools and day care facilities and remediation of high lead concentrations in such water supplies. The State shall, based on the testing required by section 1464(d)(1), place a priority on carrying out remediation activities in schools and day care facilities that the State determines are most in need.

(2) ALLOCATION TO STATES.—In each fiscal year, from amounts appropriated pursuant to the authorization contained in this section, the Administrator shall allot to each State an amount which bears the same ratio to such appropriated amounts as the number of children aged 0 to 17 in the State bears to the number of such children in all States. If the Administrator determines that the amount of any State's allotment under this paragraph for any fiscal year will not be required for carrying out the program for which such amount has been allotted, the Administrator shall make such amount available for reallotment.

(3) USE OF FUNDS.—In each fiscal year, from amounts allotted to a State under paragraph (2), such State shall—

(A) reserve not more than 5 percent for administrative costs; and

(B) of amounts remaining after making the reservation described in subparagraph (A)—

(i) use not less than 50 percent of such remaining amounts for purposes of conducting testing as required by section 1464(d)(1); and

(ii) use not more than 50 percent of such remaining amounts for purposes of remedying high lead concentrations in drinking water at covered schools and covered day care centers.

(4) SCOPE OF MANDATE.—Except as provided in paragraph (5), the Administrator shall require States to carry out testing as required by section 1464(d)(1) only to the extent that assistance is available under this section to defray the costs of such testing.

(5) MAINTENANCE OF EFFORT.—No payments shall be made under this section for any fiscal year to a State unless the Administrator determines that the aggregate expenditures of such State for comparable lead testing and remediation programs for such year equalled or exceeded such expenditures for the most recent fiscal year for which data is available.

(b) ANNUAL REPORTS TO ADMINISTRATOR.—Each State shall submit to the Administrator annual reports. Each such report shall include—

(1) a description of how the State used assistance provided under this section;

(2) the number of covered schools and covered day care facilities affected;

(3) an estimate of the number of children served by such covered schools and covered day care facilities;

(4) an estimate of future efforts required; and

(5) any other information the Administrator may require.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $60,000,000 for the fiscal year 1994 and such sums as may be necessary for each of the 3 succeeding fiscal years for purposes of carrying out this section.

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ADDITIONAL VIEWS

While we support the changes made to H.R. 5730 by the Education and Labor Committee in assuring that Congress does not issue unfunded mandates for lead inspection and abatement in schools and child care facilities, we are concerned about another aspect of the bill: the duplication of regulations for workers involved in lead abatement activities.

Section 421(a) of H.R. 5730 as it was reported by the Energy and Commerce Committee requires the Environmental Protection Agency to issue regulations on (1) the accreditation of training programs for lead inspectors, contractors, and workers, (2) licensing of lead-based paint abatement contractors, and (3) standards for conducting lead based paint abatement activities. The bill also requires EPA (unless a state asks for and is granted approval by EPA to do so) to administer a licensing program for lead abatement contractors who are "deleaders or who are engaged in demolition, lead inspection, * * * removing lead from bridges * * * and additional categories of lead-based paint abatement" as determined by EPA. Within four years of passage of the bill, EPA must also determine which categories of "renovators and remodelers" to include within the licensing regulations.

In the letter requesting referral of this legislation to the Education and Labor Committee, the Chairman of our Committee rightfully pointed out that the standards for workers in section 421 of H.R. 5730 "directly impact on conditions of employment which are within the Committee on Education and Labor's jurisdiction." Nonetheless during our Committee's consideration of the bill, the Committee held no hearings on these provisions and, despite our efforts, have left them unchanged from those adopted by the Energy and Commerce Committee.

Instead, the majority simply added a requirement that the Department of Labor also issue standards for workers involved in lead abatement activities. The result is that this legislation goes forward with requirements that both EPA and OSHA issue regulations and enforce those regulations covering the same thing, protection of workers involved in lead abatement activities.

We do want to make clear that we support protections for lead abatement workers. We also believe that the Department of Labor is the preferable federal agency to be in charge of issuing and enforcing such protections. Regulation of working conditions is one of the Department's principal roles. We see no reason to create another "labor standards" agency within the EPA.

Worse still, however, than shifting this responsibility to another agency is the bill's current requirement that two agencies regulate labor standards for lead contractors and workers. Duplication and overlap of agency responsibilities not only creates unnecessary problems for contractors and others seeking to understand and

comply with detailed and lengthy regulations, but also results in less clear accountability and responsibility for addressing the problem.

The Department of Labor has not been very timely in addressing the issue of protections for lead abatement workers, and for that reason we were willing to work with the majority in supporting an expedited rulemaking procedure on an OSHA construction lead standard. The Education and Labor Committee amendment requires OSHA to issue an "interim final standard" within 180 days of passage of the legislation. The amendment also specifies that the standard shall "provide employment and places of employment to employees which are as safe and healthful" as those which prevail under guidelines issued in 1990 by the Department of Housing and Urban Development (HUD guidelines) for lead paint abatement workers. Thus the interim standard is to be issued without either the procedural or substantive safeguards in rule promulgation provided under the Occupational Safety and Health Act. We believe the amendment goes too far in waiving these safeguards. Nonetheless we hope that OSHA will, if this provision is carried forward and becomes law, provide as much opportunity for affected parties to comment on the interim standard as is reasonably possible. The amendment requires that the interim standard be as close as possible to the HUD guidelines, and thus OSHA should benefit from the "field" experience with the guidelines in changing them from guidelines into enforceable standards.

The amendment also specifies that the interim standard "shall take effect upon issuance." Unless the standard allows a period of time for contractors to come into compliance, this procedure will be unfair to contractors, many of whom may not learn of the standard during the shortened period for comment provided in the amendment.

During the Education and Labor Committee's markup, Representatives Ballenger and Henry offered an amendment that would have deleted the mandatory EPA training and licensing provisions, but simply required EPA to issue model accreditation programs for lead inspectors and deleaders for the states. Our colleagues on the Energy and Commerce Committee, as well as EPA itself, have noted that EPA is not equipped to administer a national occupational licensing program, and that Congress has consistently left occupational and professional licensing to the states to regulate and administer. We agree with those arguments. In addition, as already discussed, we oppose giving two agencies responsibility for regulating the same matters, and believe that the Department of Labor, not EPA, is the appropriate agency to regulate worker protection issues.

The Education and Labor Committee amendment includes a provision that EPA and OSHA, in promulgating regulations, "shall coordinate with each other and shall avoid duplication or requirements * * *." While this language is helpful, it falls short of what is needed. First, it specifically addresses only duplication of requirements, and not enforcement. Second, it allows either agency to add additional requirements for contractors and workers, and thus leaves both contractors and workers trying to understand which agency is in charge.

We hope that this issue will be addressed before the legislation is passed into law. Duplication of agency responsibilities and of regulatory requirements does not serve the interests of the workers being protected, the employers seeking to comply with the government regulations, or of taxpayers seeking efficient and effective government.

BILL GOODLING.
STEVE GUNDERSON.
HARRIS W. FAWELL.
PAUL B. HENRY.
CASS BALLENGER.
JOHN BOEHNER.
RANDY "DUKE" CUNNINGHAM.