REGULATION NO. 25

RESPONSIVENESS SUMMARY
(March 09, 2006)

Comment 1 - Reg. 25 Definition - "Certificate" - delete Title 40 of the Code of Federal Regulations and insert 40CFR to conform with the use of 40 CFR in further definitions of Certified abatement worker, Certified inspector, etc. Also, 40 CFR is defined on p. 2-1.

Response 1 - Spelling out the abbreviation makes the reference clearer for casual readers. This suggested change was not made.

Comment 2 -- Reg 25 Definition - "Certified inspector"
Under the definition of "Certified inspector", the word "also" needs to be inserted between the word "inspector" and the word "samples". So the sentence would read: " A certified inspector "also" samples for the presence of lead in dust and soil for the purposes of lead-based paint abatement clearance testing."

Response 2 – Accepted and changed as suggested.

Comment 3 -- Reg 25 Definition - "Certified risk assessor"
The word "also" needs to be inserted as follows . . . . "certified by the Department to conduct lead-based paint risk assessments and also sample for. . . . " to comply with federal regulations.

Response 3 – Accepted and changed as suggested.

Comment 4 - Reg.25 Definition - "Child-occupied facility"
Delete "6 years or under" and replace with six or younger to conform with the phrase used in defining target house and living area.

Response 4 – Accepted and changed as suggested.

Comment 5 – Reg. 25 Definition - "Lead-contaminated dust"
Delete "Federal Toxic Substances Control Act;" retain the use of TSCA to conform with language in "Lead-contaminated soil" and "Recognized lab". TSCA is defined on p. 2-10.

Response 5 - Spelling out the abbreviation makes the reference clearer for casual readers. This suggested change was not made.

Comment 6 - Reg. 25.305 (C) Reaccreditation of training programs -
p.3-9 C (5) The disclosure form should be required of firms and individuals. There are examples of individuals (not a firm) in the past who have obtained trainer license.

Response 6 – Accepted – The reference to "firms" has been deleted.

Comment 7 – Reg 25.305(C) Disclosure by training providers
Strike the section because requirements for disclosure of compliance history are overreaching the intent of the Arkansas General Assembly in enacting Act 454 of 1991 (Arkansas Code Annotated Section 8-1-106).

Response 7 – All applicants are required by Arkansas Code Annotated Section 8-1-106 (b)(1) to "file a disclosure statement with their applications." Disclosures for this purpose can be submitted on a form provided by the Department. For the purpose of renewals, a declaration that no changes have occurred in the disclosure statement or a revised disclosure statement will be accepted.

Comment 8 – Notification by Training Providers
3. Also, I did not see any reference to Notification by Training Providers. In the Federal Regulations for Notifications you will notice that EPA includes a notification requirement for Training Providers. This provides an opportunity for inspection/audits of actual training classes. ADEQ will need to include a notification requirement for training providers.

Response 8 – ADEQ will add a section on notification by training providers and base the section on Title 40 Code of Federal Regulations Subpart L Section 745.225.

Comment 9 - Reg. 25.405 – Deleted section on Certification based on prior training
The requirement for persons to take and pass the certification exam is very confusing. It is my understanding that persons who had their training during the period from March 6, 1996 to January 1999 in a specific discipline from an EPA or ADEQ licensed trainer in accordance with the regs at that time were not required to pass the certification exam. I have a number of persons in my training classes who continue to take the annual refresher, but have never applied to ADEQ for a certificate. ADEQ certification is only an Arkansas (not EPA) requirement. For example, a person received initial training in 1997 and continues annual refresher classes, but has never chosen to apply for ADEQ certification; now, in 2006 the person applies to ADEQ. The certification exam should not be required. (This issue is not related to the grandfather clause for training prior to March 6, 1996.)

Response 9 – ADEQ staff agree with the commenter's interpretation that a certification exam is not required. ADEQ staff amended this section based on the comment.

Comment 10 - Reg. 25.407 (C) - Same concern as above. If a person maintains annual refresher classes, but has not applied for a ADEQ certificate, that person should be eligible for a ADEQ certificate without retaking the initial training class.

Response 10 – See Response 9.

Comment 11 – Reg. 25.409(B)(1) Disclosure by individuals seeking certification in lead-based paint disciplines
Strike the section because requirements for disclosure of compliance history are overreaching the intent of the Arkansas General Assembly in enacting Act 454 of 1991 (Arkansas Code Annotated Section 8-1-106).

Response 11 – All applicants are required by Arkansas Code Annotated Section 8-1-106 (b)(1) to "file a disclosure statement with their applications." Disclosures for this purpose can be submitted on a simplified form provided by the Department. For the purpose of renewals, a declaration that no changes have occurred in the disclosure statement or a revised disclosure statement will be accepted.

Comment 12 - Reg. 25.501 – Licensing
The term liability insurance should be clarified. Does this imply that a car liability insurance policy is sufficient. Improvement would include changing this to professional liability insurance. However, this is still very misleading. For example, a general contractor may have professional liability insurance, that would cover accidents from equipment damage, etc, but it probably would not cover liability from lead-based paint activities.

Response 12 – Accepted and changed to require liability insurance covering lead-based paint activities.

Comment 13 - Reg. 25. Chapter Six: Fees
I understand and support the collection of fees by ADEQ to support this program. However, the fee structure has not been reviewed since they became effective in 1998. Are the level and distribution of the fees justified based on the lead-based paint duties of ADEQ? When the fees were introduced the regulated community gave support with the understanding that the Agency would review the structure after a couple of years. This has not occurred. I suggest a fee structure that agrees with the asbestos reg. Licensing fees should be reduced and Notice of Intent fees should be raised. It does not make sense to have only a $100 Notice fee regardless of the size of the job. Also, there should be some savings given to people with multiple certificates such as allowed in the asbestos reg.

Response 13 – The fee structure of Regulation 25 was not a part of the revision ADEQ initiated. Regulation 25 revisions, as presented for public comment in November 2005 public notices, did not propose any changes to the fee structure. Making changes to the fee structure now, cannot be considered a "logical outgrowth" of this rule-making process. Therefore, no changes will be made to the fee structure in the final rule. The Department, is however, committed to reviewing the entire fee structure in Regulation 25.

Comment 14 - Reg. 25.704 – Notice of Deficiency
p. 7-3 (A) The statement and shall return the notification to the building owner is confusing. Does this mean that every notice (with or without a deficiency) will be returned to the contractor? I believe that the intent is to return the NOI only if there is a deficiency. The sentence should be rewritten to clarify this.

Response 14 – Accepted and amended as suggested.

Comment 15 - Reg. 25.805 (H) - p. 8-10 Excellent clarification.

Response 15 - ADEQ staff appreciate and acknowledge the comment.

Comment 16 - Reg. 25.805 (I)(8) - p. 8-12 Excellent addition

Response 16 - ADEQ staff appreciate and acknowledge the comment.

Comment 17 - Reg. 25.808 - p. 8-14 (A) (2) room equivalent is not defined in the definition section. The term is common in the HUD Guidance document, but this is the only reference I find in ADEQ's draft.

Response 17 – This language is taken directly from the Code of Federal Regulations, and ADEQ staff do not believe the term needs to be defined.

Comment 18 - Reg. 25.1002, Reg 25.1003, Reg 25.1004 – Capitalization of words
The terms, state, local and federal should all be in small case. This was verified by the Writing Center at UALR.

Response 18 – Accepted and amended as suggested.

Comment 19 - Reg. 25.102 and Following Sections –
"Target housing" should replace "residential dwelling."

Reg 25.102 clearly states that the regulation applies to target housing and child occupied facilities, and the term, "target house" is used in several sections such as the title of Regs 25.801, 25.802, 25.803, 25.804, 25.805. However, paragraphs within these sections use the term residential dwelling. Examples are found on pp. 8-6, 8.8, 8.9, 8.11, 8.12, 8.14. According to the definitions a major difference is that target house is one constructed prior to 1978, whereas residential dwelling is any house regardless of the year that it was constructed. Thus, any residence regardless of the year it was constructed would be subject to requirements such as abatement practices, notice of intent, clearance

Response 19 -- Accepted and amended as suggested.

Comment 20 - Reg. 25.808 -
Reg.25-808 is particularly troublesome since the title which did include target housing, etc. has now been deleted and the title, Determinations, has been added. Throughout this section the term residential building has been substituted for the term target housing. Thus, according to the definitions, any house regardless of the year it was constructed would be subject to the hazard determinations listed in 25-808. I recommend that the term residential building not be used, but return to the use of target house and child-occupied building.

Response 20 – Accepted and amended as suggested.

Comment 21 - Reg. 25.801 -
Chapter eight: Reg. 25.801 Work practice standards include inspections, lead-hazard screen, risk assessment, and abatement. There is also an exclusion (F) when treating paint lead hazards of less than: (1) two square feet ..... (2) twenty square feet ... (3) ten percent of total surface area ..... of deteriorated paint.

I do not agree with this exclusion for all activities (inspection, etc) listed above. Reg 25.801 references documented methodologies including HUD Guidance which does not allow these exclusions. HUD Guidance gives the procedures for conducting an inspection, risk assessment, etc. Such as the number and location of samples to be taken to determine if lead-paint is present and then the procedure for conducting risk assessment, etc. A potential hazard is not based on the size of the area.

Prior to an inspection, how do you determine if lead-paint is present in any amount of deteriorated paint (2 ft, 20 ft, 10%, or more)? Just because paint is deteriorated does not indicate that it contains lead.

Response 21 – ADEQ addressed this comment by moving Reg. 25.801(F) to a next section Reg. 25.805(L).

Comment 22 - Reg. 25.802 – Inspections

According to the exclusions above, a certified inspector or risk assessor would not be required to inspect or assess areas of deteriorated paint in amounts less than 2 ft, 20 ft, 10%. Yet, paragraph (B) states that the inspection procedures should be conducted according to documented methodologies (HUD Guidance). HUD has no such exclusions. Paragraph (B) also states that "each component.... shall be tested ...." and does not provide for exclusions.

Response 22 – ADEQ addressed this comment by moving Reg. 25.801(F) to a next section Reg. 25.805(L).

Comment 23 - Reg. 25.803 – Lead-Hazard Screen

According to the exclusions listed, a certified risk assessor would not be required to assess areas of deteriorated paint in amounts less than 2 ft, 20 ft, 10%. Yet, paragraph (B) (3) states that "each surface with deteriorated, which is determined using documented methodologies, ..." (HUD Guidance). HUD has no such exclusions. Paragraphs (4) and (5) require dust wipe samples where children (6 or younger) are most likely to come into contact with dust. There are no exclusions based on the size of the deteriorated paint area.

Response 23 – ADEQ addressed this comment by moving Reg. 25.801(F) to a next section Reg. 25.805(L).

Comment 24 - Reg. 25.804 – Risk Assessment
Reg. 25.804 ..... risk assessment .....

According to the exclusions listed, a certified risk assessor would not be required to assess areas of deteriorated paint in amounts less than 2 ft, 20 ft, 10%. Yet, paragraph (B) (3) states that using documented methodologies (HUD), "each friction surface with visible deteriorated paint and all surfaces, with visible deteriorated paint" shall be tested. Paragraphs (4) and (5) require dust wipe samples where children (6 or younger) are most likely to come into contact with dust. There are no exclusions based on the size of the deteriorated paint area.

Response 24 – ADEQ addressed this comment by moving Reg. 25.801(F) to a next section Reg. 25.805(L).

Comment 25 - Reg. 25.805 Abatement -

According to the exclusions listed, a certified supervisor or worker would not be required to abate areas of deteriorated paint in amounts less than 2 ft, 20 ft, 10%. Neither would a notice of intent be required. Neither would a written occupation plan be required. Neither would work practices such as open-flame burning, etc. be prohibited. Neither would clearance procedures be required.

According to the exclusions given in Reg 25. 801 certification would not be required nor documented work practices would be required for areas less than 2 ft, 20 ft or 10% etc. of deteriorated paint.

Response 25 – ADEQ addressed this comment by moving Reg. 25.801(F) to a next section Reg. 25.805(L).

Comment 26 - Reg. 25.801 (F) – Work Practice Standards Exclusions

a. ..... do not apply when abating lead-based paint of less than:

b. OR move the exclusions to 25.805 and use the language .... do not apply when abating lead-based paint of less than:

c. OR move the exclusion to the definition of abatement on p. 2-1. It would fit nicely in (D) which states that abatement does not include. Add the phrase..... does not apply when abating lead-based paint of less than:

d. OR move the exclusion to the definition of paint-lead hazard. I do not like this option because these small area can produce a hazard.The definition of paint-lead hazards (A) (B) C states ANY damaged , etc surface.

I agree that any known lead-based paint that is damaged, etc. may be a hazard regardless of the size of the area. First, is this a target house or child occupied building; second one has to determine if the paint contains lead; third is the location of the damaged paint accessible to a child; fourth what is the level of hazard in order to conduct remove the hazard.

Also, if the exclusion is to remain, the term treating needs to be defined.

Response 26 – ADEQ addressed this comment by moving Reg. 25.801(F) to a next section Reg. 25.805(L). ADEQ staff believe the term "treating" is not a term of art and does not require to be defined in this context.

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