

ENVIRONMENTAL PROTECTION AGENCY

Round Table Discussion of:

TSCA Section 402(c)

Lead Exposure Reduction

Proposed Renovation and Remodeling Rule

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Reported By:

CASET Associates  
10201 Lee Highway, Suite 160  
Fairfax, Virginia 22030  
(703) 352-0091

**TABLE OF CONTENTS**

	<u>Page</u>
Welcome, Introductions, and Review-to-Date	1
Work Practice Standards (set-up, dust control, clean-up, clearance, restricted practices)	10
Certification and Accreditation	149
Final Questions, Summary and Next Steps	238

## **PARTICIPANTS**

**VICKI AINSLIE**, Georgia Tech Research Institute, Atlanta, GA  
**RICHARD BAKER**, Baker Environmental Consulting, Inc, Lenexa, KS

**ROB BEEKMAN**

**MEGAN BOOTH**, National Association of Realtors, Washington, DC

**DEAN BULLIS**, MD Department of the Environment, Baltimore, MD

**KENNETH CARLINO**, New York City Department of Health, NY, NY

**PATRICK CONNOR**, CONNOR, Baltimore, Maryland

**GENE DANIELS**, UBC H&S Fund, Cincinnati, Ohio

**STEPHEN DIETRICH**, POCA, Lancaster, Pennsylvania

**PIERRE ERVILLE**, Consultant, Silver Spring, Maryland

**NICK FARR**, National Center for Lead-Safe Housing, Columbia, MD

**NEIL FINE**, Applied Systems, Inc., Holland, Pennsylvania

**MARC FREEDMAN**, Painting & Decorating Contractors of America, Fairfax, Virginia

**GREGG GOLDSTEIN**, National Multihousing Council, Washington, DC

**DAVID HARRINGTON**, California Department of Health Services Occupational Lead Poisoning Prevention Program, Oakland, CA

**MARK HENSHALL**, US EPA, Washington, DC

**EILEEN LEE**, National Multihousing Council, Washington, DC

**DAVID LEVITT**, HUD, Office of Lead Hazard Control, Washington, DC

**DENNIS LIVINGSTON**, Community Resources, Baltimore, Maryland

**DWAYNE LONDON**

**RON MORONY**, US EPA, Washington, DC

**KEVIN NOLAN**, PDCA/Painting Contractor, Ardmore, Pennsylvania

**RUTH ANN NORTON**, Coalition to End Childhood Lead Poisoning, Baltimore, MD

**JACOB PASTER**, RMD, Watertown, Massachusetts

**BRYAN PATCHAN**, NAHB Remodelers Council, Washington, DC

**GREG PIACITELLI**, NIOSH, Cincinnati, Ohio

**DOUG RAY**, US Department of Labor, OSHA, Washington, DC

**DAN REINHART**

**DORI REISSMAN**, CDC/NCEH/EHHE/LPPB, Atlanta, Georgia

**AARON SUSSELL**, NIOSH, Cincinnati, Ohio

**ELLEN TOHN**, Alliance to End Childhood Lead Poisoning,  
Washington, DC  
**DARLENE WATFORD**  
**MIKE WILSON**, US EPA, Washington, DC  
**MICHAEL WORSHAM**, US Army Environmental Center, Aberdeen  
Proving Grounds, MD  
**JOHN ZILKA**, Applied Systems, Inc., Aliquippa, Pennsylvania

P R O C E E D I N G S

(8:15 a.m.)

**AGENDA ITEM: Welcome, Introductions, Review-to-  
Date.**

MR. GRAVES: Good morning. My name is Scott Graves. I am with ICF. My role today is as facilitator. The purpose of today's meeting, as most of you know, is to provide an opportunity for you all to provide your perspective and input to EPA on the renovation and remodeling rule, as they go forward and develop that rule.

You will note that the meeting is being recorded. Your comments are being recorded. The transcript, as I understand it, will be available on EPA's web site in two or three weeks after today's meeting. If you want to, you can access that.

I will ask Mike to provide a web site address by the end of the day, so you can take that with you.

My role today, as I said, is to facilitate the

meeting, make sure that the meeting basically stays on track. I am going to function sort of as a traffic copy today.

I may, from time to time, may redirect the questions or the conversation if things are winding down, or as points begin to be raised.

EPA's role is today to be here to listen to your comments and your feedback. From time to time, I may call on them, or they may want to make a point in response to a particular issue that has been raised. I will make time in the speaker's queue to do that.

In terms of getting yourself into the speaker's queue, for those of you who have been to these meetings, before, you will remember how Shawn would say, put your name tag on the end like this, preferably with your name facing me, so that I can read it, and I will call on you in the order in which you place your name tags up.

As far as the agenda today, everyone should have a copy of the agenda. If you don't, I know that there are agendas available out at the registration desk.

It is a pretty full meeting today. We are going to get started. EPA is going to provide a brief overview, a background of the rule development process today, where they

have been and where they are going.

Then we are going to get into a discussion of the work practice standards. You have most of the morning and a little bit of the afternoon after lunch to discuss work practice standards issues.

Then we are going to move into certification and accreditation issues, and finally, the applicability and the scope of the rule concerns. Then we will get into the final questions and summary, and then we are done for the day.

I think we have spaced things out pretty well and the agenda should be pretty easy to follow. With that, I think I am going to open it up to Mark Henshall from EPA to describe the rule development process to date and provide you with an overview of where they are at.

MR. HENSHALL: Thank you, Scott. I am going to take maybe 10 minutes of your time so that we can get into the agenda.

As you can see, we have a full agenda, and we are going to try to get out of here as close to 5:00 as possible today.

When we originally started planning this meeting it was, in fact, a two-day meeting. We tried to compress everything into one day, trying to get you all back to your

real jobs.

So, if you could sort of indulge us and keep things moving along, we are going to try to get out as close to 5:00 as possible.

My name is Mark Henshall. I am the chief of the lead, heavy metals and inorganics branch. My branch is responsible for all of the regulatory development in the EPA's lead program.

One of the rules that we are working on, as you may be aware, is the TSCA section 402(c) renovation and remodeling rule.

To give some of you some background, if you haven't been at any of our previous meetings, just to give you a sense of sort of why we are doing this, what we are trying to do, and where we are in the schedule, back in 1992, Congress passed TSCA with Title X, which is a pretty comprehensive national lead statute.

It directed EPA, OSHA, HUD, and other agencies to do a series of things. One of the things it directed EPA to do was to write a regulation to train and certify abatement contractors.

EPA started that work in 1992 and finally completed it in 1996, and promulgated it as a final rule,

which I am sure you are pretty familiar with at this point.

Congress also told EPA to study the hazards that renovation contractors could pose to individuals living in homes where renovations were occurring. EPA also began that in 1992 and has about completed, or is completing that task.

Congress then told EPA to take the results of that study on the one hand, and to meet with as many people that we could find as would want to talk about this subject, and take the original training and certification rule, the abatement rule, and amend those rules to regulate renovation contractors whose activities pose a hazard. That is why we are here today.

We have had a series of meetings over the winter. We met with, effectively, this group about three or four months ago, something like that, in December.

We have met with a group of states two weeks ago, and we will be having another state meeting in June.

Our goal is to try to get a proposed regulation out by October, November, December, somewhere in that time frame, of this calendar year. Our goal is to definitely get a proposed rule out before the end of this calendar year. That is why this meeting is pretty important to us.

In your mailing, you were given -- and if you



didn't bring your mailing, we have extra copies -- you were given two items.

One was a draft rule outline, and another was a set of sort of issue discussions. I will first talk about the outline for two seconds.

As many of you know, if you have been involved with any rule makings with any other federal agencies, a lot of time what we start off working on looks like one thing and then the final rule looks like something entirely different.

I just want to caution you that what is in the draft outline is something that is being used for today's discussion, and it is being used as a starting point.

It in no way represents the final decisions of the agency. It doesn't indicate what exactly the final rule is going to look like.

I caution you not to run off and say, the EPA is going to be doing X or Y. We have a lot of deliberations to go through, this group being one, the states being another, our internal management being a third.

So, sort of treat this as a discussion document for today's meeting.

The issues outlined, I think, sort of crystallize

or give people a sense of the issues that EPA is really wrestling with at this point.

Work practice standards, which we are going to be spending a lot of time talking about, clearance testing, clearly a key issue, who can perform clearance testing, how to characterize jobs, what sort of work practice standards are required, those sort of things.

The issue paper is where we would like to spend a bit of our time today, but if you have any other comments on the rule outline itself, at the end of each section on work practice standards, certification, and applicability, we will have time to talk in general about those.

I think that is about all I have. One thing I wanted to do before we start was introduce the other people from EPA.

I think most or all of you know Mike Wilson. Mike is not feeling real well; he has got the flu. Be very nice to him today.

He is going to be leading the issue discussion. Mike is actually writing the rule, so that is another reason to be nice to him.

Rob Beekman, sitting to his left, is the economist working on the rule. Rob has a pretty important job,

because Rob has to try to defend all the actions that we take.

Speaking of defense, our attorney is also here. He stepped out of the room to get some coffee. His name is Dwayne London and he will be floating around back here.

We also have David Levitt, who just walked in from HUD. As I think you know, EPA and HUD are sort of co-partners in all the regulatory development that we do. We are glad to have him here.

I guess, with that, do we want to introduce everybody around the table? Pat, do you want to start?

MR. CURRAN: My name is Pat Curran with the state of North Carolina.

MR. FREEDMAN: I am Marc Freedman with the Painting and Decorating Contractors of America.

MR. HOFFMAN: Duffy Hoffman, Painting and Decorating Contractors of America.

MR. FREEDMAN: I am staff, he is actually a contractor.

MR. DIETRICH: Steve Dietrich, Painting and Decorating Contractors of America.

MR. FREEDMAN: He is another contractor.

MR. ZILKA: John Zilka, Applied Systems.

MS. AINSLIE: Vicki Ainslie, Georgia Tech Research Institute.

MR. BAKER: Richard Baker, Baker Environmental Control, Inc.

MR. NOLAN: Kevin Nolan. I am from Nolan Painting. I am also the residential committee chairman of the PDCA.

MR. DANIELS: Gene Daniels, the Carpenters Union.

MR. SUSSELL: Aaron Sussell, with NIOSH.

MR. PIACITELLI: Gregg Piacitelli with NIOSH.

MR. HARRINGTON: Dave Harrington with the Occupational Health Branch, California Department of Health Services.

MR. CARLINO: Ken Carlino, New York City Health Department.

MR. FARR: Nick Farr, National Center for Lead-Safe Housing.

MR. MATTE: Tom Matte with CDC.

MR. LIVINGSTON: Dennis Livingston, Community Resources.

MS. TOHN: Ellen Tohn, representing the Alliance to End Childhood Lead Poisoning.

MR. MACALUSO: George Macaluso, Laborers

International Union.

MR. LEVITT: David Levitt, HUD Office of Lead Hazard Control.

MR. HENSHALL: Great. I presume we are going to have a few more people trickling in. The last thing I want to say is, I want to thank everybody for taking the time out of their busy schedule to spend an entire day with us.

We realize that this is somewhat of an inconvenience, but without this sort of input, EPA is not going to get a rule out that is going to make sense.

We have tried to do as much outreach as we can on this. I encourage you to, if you have any thoughts that come to mind, any concerns that you have, any issues that you would like to raise that can't get raised in this form, to call or e mail Mike or myself any time between now and when the proposal comes out.

Your name is now on the mailing list, so that when the proposal does come out, we will send you a copy of the rule, fact sheets, those sorts of things.

I think that is about it. I am going to turn it over to Scott.

MR. GRAVES: For those of you who didn't get a copy of the issues paper or the rule outline, they are over

here on the table. I think we passed them around. There are a few extra copies at the end.

Before we get into our discussion today, at the beginning of each of the three major sections, I am going to ask Mike Wilson to introduce the major issues that, from EPA's perspective, they would like to have input on.

I am going to turn it over to Mike here, and let him go to town on the work practice standards. Then we will get going on the discussion.

**AGENDA ITEM: Work Practice Standards.**

MR. WILSON: As you have heard, you may hear some snuffling from me today, and I apologize for that. My toddler have been passing around a cold and flu for about the last week. It is my turn to be worse off and I think he is a little bit better today.

The first thing that we are going to discuss today is the work practice section. If you have your outlines with you, if you would turn to the second page of the outline, which is where the work practice standards begin?

We are going to start today with the work practice standards because we felt that by talking about the work practice standards first, it may help in the discussion later on certification, accreditation and applicability, if

you know what the requirements that we are thinking about imposing are.

Why don't we briefly discuss what the work practice standards includes.

It will include a work practice standard for partial inspection. If you are familiar with the 402 regulation, the abatement regulation, it talks about an inspection being a surface by surface investigation of an entire house.

Now, the work practice standards for renovation would lay out a procedure to do a more focused inspection, and just of the work area that is going to be affected by a specific job.

As we discuss later in the applicability section, the purpose of this type of inspection would be to make a lead-free certification to avoid the requirements in the renovation and remodeling regulation.

The second bullet is something that we are considering, which would be to require the owner, operator or responsible party of a building or a home, when they are doing a renovation or remodeling activity, to hire a certified contractor, a certified renovation or remodeling contractor.

The third bullet is notification. As you can see, we are not considering notification at this time. The principal reason for that is the large number of renovations that occur annually.

We are considering an enforcement program that would be based on tips and complaints, rather than an active notification and inspection program.

Next is prohibiting practices. Again, if you are familiar with the 402 regulation, you know that there were four prohibited practices that were adopted for abatement.

As you can see, we have listed three of the four restricted practices here today. The one that has been omitted is restricted practices during spray painting.

The way the outline reads today, we would restrict the use of open flame burning or torching of lead paint, machine sanding, grinding, abrasive blasting or sand blasting of lead paint without exhaust control, and operating a heat gun at temperatures greater than 1100 degrees.

The waste disposal section will basically refer to federal, state and local laws for waste disposal.

The next two bullets are basically bullets for fugitive dust emissions. They basically say that lead dust



or debris will be contained within a given work area and will not be allowed to migrate outside that work area.

Now, our thoughts for the way it would be written, rather than describe in detail in rule making how you would accomplish the isolation of the work area and prevention of this potential contamination, we will specify, as you see in these two bullets, that it will not be allowed. Then, in the guidance document, we will outline the agency's recommendations on how that is accomplished.

Then, actually, in the last bullet, you see it is for set up, dust minimization and control, clean up and clearance, and it refers to the two tables that are in the rule outline.

Basically, these two tables, the information that is here, would be manipulated into a guidance document that would accompany the rule making.

What we would probably use, some of you here are probably familiar with the issues paper and guidance document that were created last year.

Right now it is a five level, rather cumbersome procedural guideline. We would basically start with that and reduce it down to two levels, as you can see, the low and high risk.

We would basically use that as the foundation of this guidance document that I am discussing.

Let me just say what the difference is, or what we were considering when we talked about low and high risks. Those are the terms that we have been using.

If you look on table one, it basically lists some types of renovation or remodeling activities. Obviously, not every renovation or remodeling activity that is out there is on this list.

It is just basically some guidance, to give you some idea of what we consider low and high risk.

Now, in making the determination of low and high risk, what we were considering was whether or not a job required the containment of just a small work area, or of an entire room.

If you have just a couple of square feet of surface area that is going to be dry sprayed, say, then you would only have containment, plastic sheeting, in the local area, say six feet in any direction away from the work site.

The larger jobs, say if you are doing a ceiling repair that would have the potential of spreading dust throughout the room, would require the removal of removable items and plastic covering of everything else on the floor,

and then some type of plastic sheeting on the doorways.

When we are talking about low and high risk, that is what we are talking about, either localized containment, or containment of a full room or a larger work area.

MR. GRAVES: Interior.

MR. WILSON: As you can see, then, in table 2 it talks about work site preparation for the low and high risk jobs. It talks about extending plastic sheeting five feet around the perimeter of low risk jobs, about plastic sheeting on the entire floor and air locks on the doors for high risk jobs.

It talks about the use of warning signs, about isolation of HVAC, a recommendation that residents will be kept out of -- well, residents will be kept out of the work areas, and then recommendations about residents being relocated during work.

It also talks about recommendations for respirators, protective clothing, personal hygiene, showers. Also, there is a recommended cleaning practice.

Again, as I said, this will be incorporated into a guidance document. It may be several types of cleaning procedures that we present during the guidance document and, again, that will be left up to the contractor, to do the

work in an appropriate manner.

Finally, as clearance, we see for low hazard work, it is by visual examination only, and for the high hazard work, we are talking about requiring dust sampling.

In the case of owner-occupied housing, the owner would have the opportunity to waive the dust sampling. Of course, the contractor, then, would be required to keep a document in his records stating that the owner had waived that clearance. That is about it.

In general, I know there is a certain amount of concern with regard to OSHA regulations. Our thoughts are that we will defer worker safety, almost in its entirety, to the OSHA regulations.

There is the possibility that in the guidance document -- not in the regulation itself -- we may call for the use of protective clothing and things like that, in a situation where OSHA may not have, just to prevent the spread of dust from a work place, so something like that. Again, that would be in the guidance.

With that, let me turn this over to Scott.

MR. GRAVES: Again, just to remind everybody, EPA is going to be sitting over here, Marv and Mike and Dan Reinhart I see, and Rob.

They are going to be listening. If there is a point where they feel a need to respond to a comment that folks have made, we will make room in the speaking to address a concern or the issue.

To get started, we are going to try to prioritize some of the issues that we need to discuss today. If everybody could take a look at table 2 on their draft rule outline? I think it is on page five.

We have a little exercise. Lynn Richards, my colleague, is going to pass out a little instruction sheet and an envelope and we are going to use the table 2 as a way to identify the key issues that we need to discuss this morning, and then prioritize what we are going to do with them.

I am going to draw your attention to this far wall over here to my right. You will see essentially table 2 is replicated on the flip chart paper that is on the wall over there.

What I would like to do is have people address three different kinds of concerns regarding the work practices that are on table 2 of your draft rule outline.

The first issue, you are going to have five dots of three different colors each, green, blue and red. The

blue dots are for you to put up on the flip chart paper to indicate that the particular work practices there are too protective for a given risk level.

The green dots are to signify that the work practices are not protective enough for a given risk level. Then the red dots are a third category to signify that the protective measure is not implementable. It is not physically possible to do, for some particular reason.

You can use all positive dots on one particular issue. You can spread them out on different issues to signify your concern.

When everybody is done, we will take a look at where the dots are, and that will help to focus what we are going to talk about first, second, third and so on.

Let's take about 10 minutes or so and go on over to the wall and put your dots up on the wall in the areas that you think correspond to the areas that you would like to talk about first -- too protective, not protective enough or something that is impossible to do.

MR. FREEDMAN: What if our question is that we don't think that structure really is an appropriate way to proceed, and we don't want to discuss specific protective measures. We just think the whole idea needs to be opened

up.

MR. GRAVES: We will be talking about it more in depth.

[Participants comply with request.]

Before we get started discussing the issues and so on, Mike Wilson will make a couple of remarks and then we will get started right away.

MR. WILSON: I just wanted to quickly say, about the OSHA-related issues, which are respirators, protective clothing, personal hygiene and showers, that our plan is to defer to OSHA on those requirements.

The only thing that we may change is something that would enhance the protection of the occupants of the home, which could be additional requirements for protective clothing, perhaps shoe covers, or full body protective clothing, that would minimize the spread of dust in a home or the minimization of take-home dust.

I guess that is all. We don't want to spend a lot of time, then, on the OSHA issues, in particular, respirators, hygiene, showers.

If you wanted to talk a little bit about protective clothing and when that should be required in addition to the OSHA requirements, we could certainly talk

about that a bit.

I just want, again, to say that in general we will be adopting OSHA's regulations concerning these issues.

MR. GRAVES: In general, the order that I think we will go in, the areas with the most total dots, the protective measures with the most total dots we will discuss first.

You can see that right away, the first issue on work site preparation has quite a number of dots. A number of people thought that the measures were too protective, and a few folks on the high risk felt that the measures were not protective enough.

I would like to open it up for discussion on those issues right now. Who put the blue dots up on work site preparation? Somebody want to get started with that?

MR. NOLAN: Well, I guess the first thing we want to say to that is we don't agree with the low risk/high risk table. We would rather be starting there, actually.

Aside from that, I can't understand how a low risk procedure such as simply painting over lead-based paint, which painting over it without any disturbance would be considered a high risk activity.

Plastic is also dangerous to walk on. It ought to



be left up to the contractor to decide what, in fact, are the best methods to protect the flooring and other areas when, in fact, at the very bottom end of all this you are talking about clearance testing, which would ultimately involve giving a project back to the customer clean and free.

MR. GRAVES: Mike, do you have something to say?

MR. WILSON: I just wanted to say that in the case of painting, that if you are not going to do, say, surface sanding and stuff like that, if you are not going to disturb the surface, if all you are doing is the repainting of a room in good condition, then the requirements don't apply.

MR. HARRINGTON: I put up the red dots, primarily because I think if we are going to keep with the system of having a performance-based standard, I think it is really up to the contractor, to an educated contractor, to make a decision what level of containment they need in order to contain the dust and degree, rather than specify feet.

It is really job dependent, rather than getting into so many feet there on the low risk and how many feet in the high risk.

I think it should just be that it has to do a sufficient job of containing the dust and debris.

MR. GRAVES: Anybody else have any comments about work site preparation?

MR. FREEDMAN: I would like to go back to what Mike just talked about. If you are not disturbing any paint, then none of these rules apply.

At the risk of trying to inject a lot of grayness into what sounded like a very clean statement, it opens up a lot of questions in my mind about how we are assuming that there will be a lead based paint disturbance as soon as there is any type of sanding of a basic wall.

The assumption that I see at work here is that any house older than 1978, by definition, will create a lead based paint dust hazard as soon as the walls are disturbed or sanded or any kind of touching.

I don't think that is necessarily the case. I am concerned about over-reaching in that assumption.

I realize that that is not what Mike was trying to do in the comment, and I am not intending to try to direct this meeting into that discussion. I just want to raise that as a real serious question about the underlying assumptions that go into this kind of assessment of high risk versus low risk.

MS. TOHN: I guess I just want to respond to David

and say, if we have these performance standards where some jobs -- and we will figure out what that definition is -- trigger dust testing, and you have a clear standard that kids in particular shouldn't be in the work area, then it is a performance standard.

There will be some settings here where some jobs won't trigger dust testing, at least. I don't want all jobs to trigger dust testing.

For those jobs, in a guidance document, I would like to give people a feel for what seems like a reasonable amount of protective clothing, protective sheeting on the floor, precisely because I want to be sure that they don't get the impression that they have to do it over the whole room when there is a little job, when there is a little thing, when you are just working on a little repair thing.

I want to make the general principle point that you have got to put some protective sheeting on the floor in and around where you are working.

When you are doing something that disburses a lot of air particles, I want more protective cover because it will make the cleaning job easier at the end for you.

Maybe it could be said with less specificity. I think, because this guidance will probably form some of the

basis for whatever training we tumble to, it is important to give them some, e.g., this is sort of like about five feet.

I mean, I don't think it needs to be a precision thing, but I think we want to give a little more helpful hints.

MR. HARRINGTON: I think, though, that what is important here, I think it is fine to be in the guidance document, but I think when you look at this when it is on the ground and you have got a building inspector looking at a job or a local county health department person doing an enforcement, the question is going to be, are we going to quibble about a foot here or a foot there.

MS. TOHN: I think we shouldn't be enforcing five feet, four feet, three feet of plastic. I think the rule should be very simple and it should say, training of some nature is required and dust testing is required here.

That is really simple to enforce. We should never be enforcing that you didn't have five feet, you had three and a half and therefore you get a TSCA fine. That is ridiculous.

MR. NOLAN: I just wanted to say that I noticed you used the word protective sheeting. I wanted to make sure that there was a distinction or at least an

understanding that the difference between protective sheeting could be drop clothes or it could be plastic.

In many cases plastic is excellent to be used to cover furnishings or things like that. We talked about this before. On an exterior, it will kill anything that it covers, any shrubbery, any grass, plants.

So, you would be treating a dead zone 10 feet around the property. So, it is just unacceptable. The general public won't accept that.

MR. LIVINGSTON: The thing that is important is that 99 percent of the trades out there are not going to have inspectors coming in and looking.

This needs to be written to explain to people what the purpose of what they are doing is. If they understand the purpose, then they can do it.

The purpose is to keep dirt off the floor. It means covering up those areas where the dirt is going to fall.

I know it is difficult for the Federal Government to say something that simple. If the intention is made clear to the tradespeople, then it can be followed. It if is tried to be quantified, it creates chaos.

MR. HOFFMAN: A couple of things. One is on the

plastic hazards, using plastics as a protective inside as well as outside a home.

MR. GRAVES: Plastic is not here. It can mean anything.

MR. HOFFMAN: Or it means anything. We have to be careful that we don't get into the way of OSHA rules, which we have to follow as painting contractors or carpenters as well.

The other thing, disturbing of walls, the disturbing of surfaces. We have to be very careful that we don't make that too complicated. Sometimes you can go into a room and sand -- most houses that have lead underneath 10 coatings of latex paint or conventional wall paint, that room doesn't necessarily get disturbed in a renovation of that particular room, whether it be the sanding of a wall just to smooth it, then to prime it, to paint it and then to do the trim.

We have to be very careful, even if it does contain lead, and then we have to go in and run a test to see if it does have lead, which we basically know because of the age of the house. We have to be careful, what is disturbance.

Just as the gentleman over there said, we have to

be careful that we don't confuse these people with all these regs. I don't think it is a real big issue in just repainting.

MR. ZILKA: The concept of protective sheeting carte blanche, and air locks, on a high risk job boggles my mind from a do-ability standpoint.

I don't think it is an issue -- hopefully it is not an issue of obviously having all this stuff around. We do a lot of training and we talk about the fact of making this as protective as the job needs.

It depends not only on surface area but the dust that is being caused. So, having an air lock or taping a door shut carte blanche, across the board, is just way too protective.

I think the contractor, if trained properly, can evaluate the job before the job starts, make the determination of what the protective measure should be.

MR. SUSSELL: On the low risk jobs, if there is a specification for the number of feet, the 10 feet on exterior strikes me as excessive.

MR. GRAVES: Does anybody have any other comments that they want to make on the issue of work site preparation.

MS. TOHN: Aaron, do you want to provide any basis for that statement?

MR. SUSSELL: If you look at the low risk jobs, the jobs that by definition are low risk, can generate a relatively small amount of lead-containing dust.

I just don't see where there is going to be any real protection provided by extending sheeting on the outside of a structure 10 feet out.

I mean, some amount would be helpful, but according to this, if you are replacing a door lock on the outside of a building, or if there is an electrical outlet outside that you happen to be replacing, you have to put sheeting out 10 feet. That just doesn't make any sense to me, from a practical perspective.

MS. TOHN: I guess I wanted to second that. I think Aaron will -- NIOSH will have some data that hopefully they will provide to EPA in the next few months, where we did some very high risk kinds of jobs and measured settled dust six feet and 10 feet and 20 feet out.

At 10 feet, for jobs that no one would argue are high risk -- you know, somebody is going in with a machine sander with almost no venting or extensive dry scraping -- even at 10 feet, we saw big levels.



We didn't see, if you took that and tried to scale it down to a door lock and tried to extrapolate what the levels would be, they would probably be nothing.

I think some of that might be helpful. I would encourage someone, if anyone has any qualms about this measure, whether you ought to find something at 10 feet when you do a little repair job.

MR. HOFFMAN: On the 10 feet thing, with chips and dust, 10 foot tarps around the outside of a house, doing residential work, basically catches chips.

Very little dust gets caught on those tarps because generally either it gets tossed into the air or it drops down and, if you don't have your plastic tightly secured against the base of the house -- and if you have bushes there, you can't secure it tight anyway.

If you cover those bushes, going back to what Kevin said, you are going to start killing vegetation and killing grass, which is going to cause a big problem for the consumer.

I think it is another point we have to very carefully look at. If we were to say that we had to tarp out 10 feet or use protective sheeting, that we would be coming into a litigation for the contractor.

If you kill the grass and a lot of bushes, who is going to pay for the cost or the lawsuit that he will get from the damage to that particular residential property.

MR. ZILKA: One point to keep in mind, I am hoping that we are using these protective work site preparation measures coupled with good work practices.

I think the best paint chip containment can be maintained within that. Ten square feet is undoable in inner city situations, period, when you are working outside where the front yard is basically the sidewalk.

These types of issues become undoable on that end of it. Again, it gets back to the issue of checking the job out and having a competent contractor make a decision on these interior and exterior protective measures.

MR. GRAVES: Any more comments or concerns regarding work site preparation?

MR. NOLAN: At the risk of being redundant, I just wanted to run through some of the low risk things that wouldn't make any sense at all.

I don't know how you could put plastic down if you are removing wall-to-wall carpet. I don't know why you would put plastic down to 10 feet if you were doing an electrical repair or if you were doing a door lock, as you

mentioned, or if you were replacing a window pane, low risk work performed on a ceiling.

I mean, some of them just don't make sense, to incorporate them all into a 10-foot rule or a five-foot rule at all.

Even in a high risk one, for instance, floor refinishing, I don't know how you are going to put plastic down on the floor if you are going to refinish the floor. It all doesn't make just that much sense necessarily.

MR. CURRAN: Under high risk, there are a lot of green dots up there. I put one of them up. I guess the reason I put it up was covering the lawns, depending on how it is covered.

I just think the high risk, whatever is in the room what needs to come out. I am wondering why other people put green dots up.

MR. DIETRICH: I just wanted to mention that as a painting contractor, we do quite a bit of interior work in houses that predate 1978.

Ninety-five percent of the type of work that we do would not fall under the high risk category. I guess it is a problem for me to determine what you consider disturbing lead-based paint and what you don't.

I just wanted to mention that, since very little of the work that we do as residential interior repainters falls under high risk.

I guess I would like to see it up to the contractor to help make a determination on what he considers to be high risk in the painting end of it, and not automatically put it under high risk with the parenthesis at disturbing lead-based paint.

I just think that the contractor is going to use protective measures for his employees, and he is going to leave the job site clean, and those should be the biggest concerns. That is all.

MR. HOFFMAN: On the same issue there, and as the other gentleman was talking about, I think rules such as the protective covering should be put into the contractor's hands.

Hopefully, most of us will have common sense to know whether we have left 100 pounds of dust sitting on the floor or we haven't. We should pretty much know when we are in an endangering situation or we are not.

I think that should be more left to ourselves to decide, you know, under some type of our own training program or our own people, to decide what is going to create

a dangerous situation and what will not, and which equipment to use.

OSHA has already answered it in just about every publication that they have put out, what is safe and what is not safe. It would be repeating a rule and procedures that are already intact already.

MR. FARR: I would like to ask Dan Reinhart, whether in the Wisconsin study they were able to distinguish between kids in housing built before or after 1950 or 1960 or something.

I asked Tom in the New York study and he said the only ones they looked at were pre-1950, which seemed sensible to me.

Do you know, in the Wisconsin study, whether the housing in which you think remodeling might have had an effect on kids were pre-1978 or pre-1950 or whatever?

MR. REINHART: We did ask the question. One of the questions was when was the house built.

MR. FARR: What did you find?

MR. REINHART: We took a look at it. The most important distinction, of course, was 1978. The first one we looked at was 1978.

We were somewhat surprised that some activities

conducted in post-1978 houses were associated with elevated blood levels. That was somewhat of a surprise for us.

Off the top of my head, we found some degree of relationship with the age of the house. I cannot be specific at this point about how great that was.

MR. FARR: Houses built before or after 1950 or 1960?

MR. REINHART: I think there were a number of issues. One of them had to do with the knowledge of the homeowner or renter.

MR. FARR: About when it was built.

MR. REINHART: There were a number of concerns about our ability to make the kinds of distinctions, but we did look at them.

We did find, at least in using 1978 which is not the kind of clear distinction, there was no risk in post-1978 housing. On the contrary, some activities could still be associated with elevated levels.

MR. SUSSELL: On the issue of high risk, I mean, really, the high risk activities occur, we know, because of certain high risk activities being done -- scraping and sanding -- being done on paint where lead is present. Certainly it is more of a risk with high lead levels in the

paint.

One thing we found in NIOSH, with studies that have been completed and also ongoing research, there usually isn't a really good correlation between the paint lead level and the worker exposures.

I would expect there to be a similar situation with the occupant exposures, as Dan sort of mentioned. What really counts is how much lead is being produced by the job. That is more dependent on the method than it is the lead concentration in the paint.

If you are doing something that more aggressively disturbs the paint, that is going to be higher risk. The paint lead is a factor, but it is not the most important factor. It is not predictive at all for the worker exposures.

We have measured worker exposures above the OSHA PEL, even where there was no lead-based paint present by the federal definition, even where all the paint was below .5 percent, simply because they were doing dry scraping, which is a very dust-generating method, which it does not take very much lead to produce over-exposure.

MR. BULLIS: First of all, I want to reiterate that we are talking about more occupant-type protection.

Mentioning the OSHA standards relating to these activities isn't really, in my mind, the focus of this proposed rule.

We are getting into the same argument of performance-based standards versus specification-based standards here.

I have been enforcing the Maryland regulations for 10 years. We have specification-based standards. It is important to realize that one size doesn't fit all.

On the other hand, you can't say, lay down 10 feet of plastic, because it isn't going to work in all circumstances. You have to allow for alternative procedures.

The trouble is, from the regulator side, you have to realize that there isn't going to be enough infrastructure or people to review every job and every proposal for an alternative procedure.

You are going to have to allow contractors, in some way, to use what works. That is kind of how we -- when we go out in the field and we do inspections on these jobs, 10 feet of plastic, what good is that if you are talking about 30 stories up and the guy is using a cherry picker to go up there and do the job.

He can line the bucket there with plastic and



collect the debris locally and move to the next thing. They can put up a mini-containment. There are just too many variables there to say just strictly, this amount of feet.

It does work, but all those other issues -- the vegetation and the sidewalk -- come into play. So, as an overall thing, we do need to have some flexibility in here.

MR. LEVITT: He made the point that I just wanted to reiterate, that this isn't a new -- OSHA doesn't replace what this is trying to do. I think the key thing here is occupant protection and leaving the area safe, especially children.

That is the primary concern, that we want to leave the area clean after you finish the work. There is nothing in OSHA specifically dealing with those types of issues.

MR. MACALUSO: One is a question to Aaron, I guess. I was curious. How is concentration not associated with exposure? That sort of baffles me that you would say that.

One percent as opposed to 98 percent on a steel structure with a torch, I am totally --

MR. SUSSELL: We have looked at studies where we have had a lot of data, for example, a HUD demonstration project where thousands of air and paint samples were

collected in hundreds of housing units.

When you look at the overall model and you look at the worker exposure, the amount of airborne lead generated as a variable, the paint/lead concentration does contribute to the model.

In other words, it contributes information that helps you predict the air lead. However, when you look at the two variables by themselves, the mean paint lead in the house versus the air lead that happens when you do abatement work -- and the same would be true when you do renovation work -- there is almost no correlation there. It is almost a completely flat line. In reality, that is what you get.

MR. MACALUSO: Okay, I guess it would be depending on what you are doing.

MR. SUSSELL: The problem is there are too many variables in the work that are more important.

MR. MACALUSO: Obviously, a painting contractor is here, and I think we are talking about painting a whole lot. I remember the last time I was here and I brought up other activities that go on in remodeling and renovation.

It seems like we are picking the easiest one, painting, which probably generates the least exposure. I think that if I demolish a wall -- I think there are some

activities that generate more dust, either using saws or using something -- there are other things.

We seem to be focusing on just strictly painting. I just wanted to say that there are other things, other activities, where 10 feet of tarp or plastic away from the area is a little too little, and you might want to go much further than that.

MR. HOFFMAN: What I was trying to get at with that OSHA thing is that you have to be very careful -- and I think there are a couple of other people who agree with this -- we have to be very careful that when we do this information, if we redo stuff that has already been done, and we put it on the same paper, which is going to confuse people who are already confused, we have to be careful that we don't make this information any more than, say, one-and-a-half pages, two pages, so the common person will understand and be able to communicate this information to their workers, so they can create their own training program to educate their own people.

MR. ZILKA: This is an aside to all the discussion on work place preparation. I talked with Dan just a second or two ago.

Maury, in NAHP, just at a conference last week,

over the weekend -- and you probably aren't going to see much representation from those folks, so I just want to put that out, although we have a lot of representation here from PDCA, some of those folks are still coming off from their conference.

We will certainly not represent them, but certainly I just want to put that out for everybody.

MR. SUSSELL: In regard to the mention of the OSHA regulations, I do think that the primary focus of the EPA regulations should be to protect the occupant rather than the worker.

I think that is where the biggest hazard is in home renovation work, based on what we know.

I will say, as far as the OSHA regulations go, remember there is no surface action level at all in the OSHA regulations.

They depend on the airborne exposure, which the contractor is supposed to be measuring at every job. Also, OSHA has trigger tasks, which they say in the lead construction standard, if you are doing this task, you must assume that this work is hazardous until you prove otherwise.

That is not just a purely performance based

standard. That is specifying that protective measures have to be taken for certain jobs, including sanding, scraping, demolition, a lot of the things that we have been mentioning here. So, it is a combined type of standard, really.

MR. FARR: I guess there has been a lot of talk about the need for flexibility here, which I think pretty much everybody has said.

That raises the question, are we talking about putting these standards into regulation, or are we talking about having a general performance standard in regulations and this sort of stuff in guidelines of some sort.

Then the next question, just sort of following up from what Gene said, is, also we recognize, it says here, as a practical matter, the only enforcement of this is going to be on the basis of complaints.

The complaints are likely to arise because some child gets an elevated blood lead level. At that point, it is going to be impossible for anybody to know how much sheeting was down or what anybody did.

I don't understand, as a practical matter, how this is going to work at all. So, I guess my first question is, are we talking about this in detail. Here on table 2, are we talking about guidelines or are we talking about

putting it in regulations.

Then secondly, I just hoped somebody would say how, in the real world, this would work.

MR. HENSHALL: Can I answer the question? I think at this point nothing -- as I started out the conversation, nothing in the outline is to be taken as how things are going to be or how they are not going to be.

I think this is an important discussion to have and for us to reflect back on when we go ahead and write the rule.

The agency clearly has a decision in front of it. Do we make the rule more performance oriented, requiring clearance?

There are issues that surround these that we are going to get into a little bit later on, and it is not as clear cut as we would like to see it.

I think we all need to have this discussion and make sure that this issue is fully aired. At this point, we are not precluding anything or taking anything off the table.

The agency may require some subset of these in a regulation and make the rest guidance. I mean, we have a reasonably open slate at this point.

When you are having your discussion, make sure that you reflect on that. Right now we can do effectively whatever we want, and it is open to each of the commenters to sort of reflect on that and include that in their comments.

MR. MATTE: It seems like the most difficult thing about both regulating and studying this problem is figuring out what is the lead content of the stuff that is actually getting disturbed.

That is why it is difficult to find a strong association with lead paint levels. We know it has been alluded to that there are levels of non-lead paint on top of lead paint and so on.

I am concerned that, because of that, a distinction may not be getting made which probably should be made.

We know, from other buildings, which probably haven't been reviewed in this meeting, that even in places where abatement work is carefully regulated, like in Massachusetts, where work is done that actually involves removing paint to bare substrate, where that is the intent of their work, that even with all the provisions they have in place for licensing abatement contractors and so on and

so forth, that blood lead levels in children go up when that type of work is done.

That is sort of like the extreme case of disturbing leaded paint. We know if there is leaded paint on that surface, that it has been disturbed if you are trying to removed leaded paint.

I don't have a specific suggestion for how to do this. It is worth thinking about if there is a way to raise the bar when that type of work is done, for historical preservation or whatever reason, and really, that you try to have regulations that discourage people from doing that type of work unless it is absolutely necessary.

The other comment I had is a concern about -- I think I heard it said that the definition of work that involved lead paint migrating out of the work area would be sort of left vague and then the guidelines would try to define what that was.

I am just concerned, after the fact, that it looks like it is going to be difficult, particularly in urban environments, where there is a lot of ambient lead contamination, to determine after the fact whether the work resulted in that stuff migrating.

At least if there is some way without having it



all be litigated, to try to make that determination.

MR. ZILKA: We have done some training across the country on these issues. One of the first questions I will ask the class is whether or not they know the OSHA standard, specifically, the personal exposure assessment clauses within that standard.

I would say uniformly, across the training that we have done, we have got a virtual no, from people understanding what that standard is, people understanding the nuances of that standard with respect to personal exposure assessment.

Our biggest concern really is to have a standard that works, that is doable, that can be done under the guise of a contractor who understands the issues, who could apply those issues to the job-specific concerns.

Work practices, more than personal exposure, assessment, I think, are going to be very, very important. But let's not kid ourselves.

The amount of knowledge associated with OSHA standards and these concerns of personal exposure assessment is nil in the industry. I just want you to realize that.

MS. TOHN: I guess I want to respond to Tom's point with a specific suggestion on that and make two other

points.

One, I agree with you, paint removal, where that is the intent, to remove large quantities of paint, to get down to the substrate, even if you are not above the lead-based paint definition, it can be incredibly hazardous.

EPA has the authority under this rule to make a determination of what is hazardous and to apply the 402 or 404 standard.

I think we should get rid of this whole intent thing. Whether the intent was abatement or renovation, it doesn't matter. What you are doing is what you are doing.

One thing that I think EPA should do is say, if you are intending to do paint removal to get down to the substrate, you are really trying to get all that paint off, then you should have to meet the 402 or 404 standards for abatement work.

It would be a big disincentive to doing that work, because no one wants to be in that 402 404 world, and it really ensures that there is proper training and dust testing.

That is my first point. I don't think it happens that much, and we should be discouraging people from doing that, and I think that is a clear message that could come

out of this that is very enforceable.

I think a lot about whether or not this thing could actually be enforced and what this would mean in the real world.

I guess what I think this regulation could do -- and Scott, I don't know how far you want to stray from work preparation, but I think there are three things that it could do.

The regulation should have three statements in it. You need training, keep people out of the work site area -- I know that is hard to do, Duffy and Kevin, but I don't want people in the place where you are doing stuff that makes a lot of dust.

Some things that are very high risk -- and we have to come up with a better way of defining this, I don't necessarily like this categorization either, I want dust testing, because that is enforceable.

I think everything else should be in guidance. The training course should give people all the good tips and tricks we want to give them on how to make good judgement at a certain time.

Regulation needs to be simple, and if it says those three things, those are the messages we want to give

you.

You have got to change the way you do business. Go to a four-hour class. Keep people out of the work site because you can make dust that you can't see that can be harmful to children, in particular.

For some things, we are so worried about the dust from this, that we are going to recommend dust testing with owner/occupant waivers.

I would like to make a pitch for saving enough time at the end of the day, Scot, for talking about this, when are we in the high risk and low risk.

A lot of people have concerns about this and we could spend so much time on this minutiae that I worry that the more important discussion is going to get smooshed into 20 minutes, and I would rather have that take an hour and a half.

I think you have got a lot of agreement here, that a lot of this should be in guidance.

MR. LIVINGSTON: If there is consensus that there needs to be a three or four-hour class available to tradespeople throughout the country -- and I think Vermont is showing that a real broad training is possible -- then we are discussing the content of that training, and that really

makes sense.

The discussion about lead, if I tear down a ceiling, I am exposing occupants to coal dust, to mildew, mold, cockroach exoskeletons, mice droppings, bad stuff.

The issue as to whether or not the surface of that ceiling contains lead is just part of an issue of protecting occupants from bad stuff.

We should train workers how to protect themselves, how to shield occupants from large amounts of stuff coming particularly out of the wall cavities, and how to clean up correctly.

Those should be like very effective trainings which I know, as a small contractor, we are not real good at cleaning up. We sweep up and make the mess worse sometimes.

I think we are focusing on an unregulated, ununionized, unorganized trade that is doing a vast majority of work in the highest risk houses.

The training of people is the most crucial aspect of this, and the training of them to be able to do the protection of the space and the clean up with some affirmation that clean-ups work when large amounts of dust are created because you have opened up wall cavities, taken a large majority of paint off the walls, is what the

discussion should be focused on, rather than creating a set of -- I am supporting what Ellen is saying here -- a set of specific rules that we think someone is going to be forced to follow.

The training is the heart of this thing. I would really like to know if there is consensus about the training.

If there is opposition to the training, then I don't know how the information gets out. If there is strong consensus about the training, then it seems to me it is an easier discussion because we know where it is we are going to be informing people about these things.

MR. GRAVES: Just a reminder, this afternoon we will be talking about certification and accreditation.

MR. LIVINGSTON: I am not talking about certification and accreditation. I am asking that there be a little brief straw vote now to see if there is some consensus on this brief training.

MR. GRAVING: We will not be doing a straw vote.

MR. FREEDMAN: One quick question. It sort of goes to EPA and it relates to what Ellen has said and Dennis has just said, and I would like to agree with what they said also.

I really don't know what the philosophy of this regulation is. I don't know what the overarching structure and outline is that EPA is trying to promote.

We know that we want to protect occupants. We know that title X says EPA has to go out and do something. I want to make a comment that this is the first time I have heard EPA, through Marc, say that we can do anything we want.

That is a liberating statement. Previously, the assumption has been that they are tied to the 402 404 structure. Now I hear them saying we are not, and that is a good thing. That opens up flexibility.

The broader point is, we are getting very, very tied down and worked up over a lot of things that I think are important, but we don't know what the bigger picture is.

I liked Ellen's distillation. I liked Dennis' distillation. What are the key things that this rule is supposed to achieve?

Training. Good. We all agree there should be training. We are going to disagree about how you go about doing that, but let's agree that there should be training.

Keeping occupants away from the problem; excellent idea. We like it. OSHA says you have to do it. It is a

universal principle.

Dust testing, we can debate that. We have some thoughts, Ellen has got some thoughts, and I think the waiver offers some way out there.

What is the overarching structure? I mean, the high risk, low risk distinctions are irrelevant. They are not going to come into play in the real world.

I want an outline, I want a philosophy about this regulation. Then, let's talk about how to implement that philosophy.

MR. HOFFMAN: On removals, when you talk about taking paint down to a substrate, a lot of painters get into situations where they are not taking paint down to the substrate because there is lead.

Is has not anything to do with the lead-based paint whatsoever. The only thing it has to do with lead is that the lead has destroyed itself from the wood substrate and it isn't any good any more. It is releasing from the house.

In most cases, it is falling off of the house. Actually, in a residential situation, it is probably safer and better to remove it to the substrate than to let it sit there and chip onto the ground.



We have to be very careful when we say lead abatement or in residential. In a residential situation, if that paint is falling off of a house and the substrate is no good, there is no way that you are going to get a common homeowner, who makes \$40,000 a year, to spend \$40,000 to remove the paint off their house in the lead abatement program.

You have to be very careful about that. It does have to be taken off. There is no way to repaint a house without doing that when you have checkering, blistering, alligatoring and cracking.

When you start talking about encapsulation, it doesn't work. Twenty years down the road we are going to have a bigger problem if we keep pushing encapsulation.

There are certain homes that are of a certain age that the paint is completely deteriorated. It needs to be taken off the substrate and gotten rid of, so that we don't have future poisoning going on years down the road.

We have to be very careful when we start talking about residential removal and abatement removal. It can be done very safely on a residential basis if the people have the proper training, which is the key to the whole success of dust control.

MR. MATTE: I just want to ask the question. I haven't seen any data. The only data that I have seen is from a state where there is a fair amount of regulation.

In other words, I think we can all accept as a given that what is in the mind of the contractor, am I doing an abatement job or am I doing a painting job, doesn't have any health significance unless it affects what he actually does.

If two contractors go in and they remove paint from the bare substrate, for whatever reason, what is going to determine the health risk for the children, so that the lead content has something to do with it, how the work is done, how it is being done.

The only experience that I am aware of, where there has been a regulated paint removal program, is where they have encouraged paint removal in Massachusetts.

Even with the provisions that they have, requiring people to be trained and certified and clean up, et cetera, et cetera, the track record of being able to do that work safely is just not good.

So, the alternative sometimes is the component that you are trying to remove to the bare substrate needs to be replaced, and that is the alternative.

I am not in favor of leaving paint that I know is going to deteriorate 10 years from now. I am also not in favor of saying, in order protect some future generation, I am going to encourage paint to be removed now and expose kids that are living there now. It is not fair to the kids that are living there now.

I am interested to hear these comments, but I also know that there is a body of data out there that shows that when there is paint removal being done, and preparation being done, it is associated with elevated blood lead levels in children.

If we could figure out what the contractors are doing on those jobs that you say, with training and knowledge, the contractor would have the judgement to protect the kids, then that would be great, if that went into the regulation or a training program.

For paint removal from pre-1950 houses, I just haven't seen any data that shows me that it can be done safely, even with fairly burdensome rules and regulations that probably none of you would be very happy with.

MS. TOHN: To some extent, I think we have to reiterate that what is in people's minds about the purpose of why they are doing it is less important, that intent

doesn't matter. What you are doing matters.

What I would like to discourage is the interior and the outsides of buildings, I have seen lots of hunking, flaking lead-based paint looking like it should come off.

What I am proposing is, if the intent of that is to repaint the building and you are removing paint that is not adhering to the substrate, and part of that, in some places, you are going down to the substrate, but in other parts, where there hasn't been as much sun exposure or whatever, it is not even, as you go around the building. That is not a paint removal job to me.

What I am talking about for paint removal, and I am very worried about it, would be interior jobs where the customer says, I want you to strip this paint. You know, it is coming off, and I want it down to the woodwork. I like that woodwork look.

I know the consequences of that action in a lot of places, and we should be discouraging it. I think the potential regulatory mechanism for discouraging it is saying that is paint removal, that is the abatement world.

If you want to do that, the contractor should get three days of training. That is scary stuff. We know you are going to be releasing all that lead.

I mean, if it is coming off, it is coming off. It is a mass balance. It has to come somewhere. We know, from the Baltimore traditional abatement work of Mark Farfall(?) and Rabinowitz and these other people's studies, and you know from common sense, that that is very dangerous and we don't want to do it.

We either want to encourage the message, the philosophy of the regulation, Marc, should be, if it is that bad, replace that trim if it is architecturally important, or don't do that, just simply prep that surface appropriately, with the kind of training that we are talking about in this regulation, I think, applied training.

We will argue about how it is delivered, but it is not that hard to do training for that.

I think the potential carve-out for paint removal would send an important philosophical message. I think it is very clear on the inside. I think it is a little less clear for exterior stuff, what is paint removal and what is prep.

MR. CONNOR: Just picking up on the data, and Tom, I am surprised that you haven't looked at any of the data from Maryland with all the dust estimates that have been done since 1996.

It is not different, because I think part of it plays into the discussion that we have at hand. With adequate training or knowledge -- and I don't associate the two; knowledge is different from training -- but with adequate knowledge, work site control, there are thousands of units that are turned over annually in the state of Maryland, particularly in Baltimore City, that are pre-1950.

The property owners have, in fact, gone through extensive unit turnover, which has included surface prep of lead-based painting, which has included re-hanging of doors, following some of the stuff that Dennis has put forward with the cleaning. They have done window replacement.

At least with our data -- and I would defer to Dean and others around the table -- with our testing, 98 percent of these contractors passed lead contaminated dust testing first time through, and they did not leave work areas that would compromise the health of a young child.

How many apartment owners do not have plaster walls in a unit turnover that are having dry wall, that need to be coming down.

MR. MATTE: Are these certified that you are talking about?

MR. CONNOR: Yes, I am not talking about chemical

stripping down to the bare substrate. I am trying to get back to the original setting.

MR. MATTE: Under a modified provision, they are encouraging people to do things to address lead hazard which include preparation.

That can be done. It can be done safely. It does require training, it does require good inspection of the site.

I am talking about Massachusetts mainly and older exterior paint. Paint removal to the bare substrate was encouraged as a method of preventing future lead poisoning. I haven't seen any data that showed me that that can be done safely on a large-scale basis.

MR. HOFFMAN: A comment on that. One, the education and training is probably number one that the EPA and OSHA have not done throughout the United States on a big level.

I have been in the historical restoration business for a long time and I have been around a lot of big contractors, some of the biggest ones on the east coast.

Their knowledge of dust safety and lead safety -- and I could go on and on -- is almost zero, and if they have the knowledge, they will not use the knowledge.

It comes down to yes, if you are doing complete removals on the outside of a house, yes, it can be dangerous, if the person isn't educated and trained in the type of work that he is doing.

I have gone through air monitoring tests because of the lack of education by the EPA and OSHA to the contractor doing the work.

The laws and rules have been there, but the education has been probably minus 100 percent to us. I made it a point for seven years to educate myself, by myself, by taking their pamphlets, rules and regulations and job site situations to figure out ways to contain poisoning of dust and so on and so forth.

It can be done, and I don't think that, if you are in a historical situation or a house owner has a house that is 150, 200 years old, and they want to restore that house, and they don't want to remove the portals, they don't want to remove some of these very intricate, important pieces to the house, that they should be subject to an abatement rule for removing it.

I think they should have the right to hire a person who is properly trained and educated to do that work.

Now, interior work is a whole different aspect



besides exterior. I have done air monitoring tests interior, and set up the worst situation you could have with the proper protection for the guys who are doing it, to find out what is the worst scenario I am going to come up with, to know how to protect myself and the people in the home in future restorations or residential type work.

I don't think that -- I think we need to concentrate on the education and the training, so that we don't have to take a residential guy and say, okay, you are going to strip the side of this house; you have got to go abatement.

I don't think that is a correct way to go. I think it is too broad of a situation. I have brought the rules and regulations, both EPA and OSHA, into my company, and I have spent thousands and thousands of dollars to protect my men and the people who own the homes.

I am doing a successful job at it, and I am doing it because, one, I care about the environment, I care about the people, and I care about my workers.

To infringe an abatement rule on someone like me - - and there are hundreds of me out there, who don't know anything about this, and they are doing it.

It is because of lack of education and training

that these people are poisoning other people. Stripping of whole complete sides of houses, not only to protect the occupant, in protecting the occupant, sometimes we have gone overboard in some of these OSHA and EPA rulings and decisions and testings, that because there are lead chips on the dirt on the side of the house, that kids are going to get poisoned.

Well, I have had situations or projects where I have actually tested the soil before I touched a house 200 years old.

Because of the situation that house was in, sitting on a very busy corner in a very busy town or city, that that exposure that is in that soil to lead, came from lead based gas.

Some of those tests came up three times the limit level of the EPA, and no paint chips in there at all that have to do with it. So, I think we have to be very careful on how we rule that.

MR. GRAVES: A couple of things before we go to Kevin and John. First, just a reminder to please your name tags to indicate that you want to speak.

In seven or eight minutes, we are going to take a break. I just wanted to put that on the agenda.

MR. NOLAN: I just have a bunch of rambling points here, but I want to address a lot of things that have been said.

I agree with Duffy about education and training. We talked about this before, but it hasn't been brought up yet.

Education also means educating the home owners to ask for things, to look for contractors like myself and Duffy, who are trying to address these problems.

When I talk lead to a customer, which I understand is a dangerous thing, because it could throw me into an abatement category, but if I start talking lead to a contractor and trying to help them solve some of their problems they say things like, well, lead is not in paint any more, is it?

There is a huge education gulf here. They don't have a clue that this is a problem. They don't have a clue because even people in this room are talking about pending legislation and regulation that could greatly affect the way they live in their homes.

A couple of other points. Stripping of interior surfaces is discouraged by the expense involved. It is not the business that I do because I find it to be way too

costly and customers don't go for it.

I know that in some higher rent jobs it is happening, but it is very much discouraged in the industry by the price of it all.

Also, we have not seen -- painting contractors have not seen enough evidence to show that kids are being poisoned by contractors.

I mean, where is all this data? We have seen the report that was presented by EPA at the last meeting, but that is hardly all the data.

There has got to be a lot more data that says that when painting contractors do their thing, that there is or is not elevated blood lead levels.

Also, just getting back into removal, on an exterior surface it would be rare that you would do any job at all where there wouldn't be a window sill, an area that has been exposed to the bad elements and the sun and things like that, where you wouldn't have a little bit of removal.

We want to make sure that that does not trigger a whole bunch of crazy regulations.

A lot of this is actually a diminishing problem. We have talked about this before.

The only data that I have seen are that blood lead

levels are actually declining as a whole in the country.

Aluminum siding and vinyl siding is the way the market seems to be going for a lot of this anyway. Whether you like it or not, that seems to be what is happening.

Lastly, if too much of this becomes too onerous for the good contractors, the work will be done by others. It will be done by handymen, it will be done by completely unlicensed, unregulated, unconcerned contractors.

There are a lot of issues I just threw out there. But these are the issues that painting contractors are talking about.

Why are they doing this to us. Lead hasn't been in paint for 20 years. We are not just getting calls from our customers saying, you have created a lead hazard for us. So, a lot of these issues are what really we should be talking about.

MR. ZILKA: I have to agree with Kevin with respect to client awareness of the concerns out there. It is virtually nonexistent. There are a lot of misnomers.

Then you folks are asking the contractors to be the purveyors of this information. Certainly training can go a long way in supporting that, to intelligently address the questions that a remodeling contractor or a painting

contractor come up with. That is a very important issue.

The demand side of this equation has to be asked, and you folks aren't doing it right now, quite frankly, and you have got to start doing it.

I know there are some things out there that are important. I know there are some things in the mill. We have been waiting.

A lot of our compadres in the remodeling business want to say, hey, let's get the word out. You are not doing it. We have got to have that.

The last thing is the issue of abatement versus remodeling. I think you folks have addressed that with respect to 402.

It is the intent of the contract in itself. I don't think, at least in my neck of the woods, you are not going from a repainting job to an abatement job without the intent being in the contract itself, and that is something that we have all worked through.

The issue of abatement versus non-abatement with respect to the activity is not there. There are only a few states that I know of that actually look at the knowledge of lead paint as a precursor to abatement. Very few states are following the issue with respect to that.

They are actually saying, if the intent is to do renovation and remodeling work, and that is the way that most folks are going. I don't think that is going to be a concern.

Again, it is back to the issue of client awareness and making an intelligent decision on what not to do and how to select that contractor. We have got to do a better job of getting that word out.

Mr. MATTE: As far as I am aware, there is not good data to distinguish, to say how much of the problem is associated with painting contractors, licensed contractors, unlicensed.

In trying to summarize the data that has emerged, it comes initially from data where people are trying to study the effects of actually doing abatement work and finding that it was, in many cases, generating more of a problem.

Because that work overlapped, to some extent, without the mind set being abatement -- paint removal, repainting, et cetera, et cetera -- it became clear that it didn't make sense just to focus on the abatement world in looking at this problem.

Now there is some more recent data that is

intended to look more specifically at, have you had work done in your home recently, and is that associated with having an elevated blood level.

The answer is yes, certain types of works makes it very likely, depending on the setting, that if you had certain types of work reported in the last six months to a year depending on which data we are talking about, that it was associated with kids having elevated blood levels.

It shouldn't be surprising, because we know that some of the same work that was studied in the abatement setting is done every day by people who aren't intending to do an abatement.

The fact that blood lead levels are going down around the country is certainly true. It is good news. It is because we have been addressing a wide range of different sources of lead exposure.

Just like automobile accidents are going down. That doesn't mean that some kids don't continue to be poisoned by different sources of lead exposure.

I don't want to give the impression, at least from my point of view, that the science shows that painting contractors are the problem.

Certain types of work does seem, not surprisingly,



to generate dust. The focus should be on what type of work is being done, not exactly who is doing it and why it is being done.

MR. GRAVES: Thanks. We are going to take 15 minutes. I have got exactly 10:00 o'clock. If everybody could be back here at 10:15, we will pick up and continue the discussion. Coffee is upstairs, up the escalator and to the right, if you haven't been up there already.

[Brief recess.]

MR. GRAVES: Okay, we are going to get started. Just a reminder, to this point we have been having a fairly wide-ranging discussion.

One of the focus areas that seems to be coming up a lot and emphasis has been on surface preparation and painting and so on.

Just a reminder, the rule does also apply to demolition and component replacement as well, not just surface preparation and painting. Just a reminder that that is a focus of the rule.

We are scheduled to do lunch at 11:30. Lunch is an hour and 15 minutes. We will try as hard as we can to wrap up the discussion by 11:30.

Given that we are getting started a little late,

we might run a little late, too.

The second area of focus this morning looks to be a lot of red dots on work practices. I am going to ask Mike to address the work practice issue real quickly, and then we will move into a brief discussion on work practices.

MR. WILSON: As I mentioned earlier, the regulation will basically be -- well, it will be two parts. You will have the regulatory portion and then a guidance document as well.

We have some ideas now of which work practice items will be regulatory and which will be guidance. I think for today's discussion, maybe if we can get an idea as to what your recommendations are, as to whether these work practices should be regulatory or guidance, maybe that would be the most appropriate thing to do.

In particular, like when we look at the work practices on the table, I think it mentions the use of wet methods.

The guidance document itself, I can see in the guidance document that we will recommend the use of wet methods, not require the use of wet methods, but recommend their use. I don't see the use of wet methods being a regulatory item.

Maybe we can, as we talk about work practices, we can think about that for each of the individual items. If you have a preference or a thought about whether they should be regulatory or guidance, please let us know.

MR. GRAVES: I see a lot of red dots over on the work practices measure. The assumption that we made is that that has to do with feelings about working wet.

I just wanted to open up the discussion on that issue in terms of recommending versus required, and whoever put the red dots, if you want to start the discussion, that would be great.

MR. NOLAN: I put all my dots up there. I guess I have been beating this drum since the beginning, that wet methods are just not acceptable to create an aesthetic finish that my customers demand.

It is not going to be accepted by the industry. Contractors will just completely ignore it because it is one of those things that just doesn't make sense.

I understand that the goal is to keep dust down. Unfortunately, I don't even know if it does keep dust down, but I know it just does not provide a good finish. You know, we just don't think it is a feasible activity.

Also, I just want to address this one more time.

I will probably do it a couple more times. When we are talking about risk determination, at the top of the list it says repainting. Then it says in parenthesis, surface preparation which disturbs painted surfaces.

I really want to put in the word, surface preparation where it disturbs lead painted surfaces. Then I think maybe you should have three different types of risk, as opposed to low risk, high risk, maybe have very low risk or no risk.

MR. GRAVES: We are going to talk a bit about risk a little bit later after lunch, so we can get into that discussion at that time.

MR. NOLAN: Just to finish, if I was to go in and repaint a bedroom and I just needed to pull out half a sheet of sandpaper to make sure my surfaces were smooth, get off any little burrs or whatever, I would be in no way down to the lead level.

Using a wet method would be just not even in my mind or any other contractors.

MR. GRAVES: I take it that recommended but not required would be acceptable?

MR. NOLAN: Yes.

MR. DIETRICH: Not to seem redundant and to echo

what Kevin just said, but in our business, residential repaints, we have attempted to do wet work, because we thought we would be complying and we would be better off for everybody.

It is just such an impractical thing. The biggest problem with wet work is that you just cannot achieve the look or you can't have the productivity that you would under more conventional methods.

I go right to thinking that containment and clean up should be the emphasis as opposed to the practice of working wet versus dry.

If we protect our men, protect the area in which we are working, and clean up after we are completed, then I think that should be the emphasis. Working wet, for us, has just not panned out at all.

MR. ZILKA: Certainly I will definitely not disagree with the issues of repainting and certainly the aesthetics presented by working wet, that can be a concern.

The normal renovation and remodeling issues, and using it for demolition and dust containment and debris control, it certainly is, in my opinion, the recommended practice, and certainly integral to the whole issue. I would say recommended, definitely.

MR. HARRINGTON: I think, once again, this is the issue of performance versus descriptive. I think wet methods is one of a whole menu of choices.

The issue here is use the lowest exposure work methods where possible, good containment. That is really what the principle should be here, rather than specifying any kind of wet methods per se.

While I understand the sentiment of the painting contractors and I also understand the value of wet methods for demolition work, the thing about wet methods is that, where it has some value is where contractors are able to schedule work where they are able to actually come back around and stage the work in such a way that they don't have to do immediate repainting.

That is not always the circumstances. I actually do know lots of contractors that have effectively used wet methods in schools, for example, where they can stage the work in such a way that they can go back and do the painting.

On the other hand, we did a two-year study with painters in California. We found that wet methods was one of the work practices that they had the hardest time adopting, and the most resistance to, for all the reasons

that these gentlemen already mentioned.

I think it is in the repertoire of a menu of choices, and it can be used under some circumstances, but it should not be specified as the preferred method per se, but it should be in the guidelines that say lowest exposure method, containment and clean-up.

MR. FREEDMAN: That is virtually exactly what I would have recommended. You know, the whole idea is controlling the dust. You either do it at the creation or you do it at the clean up. You don't leave dust behind, and figure out what the best way to do that is.

It is nothing more than a guidance issue. I am even a little bit worried about that, but we will talk about that later.

MS. TOHN: I am going to vote for recommended, not required also. I think we should set up a simple reg with clear messages, like training, good clean up, dust testing for high risk jobs.

I will point out that some data that NIOSH has, and a few others, have shown that wet is slightly better than dry in terms of making the dust particles fall down faster and having less dispersal far away.

It doesn't make it safe. Nobody is going to say,

if you do it wet you don't need to put down some kind of covering on the fall. You don't need to clean up. Working wet is not a substitute for cleaning and containment.

I think we all -- I am agreeing with David and all the rest of you who have spoken, but adding one other thing, which is that it is a method which can reduce the disbursement of particles and that that can be a very helpful thing in the process.

That is one thing that we need to communicate to all the people who don't know anything about lead in their work practices.

Little sanding sponges are quite helpful instead of a piece of sandpaper. You are not going to get it coming out. If you can change that practice, that is a good thing.

The last point is, they are very resistant to working wet. I have talked to lots of painters and I know that.

I do know that the Vermont experience, in their two-and-a-half-hour training class, while they do get a lot of resistance to this working wet issue, the majority of that resistance is focused on exterior work.

On inside work, where you are not working typically on as much surface that typically needs extensive



repair work and it is sort of spot stuff, the working wet thing has been easier to integrate. Again, a distinction.

MR. ZILKA: One quick point, again, reverting back to training, making sure that the people can discern what the specific issues of the job are and apply those practices, I want to go back to that end of it again.

A properly trained, qualified contractor can do a good preplan, know what practices and procedures are going to be used and employed, and then make sure it is done. So, training becomes, again, integral. That is the other issue.

MR. SUSSELL: My comments are, basically I would agree with the comments that both David and Ellen just made on working wet.

In our studies at NIOSH we have seen that it can be beneficial in some situations for reducing the worker exposures and reducing the amount of dust created.

On the other hand, it is not uniformly so, and in fact, the study that we have ongoing now that hasn't been published yet, of lead abatement workers in Rhode Island, who do a lot of similar work to renovation people, because their emphasis is on scraping just very limited areas of paint, when we looked at the scraping, wet versus dry, there and had a fair number of samples of both, there was

absolutely no difference between wet and dry scraping.

In fact, the wet scraping had a slightly higher exposure level. It was not statistically significant.

The reason that I think that occurred is because of some of the comments that painters have made. If you have 10 or 20 layers of paint and the lead layer is somewhere in the middle or down near the bottom, if you take a little spray bottle of water and mist the surface, it doesn't do anything.

It doesn't wet the leaded layer of paint. So, when you hit that with your metal scraper or your power sander, it is as if you hadn't wet it at all. Essentially, you have just made a big mess without benefit.

It is certainly not appropriate in all situations. There are situations where it can be helpful. So, I would agree with the recommended. It certainly should be up to the case specific situation.

MR. BAKER: I agree with recommended. It is, as people have alluded to, it is a component and methodology specific as to whether or not it is a wet method or some other engineering approach that everybody knows would be more applicable in certain circumstances.

I think the use of recommended perhaps is

insufficient. It needs to say something like, or other engineering controls.

MR. REINHART: Could I interject something here? Surprisingly, we found that there was a stronger association between wet methods in renovation work among Wisconsin households, and elevated blood levels.

There were a number of other factors that were not controlled. Nevertheless, we found that wet methods showed a stronger association.

Sometimes -- this is just my personal observation -- that we have to be careful to keep in perspective the entire job.

Wet methods may, for an experiment or for the duration of our sampling period, provide less contamination or less spread. Maybe in the long term there might be other things that happen.

MR. MATTE: I was just going to say, we have seen in preliminary analysis in New York City data a similar thing.

If people were doing things -- these are not people doing lead abatement work. My guess is they are putting up flaps on the doors because they knew it was going to be a dusty, messy job.

It may be also that wet methods are being used because people anticipate it is going to be a nastier, messier, dustier job and they are trying to do something to mitigate that.

In these kinds of data, like you have in Wisconsin and you have in New York, it is very problematic to try to use that to show whether these methods -- I think basically what they are showing is, if you do these things, because they are not totally effective, and you are doing them because it is a nasty job, it is not enough to make the job safe.

These are not being done -- as a lot of people have been saying, the typical job that is being done, the typical repainting job, remodeling job, is not being done because of the lead concern, and it is not being done by somebody who is really knowledgeable about how to do these things properly.

MR. SUSSELL: With regard to the comments that Dan and Tom made, I think it is possible that the association that Dan mentioned with the wet methods is real.

What I have observed is that, while working wet might reduce air dust for the worker, it seems that it makes it more difficult to clean up that dust because everything

is now wet.

It is sticky and it seems to be much easier to clean up dust that is dry. You can vacuum it with a HEPA vacuum and then you can wet clean.

If you have a lot of dust that is damp and sticky and wet, if you ever tried doing this, the HEPA vacuum doesn't work very well at all on that.

What it tends to do is grind it up and pulverize it, and just makes it more difficult to remove.

I don't have any data to prove it one way or the other, but I think it is possible that working wet actually makes the clean up stage, in some cases, more difficult to achieve rather than easier to achieve.

MS. TOHN: You have data from that hospital study where they were working wet and then they tried to clean up afterwards and it was quite hard to achieve.

MR. SUSSELL: Right, there was some limited data from the NIOSH study. There was a demonstration project where they did extensive scraping of paint that was highly deteriorated in a bunch of similar rooms.

The rooms that were done wet, after a HEPA vacuuming and a single mopping, the rooms that were done wet actually had higher dust lead levels than the rooms that

were done dry, even though the airborne level was higher in the rooms that were done dry.

MR. FARR: Was there no sheeting on the floor?

MR. SUSSELL: They didn't use any sheeting on the floor. It was not designed to be done according to HUD guidelines.

MR. FARR: That emphasizes containment.

MR. SUSSELL: Sure, the containment is very, very important.

MR. HARRINGTON: Just to reiterate or support what Aaron is saying, in our study of California painters, we did not do clearance testing of the job.

Clearly, there was a significant -- when you compare wet sanding, for example, with dry sanding, you do have a significant drop in airborne lead levels, where that is being done.

The other factor, of course, is what Aaron brings in, what happens with contamination that occurs. So, there is this issue of the difference between worker exposure and potential building up of exposure.

MR. MACALUSO: Just to repeat, I guess, you get into it might be more difficult to clean, but then you have a worker exposure problem, especially if you work with dust,

filtering face pieces, whatever. That is my concern, that if you do it dry, you are going to make it an exposure problem, that would conceivably easily exceed the ppm.

MR. HARRINGTON: I think that is part of the dilemma here. If you do a dry manual sanding, you are doing an OSHA trigger task.

The way you can opt out of that is, you can go wet. That is the easy way, under some circumstances, for contractors to get under that threshold.

I think you have to consider those dilemmas. Those are what the -- it is more likely that that is going to be a driving force in any instance. So, it is very important.

It is just the lowest exposure method and wet where you can, but obviously there are other engineering controls that are not wet that can be used as well. It is just something to keep in mind. It is a trigger task.

MR. LIVINGSTON: I have a procedural suggestion. Although it is a great deal of fun to agree, I would suggest that we not spend this amount of time on something that we have obviously got strong consensus on, because there are some really burning issues.

I would plead with the chair, when there is a

sense of consensus, to move the agenda.

MR. GRAVES: Do you have a sense of consensus? Is there a sense of consensus?

MS. TOHN: Nobody stated that they felt that this should be required.

MR. GRAVES: Again, on work practices, the issue of restrictive practices fits in here, although it was not on the table 2 risk table.

The question or the issue that we want to try to focus on again is using the performance based approach versus required actions in the regulation.

How should EPA address the issue of the proposed restricted practices which I think are on page two of your work practice standards for the rule.

In the issues paper, there is a discussion on the front page there, number 1-B. In the proposed draft rule outline on page 2 it lists several work practices that are prohibited.

I think EPA intends restricted and prohibited be in roughly the same category.

The question is, should those be performance standard requirements, or should EPA focus on putting one or more of those into the rule as prohibited or restricted, in



particular, looking at the sanding and at the open torch burning.

Is there anybody that is willing to speak to prohibiting open torch burning and the sanding?

MR. ZILKA: I think it should be a regulatory issue with respect to this. I think the recommended practices could certainly be guidelines or standards of care.

I think these, in our opinion, are such that they should be regulatorily addressed.

MR. FREEDMAN: I don't think so, and I think some of my members will affirm this thinking. The issue is not whether you shouldn't be able to do something, but whether you should have to do it in a safe manner.

I would think -- we have got a sort of confusion here. We have got three items listed, open flame burning or torching. Then we have machine sanding and grinding with a control measure, with exhaust control, and then you have operating details.

What I would ask the agency to think about is, how can we say to do this safely. That is something that should be emphasized, but you can't eliminate the practice altogether. I would say don't eliminate it.

MS. TOHN: I feel somewhat conflicted on this point. I feel that it is completely inappropriate to prohibit something unless there is a good alternative.

You are just fulfilling yourself intellectually, but in a practical world, nothing will happen.

When I think honestly about restricted practices, the first question I ask myself is, if we restrict something because we are so worried it is so dangerous, there better be another way of doing it that works.

For me, the three on this list, the one where I feel like there is an alternative, if you are using a machine sander that has no vent on it, no exhaust system at all, we all think and believe and have data that that is a bad thing.

It is extremely bad inside, and it is pretty bad outside, too. There are alternatives. Some of them may cost a little bit more than we want them to cost.

For that particular one, machine sanding without exhaust, I think the agency could clearly say that that should be restricted, because there are alternatives that I want the marketplace to go toward.

For the other practices, I guess I feel that I would like to be educated from both sides of the equation.

What I hear from contractors is that we really don't do that much open flame burning. In fact, it is only intricate little woodwork pieces and it is mostly outside.

When you look at it, if this is a rule supposedly about occupant exposure, I say to myself, boy, this isn't the most important thing.

If it is really only occurring in small areas and it is mostly outside, how many kids are really getting lead poisoned because of this activity, and how many localities are banning this simply because they are worried about houses burning down, which probably completely overwhelms the lead issue if you look at health risks to people.

I am really not sure what we know about exposures from that setting and how it affects occupants when you balance it against the fact, from what I hear from people, that in a few settings you really need to be able to use that particular tool.

I guess I would be interested in whether Aaron, Greg, David or Tom has any exposures that should make me feel more nervous than I feel about allowing this to occur with the performance-based controls that we would want. That is what I don't know.

MR. HOFFMAN: I don't think there should be a lot

done on that. The one thing here about the dry scraping of lead based paint in conjunction with a heat gun, something like that would be definitely out of the question.

You are making fumes and dust all at the same time. You are doubling the exposure. When you say you have to use a heat gun to scrape, that would be totally ridiculous to do that, because you would be creating fume and dust at the same time.

You have exposed the worker and the occupant of the house to more than you would than if you did either one or the other.

You shouldn't combine the two, because you are creating dust and fume. We know enough about it that the fume is actually probably worse than the dust, especially if you are doing an open window where a child is in the room and the smell gets in the home.

The other thing I wanted to say about it, when you have an exhaust -- and in residential work with people in the industry -- that word scares the devil out of them.

There are other alternatives in residential work. There are filters on the market that almost filter the same amount of dust.

I think we have to be careful in making that a

residential rule, HEPA filters all the time. I think alternative filters are just as good in residential filters, and rather than have them use an alternative filter than to use no good filter and scaring them away shouldn't happen.

MR. DIETRICH: I agree with Duffy on that point. I think that these things should be guidelines, for the simple reason that all these methods are obviously methods that are conventionally used in our industry.

I just keep going back to, if we are protecting our workers, as OSHA requires us to, and we are containing the work area as we should be doing, then let the clean up and the containment be dictating to what the overall outcome is.

If these practices of sanding without a HEPA filter is contained in an area and your worker is protected through respiratory protection, and clean up can be done at the end of the day, or at the end of the job, however that may be, then I think that is where the emphasis should be placed, and not on restricting work practices that make it cost effective for us to take care of a lead situation, or potential lead situation.

MR. LEVITT: I think that this should remain in good practices. I think the point Duffy was making about

exhaust is correct.

I know there are some studies ongoing about some of the filters, and some of the devices that are out there, and that could change in the future, with some more data on these other types of filters.

Open flame burning or torching of paint, I think that falls into the realm of being a restricted practice.

I think if you put that into a recommendation or guidance, you are opening the door to making that a more usable form.

MR. HOFFMAN: You have to know the animal to say that you are going to restrict that. In certain residential situations, a window sill, for instance, or a cornerboard, sometimes it is the only means of getting that paint off that surface, so you have no alternative.

Again, education on that and training is a key to making that safer procedure.

MR. LEVITT: I want to hear about that. I want to know that there is absolutely no alternative to that method.

MR. HOFFMAN: Sometimes there isn't.

MR. LEVITT: The last point on dry scraping, we have already been through the discussion of wet methods here a little bit, and we put that into guidance.

So, there is still a little bit of conflict here now, having the dry with a restricted practice, trying to put them together.

We talked about having dry scraping restrictions when we talked about having wet methods included in guidance. So, we should look at that carefully in structuring the language.

MR. MACALUSO: First, just to address this concern about scaring people, it is just the word. I think the word has to be there. I think it is 99.97 percent efficient. It is just a word.

Whether you want to call it something else because some people are scared, I have never heard of that.

I think Heefer Strata(?) tools are very common. Obviously, they are just the middle one, the machine sanders. Heefer Strata tools are very common. They have been used on many structures. I don't think that is a big issue.

As far as the one that I am really concerned about, it is this open flame burner. My background has been with higher levels of exposure.

You are taking a torch, and people have a tendency to take torches and burn steel beams. They don't like to

remove the lead, because it takes too much time. So, they like to torch through the paint and, in the process, cut.

Now, I don't know what the parameters of what we are talking about here, I don't know how big or small the job we are talking about here.

I don't like the idea of taking the torch and any open flame and taking lead paint out that way. I don't know; are we talking a tiny little piece of lead, a small amount? Are we talking about a large piece?

Just in principle, taking lead out with a torch, it requires supplied air. I don't know any painting contractors or anybody using supplied air. They are not doing it. So, you don't want to use a torch.

What are we talking about? Are you taking paint out with a torch? That is the highest exposure you can get, out of all the categories.

MR. HOFFMAN: If you read the rules on protection on that, you are saying not many painters use it. I use the proper protection for fumes all the time, with the proper facilitative masks and so forth. That is not an issue.

MR. FARR: I just wonder whether it makes a difference if it is interior or exterior. It seems to me that some of these things are a lot more likely to be a



problem for the children, which I am concerned with, if it is interior than if it is exterior.

With exterior, you can do open flame -- you talked about some of the details on an exterior. My guess is there isn't much other way to do it as a practical matter.

Whatever the problem is, it is disbursed over a wide area, which means that you are going to slightly poison a lot of kids rather than heavily poison a few, which doesn't sound very attractive either.

If some things are much more dangerous if done in an interior, and it is practical, you might distinguish between the two. That is my point.

MR. BAKER: If the use of the term in this setting, restriction and prohibition, are meant to be synonymous, then I think restriction is how it should be. I don't think there is anybody in the room who would disagree with that.

Open flame burning or torch cutting or machine grinding without some sort of engineering, local exhaust ventilation, or the dry scraping in conjunction with the heat gun or without the use of the heat gun, are going to cause exposures for both the worker, the worker's children and family, and for the occupants of the structures. I am

for restrictions.

MR. MATTE: Maybe Aaron will fill me in on more recent data. Most of the recent studies that I am aware of that have looked at lead exposure from different types of practices, were studies done after the time when open flame burning had been abandoned as a lead hazard reduction method.

Aaron, you may have some more recent data on that, but there is some older data done in less careful ways than we do these studies today, where there was horrendous exposure of workers who were doing this type of work, and some of the worst anecdotal case reports of lead poisoning of children when paint removal was done inside and outside using open flame burning.

I don't want to say, you know, I can tomorrow get you the same kind of high quality data that we have looking at some of these other methods, for open flame burning.

I would be very reluctant to say it is okay to just leave it up to the judgement of the individual contractor when to use that.

It is a nasty method in terms of the particle size and the concentrations and, even for some workers, the usual kinds of respirators that the contractor might have in their

truck or whatever might not be adequate for an interior job with a lot of lead burning.

MR. LIVINGSTON: There are some times when the trades have to change their behavior. Belt sanding is an example.

There are experiments where belt sanding has been done in paint that has been declared not lead, and the clearance level of a house has gone wild, way above clearance.

Now, that surface is declared not lead. We are absolutely positive that uncontained sanding is both tremendously dangerous and not necessary, and painters will have to figure out a way to do a different thing, because the risk to children is vastly too great, and the risk to the workers is vastly too great as well. It just needs to be stopped.

I think we do need the numbers on burning, but the risk to the workers on burning is enormous, and certainly there should never be burning inside.

Whether there should be burning outside or not is something different, but one of the things to look at is the effect of the law in San Francisco, that professional painters were the central piece in writing and supporting.

In that, they have stopped open flame burning. They have stopped grinding without a vacuum attachment -- and I agree, we shouldn't use the word HEPA. We should use the word appropriate, because there are going to be a lot more appropriate machines out, better than HEPA.

Thirdly, open sanding without attachments were banned out there. The painters supported it. It is being enforced. It is working, and the trade will figure out a way to solve the problem.

MR. SUSSELL: On the open flame burning, I would be comfortable with the prohibition of that on interiors. As far as exterior work, there is really very little data on that.

It is not clear to me that on exteriors it is a big hazard. So, I am not certain what the basis for prohibiting it would be.

I just haven't seen the data on that for exteriors. It is something that we are interested in studying more.

On machine sanding, I would be comfortable with the prohibition of machine sanding on lead based paint or grinding or abrasive grinding without engineering controls.

In terms of actually specifying that there has to

be a HEPA filter, I am not quite as comfortable with that. I appreciate the points that are being made.

I don't think there is any data that really indicates you need a HEPA filter. It is just what people are familiar with, because that is what this lead abatement industry started with, is going to HEPA filters.

It has certainly not been demonstrated that another type of high efficiency filter wouldn't be just as effective at half the cost.

I don't think anybody here would advocate that we should be wasting resources without any benefit here.

Another point, on the dry scraping, as I mentioned earlier, on the interior work that we have been studying abatement workers in Rhode Island, there is just no evidence that it is any worse than wet scraping, in some cases.

For instance, trained abatement workers, who should know what they are doing, all certified workers, absolutely no difference between wet and dry scraping inside, where you should be most concerned about the hazard.

I am not real comfortable with prohibiting dry scraping. While I think there are certainly cases where it creates more dust, I don't see the evidence that it is going to provide that big of a benefit if we prohibit it.

On the last item, operating a heat gun below 1,100 degrees Fahrenheit, I am not sure that needs to be in there. I have looked at hardware stores, and you can't find a heat gun that operates at a higher temperature than that. I challenge anybody to go out and buy one.

Even if you could find one, I think it is similar to the situation with the torch burning, in that I haven't seen data that would indicate that, particularly for exteriors, that is any worse than operating the heat gun below 1,100 degrees Fahrenheit.

Some of these things are based sort of on judgement, but there is not something to back that judgement up.

MR. GRAVES: Are you arguing for the sanding restriction?

MR. SUSSELL: The sanding, I think it is clear that uncontrolled power sanding generates a tremendous amount of dust, both for the worker and for the occupants, because it is very, very difficult to contain it.

We see plumes of dust going downwind when there is uncontrolled sanding. That one, to me, is the one that is crystal clear.

MR. LIVINGSTON: And grinding.

MR. SUSSELL: Grinding and blasting, things like that.

MR. GRAVES: We are going to wrap this discussion up in about five to eight minutes. If you could keep your comments relatively on point and brief, we will try to get through everybody that is up.

MR. NOLAN: Just some comments. I wish Bert Oldhizer was here, and Lynn McGarky, two contractors that know a lot about burning.

Typically, burning is done to soften the paint film, not to ignite the lead. So, a softening process followed by a scraper is a very effective way, particularly on the exterior, where it is most commonly used.

It is also a diminishing problem because it is not being used as often as it was because of fires and things of that nature. But it is a very effective way.

We still use it as a means of removing paint from window sills and a few localized areas.

Machine sanding, I mean, it does make sense, everything you said, and we are in agreement. However, we keep going past the industry that if you would use a little palm sander to try to degloss the surface, that you would never actually be sanding the lead area. That should be at

least considered.

I think there is consensus among everybody here that dry scraping should be allowed, that wet scraping is ineffective, and that operating a heat gun is much the same thing.

We are just trying to soften the paint film and then follow that with the scrapers. The temperature really isn't the issue. It is just messy.

MR. HOFFMAN: I am going to make this really quick. This is kind of like what you were saying. It all has to do with educating on how these procedures could be done safely when you go to a training program.

Burning a whole house and taking paint off is absolutely crazy and ridiculous. It is not being done except for uneducated people.

Open grinding, for sure, is an issue, but small sanding with palm sanders and such like that, we have to be careful how we state that rule.

Open grinding where the dust is going all over, I agree 100 percent, it should be contained, and that is definitely an issue.

Then in the burning and the scorching, is what I call when we just soften a surface by scorching the paint



and then scraping it off, rather than to scrape and heat at the same time. It makes it in a safer procedure.

Then, the difference between doing some burning and using methyl chloride, in either way, you are still bringing the occupant to an exposure of some type of poison, whether it be lead or methyl chloride.

I think we should limit certain burnings, but we need to talk about procedures.

MR. FREEDMAN: Just to make sure that we pounded the last ounce of life out of this open burning question, what I am hearing is a lot of discussion about exposure to workers.

I want to make it clear that the purpose of whatever comes out of this process is not the worker issue. That is OSHA controlled. OSHA has specified what the protection should be for the worker.

It is yet to be established to me, at least, that the open flame burning represents any greater or even significant hazard for the occupants.

That is where this rule has to be focused. Unless you can demonstrate that there is a higher risk or a significant risk or a necessary risk -- I am not sure which level controls -- that open flame burning should not be

prohibited.

MR. REINHART: We do have some data. In the Wisconsin we are seeing an odds ratio of approximately five, as in five times as great a possibility of an elevated blood level where open flame has been used.

MR. FREEDMAN: As soon as you say limited and problematic, I always look at that and say, big deal.

MR. REINHART: Let me fill it out. I think it may be indicative of the kind of housing where it is done.

MR. FREEDMAN: Interior or exterior?

MR. REINHART: We don't know. I just wanted to point out that we did have a statistically significant relationship.

MR. FINE: It seems to me that everybody has totally focused on painting. There are so many other remodeling issues that involve painting that are done by painters.

It seems to me that the people here that are associated with painters are totally dollar driven, and that their feelings and conclusions are based on what it is going to cost them.

Being in the remodeling business my entire life, cost is certainly a factor. You can't just base your

decision and what you feel here on what it is going to cost. It is, rather, what the result of your effort is.

Most contractors today do not practice good work methods. There are certain ones that I am associated with, certain ones that we train, but they are just such a small amount.

There has to be a way, whether we decide on regulating or control, or whatever the decision is, to reach everybody with what our conclusions are.

You can't have what you are going to do just based on one criteria, which seems to be just painters. I am in the kitchen business, besides the training that we do.

Everything that we do involves paint, whether it is stain or varnish. It involves paint. I believe that we should regulate and control rather than leave it to the judgement of a person who has a less amount of knowledge than anybody else.

MR. MACALUSO: Real quick, I am going to beat the dead horse, because I think that horse needs to be beaten some more, because I am worried about the workers.

MR. FREEDMAN: It is already covered.

MR. MACALUSO: Not if you are going to create another work practice in an industry that we just found out,

and we knew ahead of time, that it is not being done very well.

Just a little logic here. As far as what Aaron talked about, I think you can extrapolate fairly well from industrial exposures to torch cutting on steel structures and whatever, that in the breathing zone, when those fumes come off, if it passes the nose of the worker, it is going to be an exposure that is going to be fairly high.

Whether it is over eight hours, or peaks at a certain period of time, it is going to be fairly high.

As far as heat, I don't care what you call it, the whole bottom line is, it is high efficiency. Whether you want to change the name and call it something else, it doesn't matter to me.

Of course, chemical strippers, they don't have to have methyl chloride on it. We know Peel Away doesn't contain methyl chloride.

MR. BAKER: I am going to save us all a minute. I think everybody has already said everything they can. I don't think anybody needs to hear anything else.

MR. MATTE: I am just concerned that we distinguish carefully between things that our judgement tells us that something may be very bad.

When we haven't yet subjected it to a test to see if it is safe, then I think it is okay to use our judgement.

On this question of open flame burning, I don't have good data on whether leeches were bad for patients, but I didn't think it was an issue.

Open flame burning, particularly on interiors, as far as I am concerned, nobody was really seriously thinking about that.

Because there is a lot of older data, and it was done at a time when we weren't doing careful studies, but we almost didn't need to because people were really getting sick, when that kind of stuff was being done.

If we want to say we think that there is a compelling economic reason to revisit the issue of open flame burning, then I think the prudent thing to do is say, let's study it carefully before we say it is okay to do it. That is all I am saying.

MR. HOFFMAN: A good basis for some EPA research.

MR. MATTE: Right, but not just say because we don't have data, we should say open flame burning is related.

MR. HOFFMAN: We have to think about occupied and unoccupied houses, too, when we talk about that.

MR. GRAVES: The next issue up for discussion has to do with clearance, testing and cleaning. There was sort of dancing around the whole issue of prohibited and restricted practices, and performance based versus required kinds of issues.

Clearance testing offers one means of going to a performance-based system. So, we want to get started on that discussion before we begin lunch.

Just as by way of orientation, the issue of clearance testing comes up on your issues paper handout under numbers 1-C and 1-D, when is clearance testing required and who performs clearance testing. Those are two of the key issues that EPA would like to get some feedback on today.

To begin the discussion, we would like to focus, I think, on concerns related to when should clearance testing be required, under what conditions. Should it be required and under what conditions should it be required.

You have two handouts. One is a draft rule outline and one is an issues paper. On the issues paper, it is 1-C and 1-D.

MR. LIVINGSTON: I don't know how to answer the question in order. If you are talking about clearance

testing being done by a certified inspector, as is now required, that is a very different discussion than the discussion of clearance testing being required by someone who receives a two or three-hour training.

In fact, of the four days of inspector risk assessor training, the dust testing part of that is only about 20 to 30 minutes anyway. So, a two-hour training would increase the amount of skill, not decrease it.

So, if we don't know whether you are talking about needing licensed inspectors to do this or not, I don't know how we can have the discussion.

I would ask that, if there is consensus, that we will not demand licensed inspectors, but we will allow the training of dust testers at some lesser amount of training, then the second part of the discussion, I think, will be more fruitful.

MR. FARR: I agree with that. Clearly, people taking dust tests and visual inspections, because they go together, should be trained.

It is a totally different question -- and maybe it is this afternoon -- that they need to be certified. If they need to be certified, that means state after state after state has to enact a law, and I will be 120 years old

by the time that happens.

So, an issue is how do you describe what has to happen in order for a person to be able to do this, is a pretty important question.

As to when it should be done, I think what they have written down here is probably pretty much right. I think on rental properties there is nobody to waive. Certainly the kids can't waive. It should be required.

I hope we could say for pre-1950 housing, but the experts -- Dan and Aaron and so forth -- have given me no support on that.

So, I guess it is high risk, although it would be a lot neater if it was pre-1950, where NHANES said there was no child that NHANES looked at that had a blood lead level above 20 other than Medicaid eligible kids.

Medicaid eligible kids do not live in suburbs and so on, in the United States of America.

In terms of home owners, where you have got a waiver in here, I thoroughly agree with that, as long as it is an informed waiver.

Therefore, I think the thing which really should be a regulatory requirement is that some clear document, some clear piece of paper, short, clear piece of paper, be



given to homeowners telling them what it means to waive, and what the risk is.

As long as homeowners are given really clear information -- which I don't think anything I have seen does -- then the waiver is fine for homeowners.

MR. HARRINGTON: I think in terms of dust sampling clearance, that it really should be, as far as the owner situation, it is really up to the owner. It is their option to do this clearance testing.

I also think that you are not going to be able to have some kind of a legal document that the contractor and the owner sign off on, that signs away the third party right of the children in that home.

It might make the contractor or the homeowner feel good, but in reality, it is not really going to protect either one. It is certainly not going to protect the contractor.

I think that if the homeowner waives the clearance testing, then the prudent thing for the contractor to do would be to do a few wipe samples themselves so they have some record of that job to basically protect themselves in that regard.

I think the notion that we could trade off here,

that contractors would get some protection is dubious at most.

I think the other thing to keep in mind is that homeowners could do their own testing. I don't think wipe samples are something that, as mentioned you are talking about 30 minutes at most, is something so difficult that people can't do that on their own, and they should be allowed to do that.

What is critical about this is that the pamphlet, the EPA pamphlet needs to be revised in such a way that it lays all this out, and it clearly talks about this.

The requirement, as Nick mentioned, is that that pamphlet is given by those contractors to that customer.

I think the tenant issue is a much stickier issue. Obviously, tenants would not be signing waivers under any circumstances. So, there is a relationship between the landlord and the tenants there which it is unclear how this reg could ever address that.

MR. GRAVES: Just a quick reminder, that we have about 10 or 15 minutes before lunch.

MR. DIETRICH: I believe it is really important that education is the focus on the visual and the wipe testing.

I believe that certification may be cumbersome, not only from a cost standpoint, but also from a logistics standpoint, for certain jobs.

I think it should have to do with the scope of work that you are actually doing. If I am in my customer's pre-1978 home and I am repainting their bedroom, and there is a little ceiling patching that is going on, and we did take a palm sander across their wood trim to degloss it somewhat, and I have contained everything, I just don't know that anything more than a visual would be necessary.

We try to always leave the room or the work area in better shape than we found it. We feel by doing so we are doing a benefit to the consumer.

I think it there, again, gets into the high/low risk and what scope of work as a painter. Am I creating a lead hazard. That is still unclear to me. I think that needs to be an area of discussion.

MS. TOHN: Now, you guys have heard a children's advocate be incredibly open minded how things can be fulfilled.

I will say, this is the place where, for me, there is no compromising. We have a clear, objective standard for what makes a unit safe for a kid to be in it. We can

measure the lead content in that unit.

We should give people lots of different ways of getting there. Duffy is going to do it different than Kevin does it, and then David the painter does it.

We should, because we know that children get poisoned during these jobs -- not most of the children, but plenty of kids -- we should never leave the site in a condition that has lead hazardous dust in it.

We should be able -- because we know we can't see it -- we know that, we know we have a way of measuring it. We should measure it, but we should not go berserk here.

MR. HOFFMAN: You are speaking interior again?

MR. TOHN: Interior. I think exterior, what EPA has proposed is fine, a visual for paint chips. They don't even require soil testing and abatement. There is no reason they should require it here.

We should focus on the place where we are most concerned. Inside, for jobs that make lots of dust, we should require dust testing.

I hope that we will soon, one day soon, have an instantaneous dust wipe, where we know the results right then and there.

Then a bunch of the concerns that painters and

renovation contractors really have that are legitimate concerns of about how to integrate that into this work, will go away. EPA should do anything it can do to make that happen. That is my first point.

My second point on who can take a dust wipe, the goal here is to have these people be widely available, and we should trust them.

That is what we are worried about; do we trust them. Will they do a good job.

I think that we need to not think just about state certification, like we see it or the 402 or 404 or nothing. That doesn't seem right to me, because we know these 402 404 people are widely available.

So, we can't rely on inspectors and risk assessors because they get training for lots of stuff that doesn't matter for taking a dust wipe.

I would say that we should think about -- we clearly need to be trained. Everyone agrees that we can't just do it. You need to be trained.

So, training is a part of it. Then, we need to have some confidence that that person got it; that they know how to do it.

That doesn't necessarily mean paying a fee to a

state for certification. Maybe there is a third-party test that people can take. I don't know what the mechanism is.

We are trying to assure quality and I want that to happen really, really fast, and I don't want to have to wait until Nick is 120 to do that.

MR. FARR: That is not very far.

MS. TOHN: I don't want to wait those 10 years. It may be that you complete a course and you take a test at the end, or maybe you don't even have to complete the course.

If you can pass a test that says you know how to do this, and we design a good test that is widely available to people, great. I want more of these people out there, not less of them.

I feel very strongly that this dust sampling is very important in a small subset of renovation jobs that make a ton of risk and dust, and I will take a two seconds to talk about that.

We definitely should not rely on inspectors and risk assessors. EPA should move very fast for this new dust sampling technician course that Congress told us to do.

They should get it out in six months. We should come up with some alternative ways of showing quality. You

could be state certified. You could pass a third-party test, and maybe we could even think of another. We just want to feel good about quality.

Then, when this should happen, well, I think this chart is probably pretty close to some risk stuff. I actually think a bunch of these low risk things should be out of everything entirely because it is not the main point.

I think this may be very confusing, to figure out when dust testing should be required or not. Am I high risk, am I low risk, where am I on this chart.

Then we should think about a less elegant, less precise but more simple tool. I would just say maybe it is age of housing. Maybe it is pre-1950, which says, if you are doing work in pre-1950 housing, and we exempt lots of things, lots of minor repair jobs, then we would be focusing on houses that tend to have more lead-based paint.

If we make that universe things like the jobs that we think are poisoning kids, which is paint repair and substantial rehab jobs, we should actually require dust testing.

I have a little sheet which I will hand out after lunch that lays out these proposals.

MR. GRAVES: Lunch is coming up. We will have

some time after lunch to continue this discussion. Try to keep your comments short.

MR. LEVITT: I agree with a lot of what has been said. I want to point out one other thing in terms of the regulations that are in flux right now, or are actually being finalized, things like the 1012 and 1013 regulation, and issues where there may be a requirement for a certified person to do clearance testing.

I think this abbreviated program for clearance testing is a great thing. That would be very good, if we could have people go through that course and could provide that documentation regarding clearance.

Finally, the other thing that I wanted to point out is that when you get this information, or a private homeowner gets this information, I just want to make it clear, or bring it up to people's consciousness, that this disclosure will then kick in, and now we has some data now on clearance level or whatever it is.

If you consider data on lead based paint is recorded in some way, so the clearance would fall under one of those reports, that is something that would be subject to disclosure.

I would just point out that when you open up dust



testing, you are getting data that is generated and that could be part of the disclosure process, or should be thought of in that light.

MR. ZILKA: Real simply, I have to agree with a lot of what Ellen said, with respect to the issue of proving that the people doing the activity are competent. That is an important issue here.

We were involved in some studies of the folks out there doing XRF testing. I know that it is not an analogous issue here. I know that there is a lot of data all over the board with respect to what kind of results were being brought back.

Again, I have to caution us, with respect to the issue of good protocols, simple protocols, coupled with training and a way to verify.

That is an important issue, as a result of what we have already experienced with the XRF study.

The issues of conflict of interest, I really have an issue with the contractor doing it himself. I think that is a concern that could be an issue.

You have also got to look at the issue of liability and insurability here. We all recognize right now that there are some major gaps with respect to CGNL

policies, and there may be inclusion/exclusion clauses in those policies themselves.

Insurance carriers may want to have an independent player come in here and do this, and have it done with a protocol that is, again, established by a qualified player. It is going to be an issue of insurability again.

I am also concerned about the 1018 issue here, with the issue of the data, and how it could be potentially misused.

If I am doing a small window job, if I am replacing the windows throughout the home, no matter how many windows, coming back with, there are no lead issues after the activity itself, I wouldn't want that to be misconstrued as a whole house being lead safe. That is a major issue.

MR. FREEDMAN: I would like to support what was offered in the issue paper as the alternative to recommending dust testing, and that was the idea of some type of specific cleaning methods.

It strikes me that the idea of clearance testing, Dennis, you made the point at the previous meeting when you said, kids are not getting poisoned at 51 micrograms per square foot.

MR. LIVINGSTON: I didn't say that. We don't know that.

MR. FREEDMAN: The question is not whether that specific threshold of 50 micrograms is the threshold between getting poisoned and not poisoned.

That number really isn't as important as the idea of getting to the cleaner surface. I would hate to say that we are going to hold a contractor to a standard of 50 micrograms because someone decided that made sense, when it really isn't relevant to the question of kids being poisoned.

Certainly, we don't want kids being poisoned. Certainly more lead on the surface is more of a problem than less.

If we start talking about that 50 threshold, we are definitely getting into something other than a renovation job, and that is where we get real nervous.

Furthermore, my sense is that this question of dust testing is really an unenforceable question. EPA has admitted in documents that this will have basically the same enforceable capability as the average speed limit.

You know, we are going to enforce on complaints. Who is going to complain? If you have a kid who gets

poisoned, then we have a question of enforcement, but before them, we are not going to.

My thought is, let's focus on those things that we have seen can produce results, which is the question of cleaning.

I can see a rule that says, thou shalt clean. I would disagree with David on the assessment of whether a waiver has any meaning. I think a waiver does make a difference.

We have waivers in other situations. We have waivers in the real estate disclosure rule. I think there is some value to the idea of a homeowner deciding whether it is important to them or not.

Finally, I would like to support Ellen's idea that instantaneous dust wipes would be a great advantage. That would probably make a lot of our concerns maybe go away or at least make things happen easier.

MR. GRAVES: We have about five minutes before we go to lunch, so if we could keep comments fairly precise.

A bunch of people have just put up their cards. I would suggest that we defer some discussion until after lunch. Megan is the last commenter. Richard?

MR. BAKER: When we talk about the potentialities

for exposure, what we are talking about primarily is the size of the particle that we are dealing with and the bioavailability of that particle.

We know that if we torch or burn, we are going to be creating probably a compound similar to lead oxide, which is one of the most bioavailable forms of lead that there is.

If we are talking about sanding, then we are going to be creating a much larger particle that you are going to be able to see with the naked eye, which there is a lot less probability of being exposed, because it is being filtered out by the body's process.

If we are talking about visible on the interior of a home, I think that is problematic. I think on the interior we need a clearance. I think it needs to be regulated. There needs to be clearance sampling.

I agree with most of what people say, if it is exterior, clearance sampling is preposterous; it isn't going to do any good.

With respect to the issue of training, we need to ensure that the person who is doing the clearance sampling is competent. They need to know what they are doing. They need to do know how to do it properly.

They need to know how to collect the sample, how

to package the sample, how to submit it to the proper laboratory.

I think the training which is available out there currently for inspectors and risk assessors is necessary in order to ensure the minimum competency in those persons.

MR. BULLIS: I could take about half an hour on this, easily. Clearance sampling is so complex, all the issues that can be brought into play here, that the workability for this industry of this, I really question.

First of all, I am really concerned about there being a disincentive to owners to do work with this follow-up testing being something that they will have to do.

Then, the follow-up to that is, who is going to answer their questions when they have these numbers. I got a number. What does it mean, what do I do now. What if it failed, what if it passed. What area is it in, what was the scope of the work.

The other issues are, when you have multiple contractors doing work in the same area, and how do you clear from one to the other, or how do you hold a contractor responsible for some small scope of work, and you know you are only going to test floors, sills and wells, and nothing was done with the windows, but he worked over here, and now

he is being held responsible to make the windows pass clearance.

I guess finally, in rural areas, it is going to be difficult to find somebody to provide those services. I understand you have the need to make that, but I have got experiences with accredited risk assessors that are taking samples that we don't know what they mean or what they heck they are doing.

You can get a sample on top of a door sill, and what does that mean in terms of clearance?

In an ideal world, yes, it would be great, if we could get jobs completed and then have the evidence that it was done adequately.

There are just so many questions here that I think maybe we should step back a little bit.

MS. AINSLIE: I will make it very quick. I think clearance is very important for the high risk jobs. I also think some of these results, what do they mean for consumers.

Obviously, training is important. I train people over the phone, homeowners who can't afford anything else, and they just want to know if they have a dust hazard. So, it can be done.

I do think it can be done cheaper than some of the things I have been hearing. The time frame, you get it done in six hours. I think we could also get it done instantaneously. If we can do it with the pregnancy test, we should be able to do it for dust.

MS. BOOTH: I just have three quick things. The first one is, I agree with everything Dean said in terms of disincentives.

Certainly testing is required, and also jobs where there is more than one worker on the site, I think that is going to be a definite problem.

For jobs that are high risk that would require the dust wipe, I agree with what Ellen said, that we need to have more testers. You can't just have to use a risk assessor or somebody who is certified. There is just not enough availability there. That is going to be a real issue for probably others.

The last one is that I think we need to eliminate a number of activities from needing the dust test, not only these low risk ones, but some other ones that are not on this list, just to make sure that since they don't pose a risk, that they don't have that additional burden of the test.



MS. TOHN: Scott, can I have one 30-second --

MR. GRAVES: There are four people with cards up. I think if you do that, then we will probably go well into the lunch period.

What I would like to do is, I have got your names and I have got Kevin and John and David and Ellen. When we come back from lunch, we will continue, and you guys will be the first up, and then we will go on from there.

So, be back here at 12:50. It is 20 to 12:00 right now. If we are back here in an hour and 10 minutes, it is 12:50, ready to go in your chairs.

[Whereupon, at 11:40 a.m., the meeting was recessed, to reconvene at 12:50 p.m., that same day.]

A F T E R N O O N S E S S I O N (12:55 p.m.)

MR. GRAVES: This morning we had gotten into a discussion about work practice standards and clearance testing and dust testing.

We had a lot of people wanting to make comments. In particular, Kevin and John and David and Ellen each had their cards up and wanted to make a comment.

We will do those comments and then we are going to have a redirect question to focus a little bit more on clearance testing, and we will go with that discussion.

Following our discussion on work practice standards, we are going to move into a discussion on certification and accreditation for about an hour or so, an hour and a half, then applicability for about a half an hour, and then about a half an hour on final questions and summary.

I think, as I recall from talking to Mike last week, that there was a little bit of time set aside during the summary to have a presentation, or a quick sort of update on, is it the 406 rule?

So, we are going to do that at the end of the day, and then we will get you out of here by 5:00 o'clock.

With that, I would like to open it up to

continuing with Kevin and John, then David and Ellen to make their points and then I am going to have a redirect question.

MR. NOLAN: I just wanted to comment on the clearance testing, wondering why they had to be a waiver. Why couldn't it just be promoted by the EPA in that pamphlet that is coming out in June, or something along those lines.

Wiping is a very simple technique. Anybody who has had any kids knows about wiping. There is not that much involved in it.

Couldn't there be more education to the home owner about wipe tests?

I think the waiver, fundamentally I think what will happen is most of my customers will waive out of it, because I will be able to assure them that we are going to leave a very clean surface.

Otherwise, it will basically complicate the procedure involved in a job. When do they sign the waiver, prior to the job start, or at the end of the job is an issue.

I guess, I have concerns that it is going to involve a lot of paperwork. That doesn't bother me so much, but I know that my competitors often write the price of a

job on the back of a business card or, even worse, just tell them a verbal price.

Here, I am going to be having all these papers. I think it is just going to make a bigger distinction between the more expensive, reputable contractor and the much cheaper, less reputable contractor.

MR. LEVITT: One of the things I wanted to mention about the clearance testing is for contractors to think of some of the situations that they might encounter, where maybe levels were already high in the situation that they were going into, and it may be worthwhile in certain situations to take a sample up front, so you could show that you had cleaned.

I don't know how that could be brought forth, but there could be situations where there was already existing contamination in the facility, and maybe the cleaning efforts might have to be intensified to bring it back down.

MS. TOHN: I guess I want to respond to a couple of things said and then make one last pitch.

Dean, I am sympathetic, not as empathetic as I could be to the concerns that you will get a lot of questions about what do these results mean.

While I understand that you probably don't have

the staff to answer all those, hey, that is the conversation I want to have happen.

Why are we afraid of that conversation. This is exactly what we are dying for people to do. What do these dust lead levels mean. Are my kids safe. What should I do. This is the conversation we want to have.

Secondly, we are going to have to figure out the best way of answering those people's questions without imposing huge burdens on states that may not have the resources to do it right now.

A resource limitation is not a reason not to have a conversation that is probably the most important conversation you should have.

I am sympathetic, but that is not a reason not to have dust testing. That is a reason to figure out how we can develop the best written stuff we have, give people phone numbers to call that may be more centralized, or ask EPA for some supplemental assistance, go back to Congress, supplemental assistance for this program. That is the conversation we should be having about that.

Kevin, I understand that this will make a distinction between you and other contractors, and that is a good thing.

You want to be able to say, I know what I am doing. I have a waiver here. This is required. For me, that has got to be part of your sales pitch.

I mean, you are already higher priced than a bunch of other guys and you stay in business because you are able to say, we are better. This is part of being better, starting whenever this happens. This has just got to be part of being better.

The other two things I want to say about dust testing is, I like it because it is a clear, objective measure, and I like it because it sends the right message about what matters.

That is really important to the underlying philosophy of this rule. I think the current proposal may draw too big a circle about when dust testing should happen.

That may be why there is some resistance, because I think there are clearly jobs -- you know, taking jobs in a 1972 house where there may be some incidental disturbing of paint, I just don't think kids are getting poisoning in that setting.

I think the circle may be too broad. The food for thought for people to pass around and think about in future days -- and I will hand out a sheet that has an alternative

way of thinking about it.

MR. GRAVES: I have been asked to remind everybody, when they are speaking, to please speak into the microphones. If you don't have it right in front of you, maybe the person next to you could pass it on down.

Marc, you wanted to respond to something that David had said. Then I am going to go to the redirect question.

MR. FREEDMAN: Quickly, David, your point about contractors testing when they come into a project is something that they can do on their own if they want to do that.

MR. LEVITT: Right, I was just throwing that out.

MR. FREEDMAN: They will, in some questions, if they are sensitive to the liability questions, do that, and make sure that they have covered themselves.

Ellen raised the point about the conversation that is going to go on out there. You are right, Ellen, that conversation is a good thing. More informed customers are better than uninformed customers.

There is a question about hysteria that I would not want to see take over. Lead is one of those things that everybody assumes that, as soon as you have it, you have got

a major issue, and that may not always be the case.

I think we have to be very careful about how we create that impression.

Finally, the point about the good contractor versus bad contractor, there are lots of ways that good contractors distinguish themselves already. You are right; this would be one more thing.

The point that I think we want to keep in mind about this rule is that we don't just want the good contractor to pick up on it.

We want this rule to be so widely acceptable that anybody, or many contractors who might not otherwise look at something, will take this up.

The Kevin Nolans and Steven Dietrichs and Duffy Hoffmans are here because they want to do it. It is a question of all those other people who aren't here, and making sure that they can pick up on it, too.

MR. GRAVES: Thanks, Marc. I have got a sort of quick redirect question on clearance question. If you will take out a paper and pencil and write your response to this question.

A major obstacle to requiring clearance testing is...this goes to the requiring question.



Take two minutes and write down your response to that. Then we will just go around the room and everybody will have a chance to read their response.

They have been requested to turn the heat down in here a little so it will be more comfortable perhaps. Take another minute, and finish up.

Does anybody need more time? Pat, why don't we start with you, and we will just go around the line, and just read your response to the question or to the statement.

MR. CURRAN: I listened to Alan just a minute ago, and he has kind of been fairly quiet today, but the sampling and analysis for clearances is pretty clear and objective.

I go back to -- I am looking at it from a state's perspective. We are going to get calls, and the interpretation of what the results mean is going to be really gray.

I think that poses some major obstacles. Getting back to where Dean is coming from, multiple contractors, pre-existing conditions, et cetera.

Finally, tied to that would be state enforcement or oversight. I just scratch my head.

MR. GRAVES: Just a reminder, one obstacle, and read the sentence and then pass on the microphone.

MR. HOFFMAN: A major obstacle to requiring clearance testing is confusion of job scope from renovation to abatement.

MR. DIETRICH: Cooperation from customer.

MR. FINE: A major obstacle to requiring clearance testing is the possible inconvenience to the occupants.

MR. ZILKA: Properly trained and qualified people to do the testing.

PARTICIPANT: Implications of pre-existing conditions and what happens if the dust test fails.

MR. GOLDSTEIN: The problem is clearly determining what will trigger the tests.

MS. AINSLIE: Enforcing compliance and understanding what it means, the results.

MR. BAKER: Compliance ensurance.

MR. NOLAN: The logistics of the test and the additional paperwork required.

MR. SUSSELL: To have an independent competent test at a reasonable cost within an acceptable time, and to have qualified professionals available to interpret the results.

MR. PIACITELLI: The uncertainty and the significance of the findings.

MR. HARRINGTON: The turn around time from lining up the inspector to having the results, understanding the results, and what to do with them.

MS. BOOTH: It is determining for which activities it is necessary, and the time, cost and availability of testers.

MR. BULLIS: It adds costs that may be prohibitive, and the disincentive to perform lead hazard reduction work, especially in light of 1018.

MR. CARLINO: It will be very difficult to know when to implement clearance testing; in other words, what should the scope of the job be before you decide implement testing or don't implement testing.

MR. GLUCKMAN: In addition to the obstacle being qualified people, allowing health and safety experts such as either occ docs or certified industrial hygienists to be sort of pre-approved to do clearance testing.

MR. FARR: The need for on-site, immediate, accurate dust testing device and, two, echo, only require it when there is a significant likelihood that kids will be poisoned. I say only in pre-1950 housing.

MR. MATTE: The lack of infrastructure to enforce such a requirement.

MS. TOHN: One of the obstacles to testing is the availability of qualified people and the turn around time in occupied dwellings.

MR. CONNOR: It is that no one has clearly answered the four Ws: when are they done, where are they obtained, who takes them, and what does it mean.

MR. LEVITT: Building the pool of qualified people and resistance for disclosure purposes.

MR. GRAVES: Having heard anyone's statement, does anybody have a particular question that they want to direct to anybody else around the table here?

MR. BAKER: You don't ask, what are the major benefits of requiring testing. Instead of taking the negative perspective, we can take the positive perspective.

MR. REINHART: Does anybody have a question you do want to ask somebody, what they thought the benefits might be.

MR. BAKER: I think everybody recognizes that there are benefits and there are obstacles. Why present only the obstacles.

MR. HENSHALL: I think the presumption is that there are some instances where we all agree that clearance testing is probably a good idea.

At the same time, we recognize there are probably -- I can think of that in a slightly different way, that is almost the opposite.

That is why we wanted to have this discussion, is to highlight the four or five, and those are the things that we need to take back from this meeting and work on them, what jobs, who can do it, how do we solve the inconvenience problem or how do we lessen the inconvenience problem, and interpretation of results. What does it mean, how much do you clean, those types of things.

That is what we are trying to get at. I think we can all agree that there are some instances when you do abatement. When those are, I think Pat put it best, when is a clearance test required.

We want to focus on, for us to bring back, what are the biggest obstacles that we have to overcome in the next -- you know, when we write the rule, are there ways to structure the rule and the accompanying infrastructure to overcome the obstacles that have been identified.

Again, a lot of this, we are not seeking to solve the problem today. What we are seeking to do is get the most significant hurdles on paper, so that when we go back to start to write the rule in preparation for next October

and getting it out, we have those clear in our minds.

If you want to take a limited time and talk about how EPA could begin to overcome those obstacles, that is not a bad use of the next few minutes.

MR. BAKER: Don't forget, who is going to pay for it and who is going to enforce is, are the two other questions.

MR. GLUCKMAN: It is a question of when. From my perspective when I was a contractor, jobs often take several days if not several weeks.

Sometimes they are interrupted by a few days when you go to another job. It always happens that way.

There is a big question in my mind, then, when does testing occur. There is no simple answer, in my estimation.

I just bring this out, because some of you may be thinking about this.

MR. FARR: I think that several of these questions can be answered by EPA preparing a different form of notice that contractors should give to homeowners or renters, for that matter.

That notice is a pretty good education program, and it wouldn't be very hard -- assuming that you are

willing to make protocols that are relatively simple -- to put them in that notice.

It tells the contractor exactly where he is supposed to do the samples, which I would think would be frankly just floors, and also tells the owner -- whether it be a rental owner or a home owner -- what the results mean, and what you should do if it gets to be above the standard.

Then, as I say, I would get all the data I can, including NHANES data, and the new national survey when it comes through, to think through, not 100 percent protection of every child in the country; that is not possible; it is not going to happen.

Just focus on those situations in which there is some reasonable likelihood that a child is going to get poisoned and skip the rest.

The simpler it is, and the narrower -- essentially, narrow it to places where there is really a problem, the more likely it is that, a, it will be done and, b, it will be economically feasible and simple.

MS. TOHN: I think there are three things EPA could do in the next year to substantially minimize these obstacles.

One is, I think Nick is right. The agency, as

well as putting out guidance on work practices, which essentially will serve as the basis for training, they need to put together clear information of how people interpret the results.

You can't call for a test unless you give some guidance on how to interpret the results. I would encourage them to do that in a process that involves a wide group of people -- consumers, federations, people who represent consumers, people who represent contractors, to see whether the language they develop clearly makes sense to people who might actually use it, as well as to health scientists.

The second is, they can do a lot to increase the availability of qualified people, by moving ahead with the new course that Congress told them to do, which is a shortened version of training for dust sampling technicians.

There is no reason not to develop this stand alone training course for dust sampling. Most people agree that training is critical and that the current training out there is not quite the fit that we need.

Congress already told them to do something and they need to just go ahead and quickly do that.

The third thing -- I forgot; I didn't write it down. If I think about it, I will raise it.



MR. HARRINGTON: I would say the fourth thing would be for EPA and HUD to put out RFPs. Obviously there are companies out there who can quickly move in this direction, but if not, put university researchers to look at it.

MS. TOHN: Thank you; that was my third thing.

MR. HARRINGTON: To look at real-time results.

PARTICIPANT: Create a market and they will come.

MR. HARRINGTON: Create a market and it will happen. If not, then anticipate funding research grants to develop real time testing.

MS. TOHN: That eliminates a huge number of these obstacles.

MR. HENSHALL: What about this wet issue, when a contractor goes in there half a day and then it gets wet, and staging the sequence and that kind of thing.

Let's say it is the end of the event, and do you want to require results back before you will allow re-occupancy, and what scale of job. How large does the job have to get before you prohibit re-occupancy pending results?

MR. ZILKA: I agree, creating the market is integral to this whole issue. That starts with the

consumer. Damn it, we have got to do this. We have got to get the word out to the buying public that they should be looking for people who are going to do this stuff properly. That is the key.

Of course, when you do this, you know, we run into that same situation that Marc just addressed, on a project that may be intermittently disruptive.

Basically, it compels these people, the contractor, to go back and clean the area to some level of dust that we can at least visually ascertain if people are going to be reoccupying that area.

Again, it starts even before that, with the pre-construction, for the contractor to explain the issues, understand why they are important, understand why they have got to keep the kids out of dodge and make sure, at the end of the day, if the job cannot be totally completed and clean to the point where it is going to be proven by a dust wipe sampling, that some other concern be brought about, as far as cooking and eating and things of that nature.

That becomes a real issue, and that is where the pre-construction issues come into play.

MR. HOFFMAN: A comment on what Marc was saying. We have to be very careful on a multiple contractor job. We

have contractors that might be working together as subs to the general. Then you have people that work individually for the homeowners themselves.

There are different people, painters, everything, you name it, stereo guys who go down the pipelines, the liability of that situation. Who is going to be responsible for the wipe test.

If there is a problem with the wipe test and it doesn't pass what we call good enough, then who is going to come back and be responsible for the liability of cleaning that job site up. It causes a very heavy legal problem in making the rule.

MR. LIVINGSTON: The problem with who is responsible is always a problem of who is responsible. It is the general contractor. If there are several subs, it is the sub that made the mess.

There is already an allowance for a family to move back into a house before clearance returns if there hasn't been demolition done; that is, if the dust levels, and one could even say visible levels.

If the dust levels are relatively low, HUD already allows people to move back in before the dust results, because there is no indication that the family has moved out

in the first place. You can't even have this discussion.

This is for a small amount of work in occupied houses, or kitchens that may take a month to do while the family is still living there, optimistically.

The notion of whether the family can move in or not isn't an issue. What the training must be, what the information must be, and one of the advantages of training people to do the dust test is, those people can also help the contractor learn how to do what customers like anyway, regardless of lead, which is not make a mess of their house, to restrict the dust to the work area.

The degree that that happens is the degree that both the customer is served and the customer is kept safe, regardless of lead.

Those are things that are good for contractors to get good at either way. The person doing the dust test can begin to function as sort of a trainer, because that is a person who will have gone through formal training and can inform the contractor on how to restrict the dust, so those dust tests aren't over the whole house.

MR. FARR: I think a lot of problems have been raised about how, as a practical matter, you do the dust testing in occupied houses. It seems to me that is the

problem.

We always encourage people -- renters or owners of rental property -- to do work when it is vacant. It is cheaper, it is more efficient, and so on.

The trouble is, what I was going to say is that, until you develop this 15-minute test, I think it is going to be pretty hard to require painters of occupied houses to do it. I mean, I think it is very difficult to do that.

On rental housing, a lot of it is done. Any major rehab is done when the property is vacant at turnover, and then most of these problems go away, as long as you have a relatively simple protocol as to where the dust tests should be taken and so on.

I just think that maybe until you -- the industry or somebody -- has come up with some good stuff, maybe that is all you can do for the time being.

MR. BULLIS: I am going to go back and get on my little soap box for a minute, back to when this was implemented into a shift from abatement concepts to lead hazard reduction, and the fact that we have left the horse out of the barn and we have already made the decision that we are going to have these different categories, even though a rose is still a rose, and when you have lead paint and you

disturb it, you are still creating the same hazard, no matter what you call it.

I just have this idea kicking around in my head as a possible helpful mechanism to employ when dealing with owners and contractors and the like, and this handing out of the pamphlet when they are going to perform some work.

Just a concept that I have is that a sheet of paper, a disclosure form, if you will, that the contractor provides to the owner, which gives four categories for him to check, and to sort of focus and to define what the scope of the intent.

The regulators, there is nothing we hate worse than trying to be thought police. We can't know what the person's intent is.

We are in there after the fact, when there is a big disaster and the owner is saying, well, he said he knew about lead. The contractor says, no, I am just doing a remodeling and renovation job.

My idea is to have this form, and one category is full scale abatement; the intent is to make this premises lead free, and he is going to employ the full 402-type regs.

The next would be a risk reduction category. I am here to reduce the lead hazard in some way. It is not going

to provide you a lead-free situation, but it is going to employ this.

The third would be the remodeling, renovation, maintenance. I am here to do this work. Incidentally, there may be lead and I am going to take these precautions.

I think by doing this, it will add this much better awareness and education component to both the owners and the contractors as to what level of performance standard they are working under and what should be expected.

The fourth would be another category where they could comment, and perhaps there is a local housing code or some other thing that may employ lesser or additional requirements. I would just like to know what folks think about that idea.

MR. CONNOR: I just want to follow up on one of Dennis' comments. With regard to the person who takes the dust test, regardless of who that person becomes -- and I don't know who it is -- but Dennis' comment that that person would also then become a contractor educator, a trainer, I think I would caution EPA, that if they are going to create such a position, that the position is very well defined, and that they do not, in fact, become the project designer, the risk assessor and the enforcement officer.

If they are going to be a sampling technician, then that is what they need to be. Maybe they shouldn't even interpret results for people.

If all they are trained to do is collect the sample, then there are limits to what they can do.

I heard Dennis make those comments and my concern is, we have some very well educated, knowledgeable people out there.

Even today, with a lot of good people, there are still a lot of people out there passing out very bad information.

Dean mentioned before once that he has got accredited risk assessors that don't even know how to interpret their own results.

Why would we even think we should have a sampling technician providing consultant services to the general public would be beyond my estimation.

MS. BOOTH: I just want to comment on something that Nick said with regard to apartment buildings. All of our members certainly try to do major projects on the units when they are vacant, such as repainting or putting in new carpet, replacing windows, things like that. So, they do try to do that when tenants are not there.



In the case of some of these activities which are listed here, for example, a plumbing problem, that obviously has to be taken care of while there are tenants in there.

If you have to go in there and, while you are breaking through a wall to get to the pipes or whatever, if it triggers a lot of these different mechanisms, then that is a whole other problem.

That is why we have to be really careful to really delineate which activities are included under this rule, to make sure that they are reasonable in terms of what the landlord already has to do in compliance with health and safety reasons, and taking care of the tenants and their needs when they are in a property.

MR. LEVITT: I may have misunderstood you, Dennis. You mentioned something and I didn't hear the whole piece of it, about allowing re-occupancy before clearance in certain situations.

MR. LIVINGSTON: Yes.

MR. LEVITT: I just wanted to make that clear, that the guidelines point out specifically for the activities wherein the guidelines apply, that there is not to be re-occupancy.

MR. LIVINGSTON: I have a letter from Ellis(?)

Goldman that says there is.

MR. LEVITT: There is a situation for hardship cases.

MR. LIVINGSTON: No, it is not hardship cases, it is low dust cases. The letter doesn't say hardship cases.

MR. LEVITT: Well, in the guidelines it is hardship cases. The typical guideline as it says there isn't to be re-occupancy until clearance where lead hazard control work has been done.

MR. ZILKA: I would like to see that letter, Dennis. That would be wonderful. We would all like to grab that letter.

MR. LIVINGSTON: It is in the set of letters that says -- there is a set of letters signed by Ellis, of five letters that have been sent to all the HUD recipients. It is one of those letters.

MR. ZILKA: I am not aware of it. I would love to see it. I know what the guidelines say.

MR. FARR: It is still much more restrictive than Dennis might be implying.

MR. LIVINGSTON: It is low dust work.

MR. ZILKA: Contract language, again, most contractors that we deal with work to a written contract.

In that contract, there is a suggestion that they certainly delineate what the intent of the project is, and it is not hazard reduction.

In some states -- like it or not, in some states, even temporary hazard reduction activities are a licensable issue. In other words, you have to be a licensed renovation abatement contractor to perform it. Pennsylvania is one of them.

Other states, even in Ohio, which I don't agree with, contends that an abatement job starts with the knowledge of the presence of lead paint, confirmed knowledge of the presence of lead paint. That is what the enforcement people are looking at.

What we do in the course, we basically tell the contractors to establish the scope and the intent of the work, and that it is not to perform any type of environmental remediation, period, end of story, case closed across the board.

So, I like what you are saying, but I think we have got to go back to what we are dealing with, the known reality of 402, and establishing what intent is becomes a concern, and that is where it should go.

MR. GRAVES: Does anybody else have any questions

that they want to ask of anybody across the table?

MR. BULLIS: I just was responding. I don't understand how that would prohibit informed disclosure from identifying that activity.

That can still be put in the contract language. As other people pointed out, people write contracts on business cards. This is what I am trying to get at, so there is a traceable, documentable scope of work somewhere, instead of relying on the government to have to decide, provide the elements of proof between the contractor and the other who is complaining.

MR. ZILKA: Quite frankly, the people who write contracts on the back of business cards are probably not going to give the pamphlet out and are probably not going to do other things of that nature. That is my report for that end of it. They are probably not members of trade organizations.

MR. HENSHALL: If I could just interrupt you. We have to be concerned about those people as much, if not more, than others.

MR. ZILKA: I agree with you. I think obviously some of the people from our constituency who do this work feel that they may be inordinately singled out because they

are trying to comply and they may be counted down on it. Enforcement has got to go across the board.

MR. HENSHALL: It is not just enforcement. It is also market incentives to get consumers to demand it. As you are well aware, you have got to get consumers to demand these things and you have got to make sure that the path to compliance is easy enough so that we capture 90-some percent and not 20 percent.

The path to compliance has to be easy enough so that we can bring a lot of people on board.

MR. ZILKA: As I say, a lot of remodeling and renovation contractors are looking at this thing and saying, look, we are here just to perform renovation and remodeling. We want to do it right and we want to do it lead safe, and we don't want to get into other issues associated with abatement or any other hazard reduction activities.

I am here just to perform these activities, to change your windows, to reside your house, and that is all I am going to do.

MR. BULLIS: Check box 3.

MR. FINE: You are also dealing with contractors that are hand to mouth.

MR. SUSSELL: My comment was, on the clearance

testing, if it is required in some cases, in the case of abatement contractors, it is very clear, because abatement contractors sign contractors, I believe, that say they are responsible for cleaning up to certain standards, which are the clearance standards.

If the clearing testing indicates they haven't met that, it is very clear that they are responsible for going back in, recleaning, getting it done. Any additional costs are borne by them.

It is just written right into the contractor and it is not even questioned, and it is very enforceable as a contractual requirement under HUD work.

What I see as a problem with the R&R work is, a lot of the R&R contractors are saying, well, I don't want to be responsible for doing environmental remediation of any kind, just renovation work.

I can understand that, but that creates a problem if any kind of clearance testing is done. Who then is going to clean it up, if the clearance testing fails. Who would be responsible for that.

There is a cost associated with that. Somebody is going to have to come back there and retest it again. It is either going to have to be the owner or it will be the

contractor.

It seems to me that that is something that would have to be specified. Otherwise, there is no point in doing the testing. In fact, it will probably just result in a lawsuit between the owner and the contractor.

MS. TOHN: I think two things. One is, something EPA needs to do, and others, including people like the Alliance to End Childhood Lead Poisoning, and HUD and others, we need to be working on the consumer demand side of things, as many people have said.

One clear message is, you can check to see whether the work that was done left a mess or not. That will encourage people to take pre-dust wipes, post-dust wipes.

We all agree that there is going to be no enforcement of this. That is clearly the case. So, we need to strongly send a message to consumers that it should be part of the little punch-out list that they go over with a contractor.

Kevin, I am going to hold you responsible. If you want to take a dust wipe ahead of time, we will do it together. I don't want you to show me. You didn't leave it any dirtier than you found it. That is the conversation that should be happening.

We need to go out and say to consumers, this is your right to demand this. They can make it this clean. Ask them for it. Say you are willing to pay for that dust wipe. It is part of the contract. That is part of the world we want to have happen in the future.

My point is, I don't think that needs to happen for every single renovation job. While I am sensitive to the sequencing issues and multiple contractors, I just don't think there are that many of these renovation jobs that we should be triggering dust testing for.

I don't know that we will have all these problems if we are able to really get down to the specifics of this conversation in terms of which jobs would be triggering dust testing.

The answer would be, after that particular activity that triggers the dust test, then you do the dust wipe, and you sequence it so that that is isolated and then you do the dust wipe and you are done.

I think it is hard to have this conversation in the abstract, in a way. When you get into more of the details of which jobs would trigger it, you can have a clearer conversation of how it would actually work.

I think Nick is right, and everyone is right. It



is really going to be hard in occupied dwellings. Let's try to think it through with the specifics.

MR. HARRINGTON: I just want to somewhat respond to Aaron's comment. I think the thing to keep in mind here is the consumer would probably, unless they have a signed contract that basically reflects -- let's just say it is folded in, the EPA, R&R regs into the contract, let's say a contractor has done that.

If that is not in existence, then really, if the clearance testing does not pass, the property owner is not in a position, for example, to withhold final payment in that regard, for example, because of lack of fulfilling the contract.

In fact, the only recourse would be to take it to a complaint, and that is what they would have to do.

In many cases, you are not going to have this language in a contract, so it is going to be always the same.

If, for example, a homeowner and contractor can't come to agreement and the contractor refuses to come in and do a second clean-up, then their only recourse is a complaint to whoever the local enforcement agency is going to be.

It is not going to be through withholding the final payment on the job or what have you. I don't think we have much of a standard to do that.

I just wanted to make it clear that it doesn't have to be contract language. It has to be in the regulation.

MR. GRAVES: Having heard the discussion, I want to ask Marc or Mike if they have any questions that they want to address to the group as a whole or to any one particular individual before we wrap it up with this discussion. Dean, you had a comment?

MR. BULLIS: Just regarding the enforcement of these rules, our state has work practice regulations and we already regulate repair and renovation work in rental properties that were built prior to 1950.

That might be the kind of focus where certain things can be delineated out.

What I would like to say is, I don't know how many states might come on board to be delegated to enforce this law, unless you have some mechanism, like the one I was talking about, to let them be able to know which standards they are enforcing.

Their option will be to do this. They will ask

the complainant, is there a written contract that says they are doing lead paint abatement. Okay, that is the feds; that is repair and renovation.

MR. HOFFMAN: Just to hit on maybe a complication in there, we know that in June this pamphlet that we are supposed to give out is going out.

That is going to reflect onto this subject we are talking about now, because in there it talks about certified this, and this, that and the other thing.

The contractors in general are going to get questions asked to them at that point on June 1. I know that my contractors already have the pamphlet in it, the sheets are already in it, the sign-out sheets, the whole nine yards is there.

It is going to be a problem. I know that the EPA is giving these pamphlets out and you have to order them. I would be real curious to have a consensus of how many pamphlets have been purchased, how many have been given out.

Then, before we make these types of rules, we have an idea what the response actually has been, and it will give us a good idea of where we are going to be able to go with such a rule.

That particular fact, that that pamphlet is being

handed out now, by law June 1, is going to be a problem for any contractor, whether he be a carpenter, painter, plumber, whatever he is.

He is going to be questioned on what is in there. A good, conscientious homeowner is going to say, well, are you certified? I want a test done.

Then you are going to have people who are not really competent doing those particular duties, doing them, and we have already created a problem, and now the horse is about four miles away and the cart is over at the White House.

It is a very good thing, I think, the EPA needs to take a census on what kind of problems that particular decision has made, now that we are stepping into a whole new light on the situation.

MR. GRAVES: I think we are going to move into a discussion on certification. Before we do that, Mike is going to do a quick sort of run down on the issues and information that EPA is interested in obtaining from you all.

**AGENDA ITEM: Certification and Accreditation.**

MR. WILSON: As Scott mentioned, the next section we will be talking about accreditation and certification.

At the bottom of the first page in the outline is the beginning of accreditation. As you can see, we plan on accrediting training providers in a manner similar to training providers under the abatement rule.

They will apply to the agency for accreditation. They will meet some requirements and then they will obtain accreditation to provider either/or, or they could provide all the training if they wish.

For a clearance technician, for an R&R supervisor, and then the last bullet in the outline is a voluntary training.

We are talking about three trainings, accredited training providers could provider supervisors training, which we could see being approximately one day.

Accredited training providers could provide training for dust clearance testing, which we envision to be about a half day class.

The voluntary training is a training that we see that could be picked up, again trained voluntarily, through labor organizations, organizations like PDCA, NARI, could provide this training for their folks. It could be provided through the local community colleges, through whatever avenue.

It may also be something where we will consider possibly some video based training. That is something that we have discussed as well.

Again, as far as the network of accredited training providers, like I said, the accreditation process will be similar to that of abatement.

That does not mean that we restrict the trainers to abatement training providers. It would be opened up to anyone who could meet those requirements.

As far as certification, we are talking about certification of all firms that are engaged in renovation and remodeling and we are talking about the certification of at least one supervisor per firm.

The intent here is that the one supervisor per firm could then oversee multiple job sites.

Then, the final certification is for the clearance technician. So, following that training, there would be a certification process through the agency.

MR. BAKER: How have you designed the clearance technician?

MR. WILSON: That is what has been talked about earlier. The agency got a directive in our budget from Congress that allocated money for us to develop a dust

testing technician, a clearance testing technician course. Then, after we develop that course, we would plan on certifying those workers through this rule making.

MR. HARRINGTON: Mike, clarification on that. That position, that title, that category, you have that -- it sounds like it was a rider to your budget. You don't have any leeway there; you have to create those positions.

MR. WILSON: It was included in our budget to prepare a training course for dust technicians, yes, so, we are required to do that.

Are there any other questions?

MR. GRAVES: Before we get started in sort of a general discussion, I would like to focus the discussion, by again having you complete the following statement:

The voluntary certification program for firms would or would not be effective, because.

Take a couple of minutes and write down your answers, and then we will go around the room again.

MR. HARRINGTON: A point of clarification, the definition of voluntary certification. I don't know what that means. Is that firms as opposed to the individuals? What do you mean by that?

MR. WILSON: When we talk about voluntary

certification, one of the options that we have considered is, as Dean said, the state of Maryland, they require certification of firms that are involved in pre-1950 apartment units.

One of the ideas we had for this program would be to certify firms that work in pre-1950 housing, and then have a voluntary certification program for housing built from 1950 to 1978.

Then, firms could voluntarily certify themselves and present their credentials to consumers in 1950 to 1978 housing and to demonstrate that they can work lead safe.

MS. TOHN: I am sorry, Mike, I still don't get it. Do you mean -- it seems to me that you can interpret voluntary certification at least two ways.

One is you are saying the state certification programs, but you wouldn't require them to do that. It would be voluntary whether they pursue being state certified.

Are you saying they would come up with their own voluntary programs separate from the state certification program?

MR. WILSON: No, we are saying you would apply certification to one subset of contractors. Like I said,



one example that we have thought of is that if you were to certify contractors working in pre-1950 housing, then for contractors working in 1950 to 1978 housing, they could voluntarily certify through the agency to do the work, and then they would be required, of course, to follow our work practice standards.

MR. GRAVES: Any other questions of Mike regarding definitions of terms, anything like that?

Take a couple of minutes and write down your responses to the statement.

MR. LEVITT: From what I understand, what would the incentive be for them to comply, and that would play a role in how effective the voluntary program would be, to get people to get involved in that.

MR. WILSON: Again, I think our HUD data shows, and I think in the applicability discussion we are going to show a table that includes some HUD values.

It shows the concentration of leads in, say, a pre-1950 home or a pre-1960 home or higher. So, you are targeting your certification efforts, then, on those homes that present the greatest risk.

Then the 406-B program would require some kind of informational pamphlet still be handed out to all homeowners

up to 1978.

They will get that pamphlet. What if they do like Duffy was saying. These people are going to start wondering and saying, hey, do I have a concern about lead based paint.

They are going to start asking their contractors, what are they going to do to work in a lead-safe manner in their house.

A conscientious contractor could get certified by the agency, follow the agency standard, and then use that as a sales point when doing work in 1950 to 1978 housing.

Then, at the same time, by requiring certification and following our work practices for pre-1950, we targeted those homes with the greatest risk, the perceived greatest risk.

MR. CURRAN: Actually, trying to be responsive to the question, I guess I would say it would not be effective. I am actually unclear, or not knowledgeable, of any contractor that has a clear distinction between pre-1960 and post-1960 work activities. I am just not clear on the question.

MS. TOHN: I would say two things. One is, I don't think it will be effective because I don't think currently there is any perceived benefit for becoming

certified in this area.

The second thing is, I think also contractors work on a range of housing stock. Most of them will do some pre-1950.

Therefore, the voluntary mandatory training won't be useful for them for training purposes. It would be useful, however, for dust testing on an individual job.

MR. LIVINGSTON: I will take a pass.

MR. MATTE: I would say it would only be effective -- and I am thinking of it in the context of not alongside a mandatory certification program, but as an alternative.

That doesn't necessarily have to be something that EPA would organize to be a private certification program. It would only be effective if there were sufficient consumer education to add value to having a certification.

MR. FARR: I agree with Pat, that that proposal wouldn't work, because no contractor I know is going to say, I will never work in a pre-1950 house. I think it is the wrong question.

The question that I would ask is, why do you need certification at all. Isn't there some other way. I mean, the only certification reason I can think of is to provide a revenue stream for states, assuming that their legislatures

will enact new legislation before I am 110, most of which seems unlikely. I think it is the wrong question.

MR. GLUCKMAN: I think that it wouldn't work. Compared to the mandatory certification, I am not sure why anyone would do voluntary.

If it is done, I would say that it really shouldn't be done by a video or distance learning, but really don't by someone, again, who has substantial and appropriate educational experience.

MR. CARLINO: I was just going to say that I would think the main reason it wouldn't be effective is that typically the area where safe renovations are most needed are going to be areas like the lower income areas and areas where people are less educated.

They are going to be the ones that are not as likely to get the voluntarily certified contractors.

I think like it was mentioned earlier, the good contractors, they are going to get the certification, they are going to go into the high income areas and do safe renovations, and then the low income areas are going to be deprived.

MR. BULLIS: A voluntary certification program would not be effective, if EPA came up with anything

different than pre-1950 rental, because it would conflict with the state of Maryland.

The state of Maryland should not be penalized for promulgating their regs first. If the contractor is aware of the age of the property, he had better do it right.

Mr. HARRINGTON: It would not work for the reasons that Patrick Curran mentioned, and also a lot of this is related to, just like the contractor state licensing board, it is a consumer protection issue. It shouldn't be voluntary. If you are going to go ahead with something, it shouldn't be voluntary. Otherwise, don't bother.

MR. PIACITELLI: The voluntary program, I don't think would be effective. The irresponsible companies are going to continue to do business.

Yet, the good companies, the companies that are represented here, will go through the certification and will only be forced to increase their costs and their requirements to do business in a responsible manner.

MR. SUSSELL: Would not work because the consumer demand for such certification and for lead-safe work practices doesn't exist in rental housing and other high risk areas.

MR. NOLAN: Much like they all said, I am not

certified, but I know a lot about lead, and most of my customers couldn't care less.

MR. BAKER: I would agree, that it would not work because there is nothing you can build, no smoking gun you can use to force the issue.

Additionally, the issue brought up, how do you determine pre-1950 versus post-1950, or even a different issue, if you have a home that was built before 1940 or 1950 but has been subsequently added onto in the 1960s or 1970s, which one of those would it fall under.

MR. GOLDSTEIN: I agree that it wouldn't work. This discussion just raises concerns that we need clear, definitive regulations.

MR. ZILKA: It wouldn't work because, again, because of what the folks said here. I think it is confusion not only with the buying public but also with the contractor.

There has to be an incentive and I don't really see a clear incentive for them to go that route.

MR. FINE: I agree with Patrick and David's statements.

MR. DIETRICH: I believe a voluntary certification program with firms would not be effective because I don't

believe the consumer demand there, and voluntary certification seems to me to be a little bit contradictory, and it might lead to mandatory certification, which I am in favor of.

MR. HOFFMAN: I don't think it should say certification up there at all. I think it should say voluntary education, not certification.

If you get certified, the guys who are doing what they are doing now good could get certified. It would help me get another job.

The people who are confused, it would just confuse them more. I think we need to educate them rather than to certify them.

MR. FREEDMAN: Everything has been said already. I just want to make one connection. Certification equals complication. As soon as you understand that, then you realize how little this is going to be accepted.

MR. CONNOR: I don't think a certification program, voluntary, would work if it is administered through a governmental agency. Let it be administered through one of the trade associations.

MR. HOFFMAN: Can I make a comment on the trade training, and Marc touched on that, and I am sure that some

of the people in the carpentry industry will agree with us.

The biggest problem is that we have a hard time even speaking with our own kind, to get them to do one thing.

To think that we could possibly engage in a certification program, I have been preaching to our chapter, I have written articles. To get people to listen who are in this business is almost near to impossible.

One of the reasons that I think it is impossible is because we have made all these rules and we failed to use the education system to educate them slowly as we make the rules.

We have got them so darned confused and scared, every time they read another paper, they take it and they rip it up, they throw it in the garbage can and they say, we are going to keep doing business the way we have been doing it. We are making money.

I think before we go and decide to do any training programs or certification or even think about it, we have to educate.

Education is going to be the success of this whole program. Without it, it is going to fall down the tubes and we are going to get conflicts of interest between Maryland,



Pennsylvania, New Jersey, California, Kansas. It will be a catastrophe, is what is going to end up happening, without education.

MR. GRAVES: Anybody want to respond to that?

MR. FARR: I don't know what the question is, but if it is my question, then, it seems to me that you need to figure out why you want certification.

Generally speaking, there are two reasons. One is to provide a revenue stream for states. The other one is that it is a way of proving that the person has been trained, or at least once knew what he or she or it was supposed to do.

It seems to me that there are other, less bureaucratic ways to do it, and also ways that will happen sooner.

It seems to me that the issue really is, and the last time we were here Marc said, that the reason you have certification is you want to make sure people get trained.

There is another way to do that. That is to say to the companies or individuals, as many of them are, that you have to have gotten training.

There will be a model training program or, as in the case of OSHA, there is a list of things on which you

need to be trained.

I am sure PDCA will develop a training program. NARI already has -- maybe it will be made shorter and simpler -- but training will come.

The training that people have to certify and document, that they and, I would add, their workers have had, will have to have some sort of a test.

Training providers, which I hope will include organizations like PDCA, NARI and community colleges and a whole lot of organizations, will provide some sort of piece of paper to the painter or remodeler saying, a, you have taken the course which covers the stuff which EPA says it should cover and, b, you have taken a test and you have passed the test.

This eliminates the necessity of states enacting new legislation and changing their regulations, which I think is going to be a very tough sell.

Secondly, it makes it happen reasonably soon. Thirdly, the only time the issue is ever going to arise is a complaint.

When there is a complaint, the contractor has to have some documentation which, to the extent that anything gets him off the hook, will get him off the hook.

It seems to me that is a lot simpler and more effective way to do this, and this is with respect to the contract. Now, when we get to the sampling technician, I may have different thoughts.

MR. GLUCKMAN: Actually, first, I have a question for Mike back there. Regarding firms, and needing to have one certified person per firm, can that person be a consultant, or does he need to be a full-time employee?

MR. WILSON: We haven't specifically talked about that, but it seems to me that the regulation could be written for either to work. No, it hasn't been a specific area that we have discussed. We will make a note of that, though.

MR. GLUCKMAN: I would support for the record allowing consultants, whether it be some sort of occupational physician, who has experience in this, or a certified industrial hygienist, to sign on as consultants for this.

MR. ZILKA: It is very difficult to institute voluntary training programs. I know that NARI tries, and so does NHP. It is very difficult to deal with that, and I know you would say the same thing.

I don't know what the percentage is with NARI, as

far as how many folks are CR, certified remodelers, or CLCs, certified lead carpenters, but it is probably a fairly small percentage. It is a small deal.

So, the voluntary issues are tough. Again, it has got to go back to the issue of the client, the consumer looking for this player.

I keep harping on this, and I know that Marc made comment to that, but this is very important that the consumer understand what a qualified, certified player is and what, in fact, the training -- not only just the training, but the standard operating procedures that they employ.

To have somebody trained, supervisor trained, is one thing. We contend that the most important player in most of the projects isn't the supervisor; it is the worker.

There are a lot of things that go into this. I just want to make those points.

MR. HENSHALL: John, that seems to argue for a certification scheme that is a lot more like where you train worker and you require an SOP, which would require a minimum standard.

That tends to run counter to what we have heard from a lot of other people. Do you want to comment on that?

MR. ZILKA: Tends to run counter?

MR. HENSHALL: You know, keep it simple, Marc Freedman's admonition that certification with bureaucratic involvement is also going to complicate it.

MR. ZILKA: Quite frankly, I don't know about that and there is also the issue of insurability. I am saying that the worker -- again, back to the issue of the worker having some basic understanding of what is going on, some competent person has evaluated the project itself, assigned the proper practices for that project, and that everybody in that project is on that same basis.

Now, if it is a small job, it is easy to deal with. Somebody comes in, assesses the problem, makes the appropriate health and safety issues applicable and goes from there. With larger jobs, it becomes more difficult.

I recognize the fact that it may be very difficult to train the masses on some of these things. Again, the concept of having some basic criteria so that maybe some of the trade organizations can educate, in addition to these university-based programs.

I sincerely doubt that a lot of the contractors are going to send their staffs off to one or two days of training for the workers at a university-based program.

Maybe a one day, or something less than that for workers, maybe could be a real help.

MR. HENSHALL: What would you have the contractor show to the consumer to demonstrate that the worker has been trained.

MR. ZILKA: First of all, a lot of contractors go out and market to their clients have job books. They have pre and post pictures of jobs they have done. They have a list of references.

In addition to that, they also incorporate their certifications into that job book or that presentation. That happens as a matter of course for a lot of CRs and CLCs in the program.

I don't know about your folks. I am sure that your folks market the fact that they have been through the program. I say you folks meaning the PDCA people.

Again, that is part of the issue, trying to enlighten that client to the certification issues. That is the key.

MR. FREEDMAN: I think I would like to start off by agreeing with Nick's assessment of the whole certification issue. It was a few minutes ago, so I can't recall what you said, but the basic outline was that it has

to be something that anybody could get into.

When I read this proposal and I saw these references to the previous abatement regulation, I shuddered.

I can't say this strongly enough. As soon as you reference the abatement rule, you have lost. This thing is going to tank. The abatement rule is a non-starter. If you use that as a model, then we are not going to get anywhere.

I would like to see something that goes toward a structure outlined in the voluntary R&R worker training issue.

Again, I think the model here is the OSHA training -- this is one of the things Nick said -- the OSHA training approach which says, here is what your workers need to know.

It has been said before, the workers are the ones who are going to be making a difference here. Contractors, as the employers, have the obligation to make sure their workers perform to the company standards.

Whether they have a certified or some other designated supervisor to oversee that, or whether they have taken the time to do the training on their own, that is up to the contractor to determine.

If you make the training worker based, and you

make it such that any contractor can do it on their own, you will get much greater uptake of it.

You will allow independent organizations like the associations, like the unions, like other independent consultants, to provide that training on a widespread basis.

As soon as you talk about accredited training providers you have cut out a bunch of opportunities right there. I can't say it more strongly.

PDCA is about to go off to their convention next week. We are going to have seminars. Bert Altheizer(?) is going to teach a seminar on lead.

That is a perfect training opportunity. If we have to have all these specific people who are accredited present that, we are going to be out of the market. We won't get it done the way it should be done.

It has to be much more available than anything that is related to the abatement rule. Just don't even use the abatement rule as a model.

MR. CURRAN: I am just sitting here scratching my head. I know that Dean and Maryland have already got a program established.

I am sitting here wondering how in God's name I am going to sit in front of a legislative committee and present



this.

I don't know that I would ever get it through the legislature. Well, I could hire Dean, yes.

As far as being a revenue stream for the states, I resent that. I don't think that it is a revenue stream. I think what we want to do is provide good public health for the citizens of the state and not to provide income. I resent the remarks that were made.

I wondered about -- I have worked with the PDCA in North Carolina -- leveling the playing field. I know in Charlotte there are very few member, but when you look in the phone book in Charlotte, at least four years ago, there were 500 painting contractors listed, and in PDCA there were probably 11 contractors. How in God's name do you level the playing field? I don't know.

Then, how in God's name is a governmental agency -- we have 53 local health departments in the state. We have two environmental health specialists in each department that is assigned lead-based paint work.

My God, in some of the counties they have thousands of building permits. How in the world are we going to get around to all of them.

I am kind of leaning saying, is it a voluntary

program and we go through the association? I don't know. I don't have answers at this point, but I have a lot concerns.

MS. TOHN: As many people have said, what we are looking at here is sort of a mass roll out. The abatement regs were very targeted regulations for the professional world.

We are talking about, in our ideal world, hundreds of thousands of contractors getting trained. It is a different model.

I think certification doesn't work. I also cannot imagine many states, this would require a legislative change and a regulatory change.

If we are looking to change practices in the next decade, we are looking in the wrong place. We shouldn't be looking at anything that requires big legislative changes for sure, and maybe not even substantial regulatory changes.

What I tumble to from that is, this industry has different kinds of contractors. So, there shouldn't be only one way of getting this training. We have to allow lots of different ways of fulfilling it.

One way, for some people, accredited training providers may work. There may be some states that have a big source of such people and accredited training providers

would go there, get the certificate, and that is the documentation that you were there.

For some contractors, who are far away from such training providers, there should be an option of some independent test that they could take.

They learn it any way they could learn it. It is a video. It is going to talk to somebody. I don't care how they learned it.

Make the test pretty hard. If they can tell me how to do this work safely, I view that as a huge victory.

MR. FREEDMAN: Contractors or workers?

MS. TOHN: I am thinking workers. I don't think the distinction between supervisor and worker is necessarily the right one to make.

MR. FREEDMAN: The distinction between the firm and the worker.

MR. HENSHALL: You are talking about a written test or a practical?

MS. TOHN: I am talking about a written test. I don't know how you would administer a practical test on a widespread basis.

Vicki and I talked at lunch about, in the training world, in the abatement world, where we have pushed hands-on

training quite a bit -- I will paraphrase you and you can feel free to tell me if I am wrong -- she said, you know, there have been some benefits, but it is not the end all and be all.

I mean, just because they did it for me once doesn't mean they will ever be able to do it correctly again. So, let's not assign an inflated value to that either.

If we want lots and lots of people to do it, let's give them lots and lots of ways to fulfill it, is what I would say.

A third party written test, for some people who have electronic ways of doing it, give them an electronic way of taking the course. That is not the guy driving in the pick up truck, but that is some guy.

We need to come up with as many ways as possible, because there are many kinds of contractors here. We should say that it is possible -- I mean, I refer everybody again to Vermont where over 7,000 people, over the past two years, have taken a two-and-a-half-hour training course. These are painting contractors, renovation contractors and maintenance workers.

They go from 6:30 to 9:00 o'clock at night once,

and they take a test at the end. They have evaluated their program, and six months after going through this training course and taking this test, they remember a huge amount, as good as any test we have ever had. They get 90 percent of the questions right about how you do the most important things.

That is what I would recommend. I am against certification. I am for multiple ways of fulfilling training and we should be more creative about it.

MR. BULLIS: In 1988, we had work practice regulations in the state. We had a requirement that every worker be trained, one-day worker training. At that time we had one approved training provider.

In 1996, we got a certification program in place and we have, you know, a dozen or so training providers across the state.

I just don't believe you are going to have people crawling out wanting to do this kind of training unless there is a requirement as such.

Further, I think that if you have -- the lesser requirement that you have for the people you are regulating to be accredited -- in other words, the supervisors, the workers -- the more strenuous you need to be on the training

providers, to make sure that the curriculums that they are teaching are going to cover what it is that you are trying to get the message across.

I have got all kinds of anecdotal stories. What you have is consultants, beltway bandits, whatever you want to call them, providing any kind of training.

If you cut these people loose, you are going to have people sitting in classes for eight hours learning about respirators, in-line respirators or whatever, and nothing about the carpentry or the rest of the skills that are needed to do this kind of work.

So, as long as we get something established to make sure that what is taught is relevant.

MR. HOFFMAN: I have to agree with Ellen on the open types of training programs. Right now, in probably -- I can't say every state but I have experienced Pennsylvania and New Jersey -- most of your safety and health departments have more information on lead and dangers and hazards.

In my own company, because of seven years of collecting piles and piles of paper, I realized that the only way that I was going to be able to train my men was to do it myself, by taking all that information.

We are supposed to be giving our men safety

programs anyway. Once a week we are supposed to be holding shop talk.

Probably 90 percent of your guys out there don't do that. Especially in rural type areas, it is harder to get the information and get those types of people to get tested.

You can't enforce what they are doing so they say, heck with it, nobody will catch me.

There are thousands of pieces of paper that you can get through the health departments, through OSHA, and different departments, that give you all the information you need to know to train your men.

You run back to the same problem. If the contractor isn't interested in having the trained force to do the work, there is always a problem.

That is why we need to open the training up instead of having certified training. Again, with different organizations that come in, and going into the training business, they come in and they want to train people.

Sometimes they are wanting to train them, just collect the money, and they may spend four days on respirators, instead of knowing exactly what the painter or the carpenter needs to know in his trade to apply the safety

precautions to do it.

I don't think that all these guys would need to go to this program. I think the owner of the company and a supervisor should be educated through some type of program, so that they can train their own men on a consistent weekly basis, by using paper out there that we have already spent money on through the EPA and through every state agency in the country to educate our people.

MR. GRAVES: We are going to go with Dennis and then David and then we are going to take a break. When we come back it will be Aaron and Kevin and John and Nick.

MR. LIVINGSTON: The Vermont experience seems to really answer our question. Vermont is a very small state. They trained 7,000 people. It appears that about six people have done that training.

In another state you would have to train 20 trainers. The certification thing only works to create a monopoly, not a broad-based education.

You want to train everybody that works on old houses how to do it right, not just the supervisors. Most of the crews we are looking at, they don't have supervisors. A couple of people go and do stuff.

There isn't any of this hierarchy. That hierarchy



exists in a whole different realm of corporations that basically mean the requirements of 10 or 15 percent of upper income people.

For the rest of the trade, particularly where the kids are getting poisoned, there isn't a hierarchy of supervisors and foremen and workers. It is the two guys you sent out that day.

What we want to do is, we want to get an awareness in the world that you don't let people work on your house until they have got this piece of paper that says they took the four-day thing. That is it. You don't need legislation. You don't need anything else. I mean, a four-hour tour.

It is a letter that says, I took the four-hour course. You train the people who train that thing well. Eventually, as 7,000 people in Vermont have this, people start to ask the question, do you have your letter.

If you don't have your letter, it is something you can go down the block to get. The problem is, we shouldn't have a lead paint abatement field at all.

We should have a healthy house field. We should have a field where everybody does exactly what they did before, with an awareness about lead and asthma, carbon

monoxide and other issues.

Creating these industries has created a series of radon, asbestos, lead, carbon monoxide nightmares. What you want is every tradesperson to learn to do their trade safely.

You want a simple course for it. Certification just creates added chaos.

MR. HENSHALL: Dennis, who would you see offering that training? Do you care at all who offers it?

MR. LIVINGSTON: As many people as is humanly possible. The trainers need to be trained, and they need to be well trained, and they should be chosen as teachers.

If three or four trainers can train 7,000 people in Vermont, that is not a problem. We already know it is not a problem.

MR. HENSHALL: Do you see government or someone else having an oversight role in who can offer the training, how those guys are trained?

I mean, you are presenting this sort of ideal world where you have well-qualified, good quality trainers. That seems to be the key to your whole scenarios.

MR. LIVINGSTON: Every state has dozens and dozens and dozens of expert trainers already.

MR. HENSHALL: How do those people rise to the top and those that aren't good, how do we keep that out of the training.

MR. LIVINGSTON: I think different states can take different systems. Some states may have a university system. Other states may have a contractor association system. Some other state may have a system of Native American communities.

Other states may choose people who have been doing work in churches for young people. I don't think it makes a difference.

I think the trainers need to have some kind of uniform curriculum, a minimum amount of information should be put forth, and they should go to a course. In Vermont, how long is the course?

MS. TOHN: They developed a manual and then people started offering the training. Then they realized that they had 25 people offering the training and there was very inconsistent training.

They brought them all in for a day and a half and they sort of went through the training course with the training providers.

MR. HENSHALL: This is state sponsored again.

MR. TOHN: Right.

MR. HENSHALL: I am trying to assign some degree of responsibility or not to the oversight over the quality of the training.

MS. TOHN: I guess here is what I think the government role could be. The government could put out some model training material. That is one thing the government could do.

The government could say, here is what needs to be communicated in training. The government -- EPA -- could also come up with a test that other people could use.

Then, at least if the training is inconsistent, at least we have one consistent test. As Patrick raised to me over here in a little side bar, he said, you know, what is really annoying is that if you cross state lines there isn't enough reciprocity and it is a real pain in the neck in some places.

So, some kind of sort of leveling of the playing field across states, that could be a Federal Government responsibility, develop a training course, develop a test.

Then, states could have multiple ways that they could develop it. They could use their lead accredited training providers, or they could propose some other set of

things, whatever would work in North Carolina to get the best quality that you could get with the least amount of hassle and regulatory and legislative changes is what to do.

MR. HENSHALL: The states are going to do that without some impetus from EPA?

MR. LIVINGSTON: The point is now, in the trade we are going from zero to a little bit of training. It is not like we are fine tuning people's lead abatement awareness here.

A vast majority of contractors have zero awareness of this and don't want to have any. So, if you don't make something incredibly accessible, nothing is going to work, or it will work with an esoteric bunch of people and kids are still poisoned.

MR. HENSHALL: The accessibility of quality.

MR. HOFFMAN: The government already has the information that a state needs to know about lead safety. It is all out there. There are about 10 million pieces of paper out on it already.

MR. HENSHALL: What we heard from you today in this process, I think we have a sense that there are two sides to this.

There is mass accessibility and the asbestos

experience, which was setting up the ball room and lecturing for eight hours to a sleeping group of people about how to do asbestos work.

We don't want that to happen. What we are trying to figure out is this middle road here. How do we make it accessible and how do we assure a minimum degree of quality.

I think we all agree, we want experienced, personable contractors, carpenters offering lead training.

MR. GRAVES: Okay, David is next. Then we are going to take a 10-minute break, and Ellen, you are actually on the list. Aaron, Kevin, John, Nick, Dan and Ellen. So, David?

MR. HARRINGTON: I think this issue of accessibility versus quality, well, first of all, I think those are the critical points.

I think if you are not going to go with a certification program, then you need to look at the quality of the training that is disseminated out there.

You pointed out the Vermont program. I am not knocking it. It has been a good, effective program. It is run by the state, and those are state trainers.

In my conversations with the state health department people, they have had people who have taken the

half day training cited by OSHA for lack of worker training and lack of other work detection measures.

The thing to point out here, you are only talking about building occupant protection. One of the things we need to decide here, or that EPA needs to decide here, it is not in the reg, because you don't have jurisdiction, is the value of having one-stop shopping for contractors, where you have folded in both worker protection training and building occupant protection training.

The value of that is clearly, given you get contractors to do anything, this is probably the one opportunity for them to get some quality training.

It is really a disservice to them, and put aside their workers, but say for them for right now, to not have an integrated program that includes what they really need to know to run that job safely.

I think that is one of the things to consider, is that EPA has to develop a model curriculum that folds in -- they can't require it -- but folds in the OSHA worker training piece with the building occupant protection stuff.

That would make it longer than the Vermont program. The Vermont program is extremely stripped down, bare bones.

As I said, contractors in that state have been cited by OSHA inspectors for lack of training and being in compliance.

I think the other thing to keep in mind is that accredited training providers is probably the one key way. Already in California many of these training providers -- there are 26 of them -- are offering less than the certification level training because there is a market demand for it. People want one-day courses in things.

That is one mechanism by which you can assure that you have got some quality of training.

What I would want to see is that the states have a system where the accreditation process is not so burdensome to where you could still get good training providers out there, so you do get trade associations, you do get community colleges, you do get others out there besides university-based networks, to provide that training.

We have a smattering of that. I can't say that we have really covered the map. So, I think if you are not going to require certification you need to have some kind of quality control on the other end in terms of what the training is.

I can tell you, as a person who helped start the



program in California, when we first went out and audited even the accredited training providers where we had done desk reviews, there were a lot of problems with the training that was being implemented out there. I think that it is either one way or the other.

Finally, the issue on certification. I think there are a lot of arguments against certification here, but I think that it is important to keep in mind that it has got to be risk driven, to some degree, and this is where it is related to work practices.

In California, we already require that workers exposed over the PDL have to be trained and certified. Is that happening? Generally not, because of a lack of enforcement.

What we have generally found is that people take the training but they don't always apply to be certified, because they find that the certification step puts them into another loop where they have to go in for renewal and things.

I am not arguing in favor of certification. I am arguing that if you are going to go voluntary, because of some of the barriers that get established through certification, then you need to control the quality of the

training.

MR. GRAVES: I have 2:32. If we come back here in 10 minutes at 2:42, be ready to go, we will continue the discussion, and we will go whether people are here or not.

[Brief recess.]

MR. GRAVES: Okay, we had a bit of a discussion here going on about the merits of certification and the different approaches to certification. Aaron and Kevin and John, Nick and Dan and Ellen, at one time, had her card up. I think we will start with Aaron and just work around.

MR. SUSSELL: What I would like to argue for, I guess, is the middle road on the certification issue. Also, as David mentioned, it is important to link the worker and occupant protection training.

I think on the one hand, the asbestos lead abatement model is not appropriate and won't work. It just creates too much of an obstacle to do the work. It is too expensive. I am not convinced that it would really provide the benefit.

On the other hand, could the OSHA model work. For people who aren't familiar with the OSHA standards, in OSHA standards and the lead standards specifically, there is no standard test, there is no specific number of hours of

training, there is no specific required content, there is no accredited provider. Really, it is an extremely vague requirement for worker training.

PARTICIPANT: There are accredited providers.

MR. SUSSELL: In a vague sense. I don't think it is as specific as a model course. As far as I know, there is no model course.

On the other hand, what OSHA requires is that the employer has a duty to protect the workers from lead. I think that is an important thing to keep in mind.

If EPA were to, for example, pass a rule that the R&R contractor has the duty to protect the occupants, protect the children, then you could argue, I think, possibly, that the OSHA model might work, but only if there was that duty.

If that duty doesn't exist, I don't think there is any chance that it would work. Even if that duty is created by EPA, in my opinion, I think we already know that the OSHA model generally won't work in the R&R industry.

The reason I say that is because we have already heard today most of the small contractors -- not the ones here, of course -- but most of the small contractors don't comply with the OSHA requirements. Therefore, the workers

are not trained and they are not aware.

If, in fact, the OSHA model worked in the R&R industry, then the workers would already be well informed about lead hazards, because this requirement has been in effect for six years.

MR. NOLAN: I think, to some extent, at least in my experience, that the OSHA model does work. We incorporate it in a monthly safety meeting and are able to explain things to our workers in that manner very effectively over a period of time.

I think it should be the responsibility of the employer to educate his employees and his workers. The typical employee would be a transient worker who would come to me on a seasonal nature -- in other words, laid off in the winter by another contractor. So, there is this constant fluctuation of these workers.

I think that you basically have to make the employer responsible for the education. Just as I am responsible for the quality of the work that I do, just as I am responsible for the OSHA training, I should be responsible for providing lead-safe information.

If we put them together, I can incorporate them in a very constructive meeting over a period of time, where I

could touch base on all those issues as they relate to each other.

It is a very simple thing here. We talk about the quality of the education. Whether it be an hour or four hours, it is basically about cleaning and containment.

As long as you can get together some kind of curriculum or course or understanding, then it could be given in seminars to employers. Then they could take it back and spread the word.

I think you have to look at the nature of the people doing the work and what is the best way to get it to them.

The best way is from the employer, who is ultimately responsible to the customer for everything, from the quality of the job, to finishing up and paying the employees at the end of the week.

MR. FARR: Is Marc gone? I was going to say something nice about him. That is rare. He asked a good question, and that is, if you would like there to be qualified trainers.

I think we would all like that. If and when states develop some system for qualifying -- I won't use the C word -- trainers, that would be terrific.

In the meantime, I think EPA should produce some sort of system which does not require state legislature, because it won't happen.

Some of the things we talked about -- I don't know what the states are going to do for sure, but what we don't want is to have this whole thing rise or fall on a special sort of industry.

The certification of abatement contractors, as far as we can see -- and as you know, we have looked at over 3,000 houses in which abatement contractors have worked.

One characteristic of abatement contractors, they don't know how to hammer a nail in and they don't know how to do carpentry.

The last thing in the world we want to do is create some sort of new industry in the renovation and painting industry of people who are willing to pay \$250 to the state, get recertified every two years and that sort of thing, as Aaron pointed out. They won't do it.

There has to be some way short of requiring state legislation to have EPA or a state which is interested -- which I don't know how many there are but not very many -- to appoint or qualify contractors without legislation.

Clearly, a state can go further. EPA can pass a

rule. If California or Ohio or the states that claim to be highly regulated want to go further and require certification, they can do that.

EPA should not enforce a regulation, the operation of which is dependent upon state legislation.

MR. GLUCKMAN: I just wanted to chime in to say, in terms of getting more qualified supervisors and trainers, I know abatement seems to be a bad word around here.

In some of the alternate certification from the abatement language, allow those professionals who have experience in this not to have to do the multi-day training sessions and just be allowed the option of taking the exam.

I think some professionals are dissuaded from becoming trainers because of the multi-day classes which are sometimes required and these people might not need.

In addition, some professions -- I know CHs are one -- require certification and maintenance for other designations.

I think that EPA, or I hope that they would at least recognize those and other professional educational maintenance requirements in looking at lead trainers and supervisors.

MS. TOHN: I guess I just want to put forth, Marc,

you know, I think raised a good question. How can we come up with a system that ensures as much quality as possible, but that actually will occur without being a huge burden on the states. That is one question you raised, and to contractors.

So, I can think of a system where it works like this. We don't use the state certification program for a lot of the reasons that were outlined here.

We want a big pipeline. We want a lot of people going into the system and we want a lot of consumers at the other end requesting it.

I don't want to create a narrow little funnel in the middle, going through a system that has trouble working for a lot of people.

We talk about a discipline that is EPA or state recognized. I think we should stop using the word certification.

You can get recognized as having competency in this area by either completing a training course by an accredited training provider -- a lot of states have accredited training providers, you wouldn't require any new training regs, they are already accredited.

You come out with a simple regulation with model



curriculum and that is just another course that they can teach. It doesn't require huge burdens.

In some states there are quite a few of these people, and it gives them more to do. That is fine with me, too.

A second way to do it is you come up with -- for some of these people, and I don't think this is the world of them -- and interactive CD ROM thing.

So, Kevin's workers, he can say, look, over the next two weeks I want you to sit at this computer. For the guys who can do it that way, go through these things, for the companies that can do it that way, and for the workers for whom that will work -- not everyone can learn that way, or if there are language issues or whatever the problem is -- go through an interactive thing and a test.

The third thing is that the EPA could make a video and that also could have some type of test.

A fourth option would be some states, I am told -- and California is one of them, I believe -- have state systems for contractors separate from the whole health field.

There are some systems in some states -- Patty from NARI told me the last time we were here -- that make

contractors do some things.

For those states that already have a system that makes general contractors do some things, this should be built into that. This shouldn't be a new thing.

They can figure out how to basically incorporate your training and your testing stuff into whatever else those contractors are already doing at a state level.

None of those four things would require legislative or regulatory changes, and EPA says, states, either you pick this up or it will be run federally.

Because you have these sort of centralized, easy ways of running it, using the existing accredited training providers or these other ways, then it is better than where we are now.

It is not perfect, but it is a lot better than where we are now, which is that only the 7,000 people in Vermont and the few people in California who are taking the one-day kinds of courses.

MR. FREEDMAN: The CD ROM idea is something I think that is a lot more viable than some people would expect it to be at this point.

I want to read just briefly from a posting that was in an on-line bulletin board for painting contractors,

to make two points.

First, let me read the piece. Instead of a complicated process, they should have the contractors himself get trained and then be responsible for teaching their crews the regulations, much like a written safety program, the OSHA model.

You go over the information a little each week and have them take a short test and sign it. Then you, the contractor, are responsible for the lead issues, just as you are for the safety program.

Here come the objections. What contractor wants to lose his key guys for a few weeks to have them get certified, then find out, guess what, I am leaving to work for company B. That is what contractors are facing right now.

The important point, to me, is why they don't want to send people to training programs because of what they mentioned.

The other thing to appreciate here is that this is a painting contractor on the on-line bulletin board. These guys are out there using this computer technology every day, and more and more.

There is very little, I would say, technological

blockage between painting contractors and users of on-line technology. Just because they drive pick-up trucks doesn't mean that they can't use computers, too.

I think we should explore that as a way of getting this training system out there. My sense would be, CD ROM, put the curriculum and a test on line so that people can download it.

They can do it in their office. They can have their employees go through it. I mean, at that point, EPA has done its job and it is done. You don't have to worry about a provider. It is already in the hands of people who can use it.

MR. HARRINGTON: Two things. Before we bury the states, as far as their ability to do this, just assume that they can't do this or something, keep in mind that there are numerous states who have their enabling Title X legislation.

It basically gives them the authority to fall in line behind what EPA does. So, depending on what happens in this R&R process can determine a lot what the states do. That is one thing to keep in mind.

It is not necessarily that Pat has to go before the legislature and argue on a certain bill per se. I don't know the specifics of North Carolina's enabling legislation,

but that is something to keep in mind, that that is going to vary. Many states have broad Title X enabling legislation.

I think the other thing to keep in mind is that I am not advocating at all that this be required certification.

I think what Ellen is advocating is, by default, certification. If you have some kind of an exam that somebody is going to have to score and somebody is going to have to give out some kind of a notification, you are in some sense certifying those contractors in the eyes of the consumer and the public, that they are qualified to do this work.

I think you have to be very careful about this. If you don't want these training providers to be doing this, then you are asking the states to do this.

Then, really by default, you are falling back into certification. I just think you need to be wary of what it is you really want to be advocating here.

I think one possible scenario I know we have thought about is that, if we don't require certification, that we try to fold a module into the existing contractor state licensing board exam for certain trades -- the painters license, there is going to be actually a new home

remodeler license in California.

You drop in pieces, you drop in parts of an exam into that exam, so you are not creating a whole other certification or some other loopy testing system, which we know what happens there.

We have already got problems with training providers teaching to the exam, or the exam being sold as it is.

I mean, anybody -- a monkey would be able to pass the exam, quite frankly. There are too many opportunities for corruption here.

I think it is more important that states figure out how to fold some litmus test into the existing structures, like contractors state licensing board kinds of exams, if we are not going to go the certification route.

Rather than thinking that somehow if training providers give an exam, then that makes it all copascetic, I think that is illusionary.

First of all, they are not third party. There are lots of problems that exist already. I could go on with the problems related to that.

MR. CURRAN: Just to pick up where David left off, I think a lot of states have broad legislation. Vermont

will not have to change, California I don't think will.

Out of the six states in my region that have legislation on the books, all six of us are going to have to go back to the legislature.

We are scared about that because we are going to have accountability, why we keep coming back. When we talk about clearance and we start, as an example, with certification, I can see the legislative committee just tying me up in knots as far as clearance sampling is concerned, as far as interpretation.

What does it mean? Is it going to put somebody out of business? How is it going to level the playing field.

We do have contractor licensing boards in the state. We already have lead questions on specialty licenses, such as painting and interior specialty license. There are updated questions that we do put on there.

That would not require any changes in laws or in rules. We are already doing that. I think the states could pick up something like that reasonably.

When we start adding certified clearance technician and so forth, we are talking at least a minimum of rule changes. So, we are going through official state

bodies. In a lot of instances, it is going back to the legislature.

As far as a CD ROM, I was wondering, in North Carolina, whether that goes with an RC Cola or a Moon Pie. I have not as much faith as Marc has in contractors with pick-up trucks in rural areas. I like the idea, though.

MR. SUSSELL: Following up on the comments that Ellen made, her plan sounds good to me, but also, in recognition of what David said, the idea of having a test for recognition, for me, raises a lot of questions.

When you use any kind of a word like recognition, to me that is implying some kind of outside or independent check on what you are doing.

So, it almost gets back to the semantics. It is almost falling back into certification. I think that if there is any kind of test, it really would have to be thought out, and who would administer this. Would it be self administered, would the contractor administer it or would it be, perhaps, to get away from the state setting up certification programs, another possibility would be essentially a private sector certification or recognition system like trade associations or training providers doing it.



My hesitation with it would be, if you give people a CD ROM that has a self-administered test on it, somebody, at some point, is very quickly going to get all the answers to that.

Once those answers are out there, it is very easy to distribute them. What would prevent unscrupulous contractors from simply saying to all their workers, okay, here is a test, here are the answers, now fill out your form and put it in your file. Then you have got another meaningless piece of paper.

To me, unless you have some kind of system for really having recognition, it is not even worth thinking about doing.

MR. BULLIS: First of all, I wanted to build on what David was saying and also Aaron as well now, the same sort of thing.

I believe that we should have as much outreach and education as possible on this subject. This is not a consensus building. If we were voting, maybe I would go for some of the things that Ellen has talked about.

I feel compelled, because I have been regulating in this industry for some time, to raise the devil's advocate questions.

When it comes to this, if somebody has got a piece of paper, a little pink thing with little frilly things around it, and they have got their name on it, lead awareness training, I can't even begin to imagine all the names that we are going to come up with, but those property owners and the people that are procuring those services are going to think that these are the experts in the field, and that they are going to be getting top shelf performance from these people because they have got this training.

Then things are going to go to hell and they are going to be screwed up and they are going to call me and I am going to go, well, what is their certification number.

I am going to look and, oh, no, that is just -- how am I going to explain that to this mother of a poisoned child that, well, actually, we don't regulate those people; you have got to call the EPA on that.

By the way, the CD ROM, there are some guys in western Maryland the eastern shore who will tell you what to do with a CD ROM.

Again, get the outreach and education out, but when it comes to training, do whatever kind of training that you want, but don't let them issue a certificate of completion or any other kind of verification of standards,

unless they are meeting a curriculum that is meaningful and has some sort of oversight.

MR. GRAVES: We have got about 15 or 20 minutes to continue this discussion, and then I will have a redirect question here to kind of summarize. Next we have Greg, then Nick, David, Dan, Dennis.

MR. GOLDSTEIN: I have a couple of things. First of all, if a technician is going through training of some sort, I would sense that they would be interested in receiving a certificate.

I think it would be hard to give someone a test or give someone training and you said, go to the training. Okay, what do I get out of it. Nothing.

I assume that people are going to want a certificate or something out of that. I may not quite understand that side of the industry.

One of the things that I am concerned about in this whole discussion, which I don't think has been covered adequately, is who we are talking about getting this training.

I am with the apartment industry and I am wondering about maintenance technicians. I am also wondering about all the other industries that aren't

represented here.

We are really talking about one or two groups of people here. We are talking about painters and renovators and just a couple of people. But there are a lot of other people here this rule might affect.

Someone mentioned earlier putting a stereo in a house. That is a very realistic concern. If someone is going and putting speakers in a wall and cutting out a little bit of a wall, are they going to have to go get certified and take the tests.

The cable guy that comes in to install a new cable system in an old apartment complex, or whatever it may be, and they are disturbing parts of the wall and creating some dust on their own, what kind of training are they going to get.

I think we need to think very carefully about who this rule is going to affect and how they are going to get this information.

MR. FARR: I think we should bear in mind that this rule will not be in effect for four years, as a practical matter.

They have got a two-year after the final is published, and the period between proposed rules and final

rules is a year, and the proposed rule isn't done yet. So, we are talking about something a long time in the future. I will be 116 by that time.

Maybe EPA, working with the states, which I know they are doing, is going to be able to figure out some things with a huge lead time to get going.

Secondly, we always talk about how the states can do something more restrictive, and some states have figured out how to do that very well.

I think EPA should -- this is radical -- EPA should not approve regulations of a state that make it so difficult for people to do things that it creates a very monopolistic market.

It should cut both ways. Not only should EPA make sure that it is a sufficiently open system that it will work, I don't think anybody has ever thought about turning down rules because they are too restrictive, but think about it.

MR. GLUCKMAN: Just regarding the CD ROM issue, I think now, with all graduate level board exams -- GRE, GMAT, et cetera, et cetera -- are all done on CD ROM. I don't see why a test of this type couldn't have, say, 1,000 questions and only a small portion that actually come up every time,

almost randomly selected.

I don't think you need to worry that much about people memorizing answers, and then selling them, et cetera, et cetera.

MR. PIACITELLI: Somebody administers those tests. They are administered by essentially boards, and there is a cost associated with that.

MR. LIVINGSTON: I actually teach this course. I teach it once a week. I teach it to carpenters and I teach it to the maintenance people who work with properties.

There are about 30 questions. I tell them the answers right to begin with. I tell them the answers in the middle and I tell them the answers at the end.

That is what I want them to know. If they memorize all the answers, that is what they are there for. There are about 30. It is really simple.

I teach them how not to make dust, how not to spread it, how to clean up when they are through, and how to do dust tests to see if they are right.

Then they get pretty good at all those things, and they are kind of enthusiastic, and they pass the test because they want to know that stuff.

I don't think it is third party tests. You are

talking about some other universe. This is a really simple course for people who work on houses all the time.

I am telling them how to do exactly what they are already doing a little bit differently.

They are happy, because they can kind of market it to people and they don't want to poison kids. This isn't the asbestos training. This isn't abatement. This has nothing to do with that world.

This is teaching tradespeople to clean up their mess and to not spread it. It is very, very simple. By making it esoteric and third party tests and CD ROMS and everything else, you are turning this thing into a monster that doesn't need to be. It just doesn't need to be.

It really works. I do it all the time. I wish people would go with me to one of my little courses and they would see how simple it is and how enthusiastic the tradespeople are.

They don't see this as a bitter thing dropped on them. The only thing they see bitter dropped on them is this illusion that they have to air monitor all the time to see what their personal protection level is.

That is the only thing that is really a sticking point. All the rest is stuff that they are perfectly happy

to do, although it is hard for them to put their booties on.

You know, that is the struggle. That is the level of struggle that we are at. This is really a simple course. They like it. They really do like it. They are happy to do it.

MR. BULLIS: They will put their booties on, but then they will carry the ladder out with all the paint chips on it, spilling it on the way.

MR. LIVINGSTON: I know, booties are a problem.

MR. FARR: Including certified abatement contractors.

MR. LIVINGSTON: Particularly certified abatement contractors. We are trying to raise the quality of existing world, not restrict the field. We are trying to influence everybody's work.

MR. GRAVES: We have got about 10 minutes before we wrap this discussion up. Tom, and then David Levitt.

MR. MATTE: I was just going to say, it seems to me that the most successful certification programs that are out there that are widely used are actually not government run certification programs.

They are private ones like board certification in medicine, certification in industrial hygiene. What makes



them successful is that there is a market.

Some sort of a market is created whereby there is added value for having a certification. It is often not a regulatory value added. It is just consumers perceive you as being a better internist if you are board certified in internal medicine, for example.

It seems like the way to be thinking about this is to, first of all, completely, don't start from the question of, does this need to be a state-run certification or private.

It is to think about, what are the market hooks that either already exist or could be created, and then what kind of a certification could pass the lap test as being worthwhile to get that market advantage.

MR. HENSHALL: Aren't those market drivers very different for single family, owner occupied versus rental, and how do you address that?

MR. MATTE: It may be that one size is not going to fit all for certification. I guess that is the first way I would address.

Do not try to come up with one state certificate, which you are probably going to want to design to meet the highest common denominator.

What I am saying is that the tendency is going to be to say, well, if the state is going to certify people, then you have all the people raising this anxiety.

We want to certify. We want to make sure that this, that and the other thing. For most of the contractors doing most of the kinds of things that they do, the benefits of that kind of certification is not going to make it worth their while.

It may be worth their while to take a little course given by the trade association, either live, on line or through a CD ROM, get a little certificate, have that in their portfolio, have that in their ad in the yellow pages.

I guess I think this always has to start with, what is going to be the market advantage to having a certificate or recognition or whatever it is.

Then, how much trouble is it going to be to get it, given what the market advantage is likely to be.

MR. HENSHALL: One of the concerns that was raised about not having any government control -- and it is not that we see government controlling everything as a good idea -- is the dilution of the quality of those over time.

Five or ten years from now, people just find that they really don't need anything, that the rules fit

everyone.

MR. LIVINGSTON: That is great; we have won. It is over with now. We can move on.

MR. HENSHALL: That everyone has one and it really doesn't allow the consumer to distinguish between a good contractor, in a sense, and a bad contractor.

MR. LIVINGSTON: This won't anyway.

MR. MATTE: The two things sort of trade off against one another. If you are saying it is something that everyone is going to get, it must be something that isn't too hard to get.

MR. HENSHALL: That is what we are trying to get at.

MR. MATTE: So, if it only conveyed a little bit of advantage to you, it might still be worth it because it isn't that much trouble to get.

There are actually people out there who like to learn how to do their work better, and a lot of what is involved in lead safe paint work, from talking to contractors who understand lead-safe work, I have learned more about how to paint well, how to have a paint job that actually works wet.

I just think that we seem to be going back and

forth in this discussion from, we have got to have it widely available, everyone has got to have it, and then the anxiety starts to surface, what if it doesn't really -- the same thing goes for state civil service exams. Those get scanned. States give driver's license exams.

MR. HENSHALL: The question is, do we want this system to be a system that allows the consumers to distinguish between contractors, or do we want a system that would allow effectively everyone to get it, and continued varying degrees of success.

[Several voices heard saying yes.]

MR. MATTE: Consumers will distinguish contractors based on a whole range of other factors.

MR. HENSHALL: How do consumers access that information.

MR. FREEDMAN: What you want to do is set a threshold that says, all contractors who do work in homes of an undetermined age, because we think they have lead, will possess the following knowledge.

Then, you, consumer, can decide what contractor you want to use based on all these factors. Trust me, they are not all going to get it anyway.

MS. TOHN: Mark, it seems to me you are asking, do

you want 100 percent of the people to know it, 30 percent perfectly, or do you want 30 percent of the people to know it 100 percent perfectly.

I would opt for 100 percent of the people to know it 15 percent perfectly. That is an actual question to me. I would rather give up quality for having broader exposure.

We are talking about sort of an awareness level training, and for me, the awareness level training is acceptable because -- I mean, I am still going to push for some kind of intensive dust testing in the super-super-riskiest stuff.

In this particular case, I think we want mass, broad -- that is the way consumers are going to start to be aware of it, because everybody knows somebody who does a trade.

So, if people start talking about, hey, you know, I went to this lead thing, you know, you just want people to start talking about it.

As Dennis said, it is not that complicated. You can explain to somebody in 20 minutes the key elements of how to do this lead safely.

Because it is not that complicated, we should be able to get massive stuff. If they get a little bit of the

fine tuning, that is all right with me. You can take a dust wipe at the end.

MR. GRAVES: I had David up and I had Nick up. Then we are going to sort of go into the wrap up and we will talk about where along the continuum of complex, stringent versus widely available do we think it ought to be.

MR. LEVITT: I agree with what Tom was saying and Ellen, and Dennis, in terms of it being simple. I do think there needs to be some standard level of curriculum.

MS. TOHN: I agree with that.

MR. LEVITT: I think there has to be some sort of test, some sort of certification. I think the reliability needs to be there, to bring these people in and teach these people the training, do I get something at the end of your course, and is that defensible, somehow, if something goes wrong.

I guess there needs to be some element of that in this, if this thing will work. It has implications out there in terms of --

MR. LIVINGSTON: They are already doing the work. They are not doing the work more. They are doing the exact same amount of work they were doing before. They are doing it more safely.

MS. TOHN: I don't think it is a defense, David. I think the only defense is if you can testify, when I left, it was clean. That is the only defense.

MR. LEVITT: If you have to produce to somebody that you had a standard training, that you passed a standard test and show them that at the end, people can say, well, I want somebody who has had that and can show me something that they have passed something that is stringent, and developed as a core curriculum for the standardized course. That is what I am driving at.

MR. LIVINGSTON: That is for the abatement field. That isn't this. This is for everybody else. If it was possible to do that, I would be for it. That is not possible.

What is possible is to train everybody in the field with this bit of knowledge of how to prevent dust from spreading, protect workers, and clean up at the end. We are trying to teach all of the tradespeople.

MR. LEVITT: I agree, and I think that is a good point. I am saying, if I am a consumer and I have my choice between somebody, what I just asked, did they go through some general course --

MR. LIVINGSTON: You may choose to hire certified

people. That would be your option. For most consumers, they don't have that option, but you do.

MR. GRAVES: On the issue of complexity versus widely available, you guys have been going at it pretty good here. I saw John's card up and I saw Kevin had his card up briefly. We will just get going on where should EPA draw that line between widely available and something that is a little bit more stringent and sort of requirements driven, like certification.

MR. ZILKA: You know obviously that protecting the public health and certainly the environment is a very key issue.

I believe that getting all this information out to the people, using the proportion of 100 percent of the people knowing 30 percent is smart.

I think the trade organizations, the more savvy contractors are going to look for another way to lift themselves up from the pack, and that is up to them.

I know when we are dealing with NARI folks, who tend to believe that they are higher grade players, that their certification requirements for their CLC or CR program is that discrimination that breaks them away.

That is something that I think contractors need to



make themselves. That is how I am going to approach the training.

My training is a little longer. It is two days. We go into a lot more things that may or may not be required with respect to some of the criteria that you go through, Dennis.

We have covered Dennis' points and they are valid points, and what Dennis is saying is absolutely true. Again, we go to the next level as far as helping them market their services, and that is something that the marketplace will take care of and the industry groups will be able to satisfy. That is the angle that has to be pursued.

MR. LIVINGSTON: The people who are doing the training, I encourage them to take the two-day training. I tell them that there is a lot more to learn, this isn't it, but at least know this stuff. At least know this. Please take the two-day training. This isn't enough. Please take that, but at least know this.

MR. HENSHALL: I want to make sure that we get the position of everybody in the room. Are there people who would infer that the EPA is advocating a narrow window of time where we could have done more, and are we going to look back and regret it? Does anyone have a counter?

MR. BULLIS: I believe we ought to kind of think back or reflect on what is the purpose of this again. We are talking about protecting essentially children from lead poisoning, and not a worker protection issue.

Greg pointed out something which I meant to mention, which was we keep talking about contractors. Half the people who do this work don't realize that they are contractors.

They are property owners, or people who work for property owners. I think that the system --

PARTICIPANT: How about the homeowners? The homeowners are doing a lot of work as well.

MR. BULLIS: Right, exactly. The outreach and education should be there and the lesser training curriculums and so forth should be there for folks like homeowners who want to get an awareness education.

For those people who are going to go into rental properties and do work that is going to disturb lead paint, then perhaps those are the people that it should be mandated that they have a certification and have some ties on them so that there is something that can be done if they don't follow good practices.

MR. HENSHALL: Can anyone think of another

inclusion criteria that you could agree that certification, whatever form it would take, and some mandatory training, a day or so, and requirements for practice standards, that you would agree that government should compel that type of certification to be used.

I am thinking in pre-1950 rental housing. In pre-1950 rental housing you need to be certified, and all the trappings that go along with that.

MR. BULLIS: But it doesn't have to be a five-day training.

MR. HENSHALL: An eight-hour training course with an exam at the end, required for clearance testing, and that would be about it, and some ability of the government to require the certification in the first place.

MR. FARR: I think two things. Number one, I think the question you raise, how do we define who a qualified trainer is, is a good question.

I don't have an easy answer to it, but that is an important part of it.

The second one is that, for this group, which I agree with you are the people that at least I worry about, rental housing built before 1950 -- and I think that is where 87.2 percent of the kids get poisoned -- that is where

I would say dust testing with a clear protocol.

It is at that end of the spectrum that I would catch those people.

MR. HENSHALL: You are okay with a two-and-a-half hour night class, to allow people to do that work?

MR. FARR: If there is a good dust testing at the end.

MR. FREEDMAN: Let me offer an alternative scheme. Instead of time based, content based. That is a lot better.

MS. TOHN: I guess what I am saying, it is more than 15 minutes talking to Marc. It is the kind of information that one can communicate in about four hours and it could be done lots of different ways.

MR. HOFFMAN: What makes that different from HUD, then?

MS. TOHN: Than HUD what?

MR. HOFFMAN: If you are talking about rental units, doesn't HUD apply to inner city rental units?

MS. TOHN: No, only if they get federal assistance.

PARTICIPANT: Four percent of the housing in the country, maybe five.

MS. TOHN: What you want is a two-tiered system,

Marc.

MR. HENSHALL: I want to focus on the narrow tier, the high-risk dangerous tier.

MR. SUSSELL: I have an opinion on the high risk work, the pre-1950 or pre-1960. I think that if you are going to make the argument that clearance testing is good enough, then we should do away with the clearance requirements for abatement workers.

I see no difference. That is also high hazard work. We have a clearance testing system in place. We have certified people doing that testing. Why do they need it?

I don't see any difference. Either both need it for high hazard work, or the abatement people are being punished just because they happen to work in a sector that is primarily publicly funded.

It makes no sense to waste dollars that could be spent on abating more units.

MR. LIVINGSTON: I just want to point out something that maybe is obvious, but we are really dealing with two different paradigms here.

If we are talking about widely available training that is not provided by accredited training providers, but by anybody, then I don't think EPA should be in the

business, nor should be the states, of issuing anything. I really think that is really a wrong path to go.

Why would we like certify or even issue some kind of a certificate to somebody where we have no control over the training that they received or anything like that.

There, the ultimate test is dust clearance testing for high risk activities.

If you go with the accredited training provider model, then I think you do have a responsibility for a number of reasons.

If people have gone down that path, they have taken that level of training, then I think there is an issue of something because, in fact, people want something.

As part of any kind of training program, people want to have some -- no matter what trade or field they are in, they want to have that.

Also, it is a big incentive for why they should be able to market themselves as being whatever it is we are going to call it, whether or not it is certification or whatever you want to call it.

I think those are the two choices. Then, ultimately, of course, dust clearance testing is the ultimate litmus test here.

I think we just need to be clear about that, that those are sort of the two pathways for us to go down here. I don't think we can do accredited training providers and then -- well, do it widely available and then turn around and issue certificates to these people.

I think that would be a real mistake. It would be a real mistake for consumers. There would be so many opportunities for problems because of the variability of the training.

Obviously, training doesn't necessarily turn into good work practices. Ultimately it is going to be up to how that contractor oversees that job, or makes sure that his or her people do the job correctly.

MR. HARRINGTON: Are you arguing against certification of trainers?

MR. LIVINGSTON: Who did?

MR. HARRINGTON: You did. You said widely available, let anybody do the training and then have a test at the end and issue a piece of paper.

MR. LIVINGSTON: I didn't argue against the trainers being certified. I am for the trainers being certified. I don't have any problem with that.

MR. HARRINGTON: I mean accredited.

MR. LIVINGSTON: Accredited, whatever. I am for the trainers being trained and accredited, very trained and very accredited, yes.

PARTICIPANT: Unless you need state legislation, which you do in a lot of places. That is the problem.

MR. GRAVES: Time out, time out. We have got two people over here who have had their cards up for quite a while, and then we will get to Dennis and we will continue.

MR. BAKER: Is it foreseen that this which is being proposed is an add on to the OSHA lead awareness or is it strictly safe work practices?

MR. HENSHALL: This is how to do a renovation job without causing undue risk to the occupants.

MR. FREEDMAN: I am trying to remember where we are in this. Let me respond to Dennis for a moment, because he wanted to know if anyone had spoken against accrediting training providers.

I think I probably did at one point and I probably would do so again. Again, my model for training is more widely available than less.

Any time you talk about accrediting training providers, you are talking about limiting who can do it and you are limiting how many people will get into it.



I think one of the key audiences that you guys have got to approach is the do-it-yourselfer. I mean, you have got Home Depot out there with these ads that say, we will make you a painter.

That hurts my contractors. More important, it undermines whatever it is that this rule is designed to achieve.

I would think you would want to develop some trade information that, if Home Depot is going to do these in-store demonstrations on how to paint, they should be able to include this information in that discussion.

Maybe that is a different level once you get to the contractors, but I would think it would be pretty close. That should drive the question of simplicity.

MR. HENSHALL: Do you see any type or scale of job that would warrant using a certified renovation contractor, saying that only that person could do it.

MR. FREEDMAN: I would have to know what we mean by certified, but my gut instinct is probably not. What we are looking at trying to do, as Ellen has said, is bring up the level of awareness among as many people doing this type of activity as possible.

MR. HENSHALL: You don't see some jobs being so

inherently dangerous that you would want a narrower band of contractors who had taken a one or two day training course, and they carry a card --

MR. FREEDMAN: The problem I see with that -- and I understand that you are going toward, and in principle, I would be inclined to agree with you.

In practice, my concern with that is, how do you get a consumer to understand that distinction, and how do you get them to recognize that they can only use one type of contractor for the type of work you are talking about.

I think you are just going to lose the impact of that distinction.

MR. HENSHALL: Does anybody else have any response to that specific point? Is there a sort of narrow category of job, whether it be distinguished by the age of the housing or the square footage or a dollar amount, that you can see the need for some sub-abatement contractor but better than your typical renovation contractor who has had an awareness course.

How do you do that in a repeatable manner, so that it is understandable.

MR. GRAVES: Okay, responses to that.

MR. GOLDSTEIN: I think that is the question we

have been trying to answer since we got here, and maybe since before we got here, when we first brought this up, and that is, how big of a job does it need to be, to demand some sort of certification.

I think the other side of it, which Marc was talking about, is some sort of public awareness campaign, which is never a bad thing.

A lot of us talked about, the general public sees lead -- and it is largely true -- as a declining issue in terms of lead poisoning.

A lot of people don't see it as an issue at all any more. It is not a big issue for the general public, outside of contracting, our inside knowledge of these issues.

I like the idea of there being some guideline on some really large projects needing some sort of training and perhaps some sort of certification.

I was a little nervous a little earlier when it was mentioned pre-1950 multihousing, everybody needs to be trained and take some intensive course, because I don't think that is necessarily the route that needs to be taken either.

You have a lot of maintenance people with a lot of

different rules. Again, I think it needs to depend on how large the project is.

Some guy going in to change the doorknob, just because he is in a pre-1950 multihousing unit doesn't necessarily need --

MR. HENSHALL: What we are talking about now is what is that step.

MR. GOLDSTEIN: That is a big issue.

MR. LIVINGSTON: The person who changes the doorknob tears down the ceiling next. Virtually all the tradespeople, at some point over the next couple of months, do that one thing that we are considering very dirty, fixing the broken ceiling, whatever.

We don't have doorknob experts out there. The people we are talking about are the maintenance people of older houses.

They do all that stuff. Unfortunately, they do some stuff that they are not supposed to do. The notion that training more trainers means you have to lower the quality of the trainer is an aristocratic notion that I don't comprehend.

There is an infinite amount of tradespeople out there who could be trained to be excellent trainers to do

this specific course, and train trainers. We won't run out of them.

We have got eight of them in Vermont. California may need 400. There are 4,000 people in California who we could choose from. We are not going to run out of tradespeople who can teach their trade.

All we need to do is come up with a good curriculum, and every single person is a person who, at some point, is going to run the risk of poisoning a child if they are working in older, occupied houses.

We want everybody trained. We don't want two tiers of people, or else we have to, then, tell the one tier that they are never allowed to do second tier work.

The notion is to whatever you call it, certify, verify some top-notch trainers, lots and lots and lots of them. We will never run out of that potential.

It is a way for them to make some extra money at night. All they need to do is know their trade very, very well, and take a training to train.

There should be some qualifications. They should be in the trade for X amount of time. They should be able to speak the language of the people they are teaching, whatever else.

We can train top notch people. It doesn't mean that because we are training lots of them, that they have to be less trained.

I do agree, that the state needs to make sure that they be qualified. Once having done that, everybody who threatens the health of children should have this training.

I also agree that for the tradespeople who want to differentiate themselves, they should take many higher trainings and market themselves for the higher trainings.

What we are talking about here is an absolute minimum training for people who create a lot of dirt in houses.

MR. CURRAN: I like the idea of having people, you know, widely available. I think that is really good. That is the way to get public health done.

I think accreditation, going back to what Dave said, accreditation is necessary. That means some state or local oversight.

I guess we will deal with that as it comes and try to scratch our head.

What happens if somebody does something wrong, performs an improper work practice. How are we going to fine them? What are we going to do, take away their pick-up

truck?

I think eventually, when I go to hire a good contractor to come into my home, I check references. I could care less -- I mean, I want to know if they are a licensed plumber, but I also want to know what their references are.

A generation from now we are going to see that. It is like wearing seat belts or stopping smoking. It takes a generation to get this through.

I think we are going to drive some people underground, which is where they already are as far as the IRS is concerned.

The other thing, in looking at asbestos as a mature industry now, the largest amount of criminal activity in asbestos today is in the trainers.

There is a tremendous amount of criminal activity that the states are beginning to recognize and 10 years, five years from now, lead abatement, lead R&R, the same types of activities are going to be, unfortunately.

MS. TOHN: Marc, I am worried about making it more complicated. We have this abatement world over here and now I think what you are asking is, should we have abatement, really risky renovation, and then a less than category,

which is you are not a certified renovation contractor, you take some other training thing.

I think that is just too complicated for consumers to get, to distinguish, well, I have to hire this super-renovation guy here but not here.

I think it is too complicated from a consumption standpoint. For me, what I would say, draw the line between -- I mean, you have this category where we are requiring lots of training.

I think you heard that paint removal is really dangerous. If your intention is paint removal or going down to the substrate and serious stuff, that should be in this category where you get lots of training.

We can argue with these guys about it, but there is pretty clear health evidence in that respect. That is the one task that I think is really bad, and those workers can go to three days training for that. That is fine with me.

For the rest, we should push mass training, I think offered by accredited training providers. I would like to start there and have people tell me why that can't work.

There should be some alternatives, electronic



alternatives for the people for whom that works. The mass should be accredited training providers.

Again, my comfort level for these risky jobs would be dust clearance testing and not relying on a training thing, because we have seen lots of certified workers who don't do a particularly good job in the abatement world.

I mean, they fail clearance in the HUD evaluation one third of the time. Why we think that they simply --

PARTICIPANT: At 200.

MS. TOHN: At 200. Why we think that being certified means that they will leave a clean job site is beyond me, and that the best way is to focus on those really risky jobs and use the one objective measure we really have.

MR. MATTE: I am struggling with the thinking about how, if what you are thinking of mainly a complaints and sort of tips enforcement, then that would seem to me would most often be based on an observation by someone of what is happening, as opposed to asking the person, do you have your credential.

It seems to me that is the way this group works in practice. So, if that is the way it is going to be enforced, it seems to me almost irrelevant, how you would say which kinds of jobs require a certain level of training.

The complaints, the tips, it could be the person who got the training, but the person is complaining because they are doing some unsafe work practice that the consumer was educated about.

It seems that you have to keep getting back to, what do you envision being either the market incentive or the regulatory disincentive that is going to somehow be hooked to certification, training or whatever in some way.

If you are talking about getting a building permit, well, that works for plumbers. You know, they read their license number on the building permit.

If we are waiting for consumers to call in, then I am not sure that we would react differently whether or not the person had training and somebody called up and said, there is a cloud of dust in here and this and that and everything is going on.

MS. TOHN: That is something a tip system would work with. They were supposed to do a dust wipe and they didn't.

MR. BULLIS: First of all, we have already made the decision to have this differentiation in classes, calling lead abatement one thing and this something else.

It is too late for that. There already is a

difference, as we are trying to go from here and trying to work within what the legislature and the powers to be have decided and charged the EPA to do, and that is establish how are you going to implement.

There is a lot of talk about market demand. I just wonder, there are folks who are looking for that intermediate level of work between a full scale abatement job and just a guy driving down the road in a pick-up truck or standing on the corner with a paint scraper.

To have a two-day supervisor training and that level of kind of somebody who can do repair and renovation or risk reduction or whatever you want to call it, and have a little bit more sense of training, and they were able to learn how to put up a mini-containment when they replaced a window, as opposed to somebody who stood there for four hours and dust, dust, dust, they got a little bit more than just the cursory learning the answers for these 10 questions.

I think there is a need for that. I think that if we go back to my disclosure form, when they hand out the pamphlet and say, I am going to perform this work for you now, that will be a reinforcement of I am doing category number two for you here, and providing this level of

services, and you should be expecting to have this level of a product when I am finished.

MR. FARR: I am trying to answer Marc's question. I think an awful lot of people have said, you can't differentiate by the contractor. I think you can only differentiate, as Maryland statute does, to the house.

Therefore, the only way I can think of doing this is -- I think what you are worried about is a big demolition job or something like that.

If it is a permitted activity, then maybe you could try at least to persuade permitting, the codes essentially, to require certain things for certain kinds of permitted activities.

Now, electricians and plumbers, that wouldn't happen to be the ones that I am talking about. I don't know everywhere where you can identify the kind of work you are worried about which requires a permit.

That is the only way I can think of that you can go after some kind of particular work.

MR. CONNOR: Just to follow up the original question, can we have multiple degrees of training? I would suggest that we not.

The reason I believe we shouldn't is, we do have

the different -- we are separating abatement from repair and remodel, and that is one separation that I think is going to be the same, and people are going to have to understand it.

To get into renovation, repair and remodeling and have multiple degrees of training, I don't think it will work.

My personal experience right now, I have finally found a contractor who would work on my house. As I told you last time, all these contractors wouldn't work on my house.

On the fly right now, we are changing things. Things that would disturb zero square feet of paint are now going to disturb 20 square feet, because the person who did the wall papering never sized the walls, so now the wall paper is not coming off.

You come up with an alternative, and actually, you disturbed lead-based paint. To think all of a sudden, well, great, you have a two-and-a-half hour course. I am sorry, my contract with you is now void. I have to go out and find myself a four-hour person. I know I couldn't do it. I can't imagine the consumer trying to do it.

The consumer should know that the person they hired, whatever we come up with, the recognized training,

accredited, friend of Bob's, whatever, they can do whatever it is in the house, because no one would start changing scope of work.

I just can't imagine the average consumer trying to recognize that, you know, Duffy is no longer good for the job. I have got to go find Kevin.

I am sure Duffy, then, would want to keep my deposit. He mobilized. He started the job. He bought supplies, and all of a sudden -- I would encourage EPA, whatever the training is that they decide upon, that it is one. I don't think we can have more than one.

MR. GRAVES: John is up next and then I am going to sort of reserve some time for Marc.

MR. ZILKA: I want to go back to Marc's question, what type of work would be a very, very dust-causing issue. From our experience, certainly things we have talked about in the past, refinishing would certainly be one of them, that maybe a normal homeowner wouldn't be able to get into, certain types of window change outside, disaster restoration. These can be very, very detailed projects, maybe large historical restoration jobs.

We contend again that the permitting, as Nick pointed out, would be a vehicle to potentially control some

of this.

I think that is certainly the way it goes. Again, apartments, people skirt around the permitting issue. Again, I really have a concern about logistical matters, being in midstream and a patch is displayed, and the next thing you know, you have gone from one small issue to another, and that may become a concern.

How are we going to handle it again? We are going to go to another level, and they can voluntarily go to the next level for the trade.

I think we are doing it now and saying, this is the minimum for awareness or whatever you want to call it, but these other issues, we are going to go to the next level and talk about those other types of high risk jobs.

MR. GRAVES: Marc, did you have other questions for specific individuals on the things that they have said?

MR. HENSHALL: No.

MR. GRAVES: Nick is up and then Ellen.

MR. FARR: The sampling technicians, are we going to have time for that today?

MR. HENSHALL: No, probably not.

MR. GLUCKMAN: How about high risk/low risk tests?

MR. HENSHALL: We could spend a little more time

on that if you wanted. I think we have got a lot of stuff that came out today that we may or may not rely upon.

MS. TOHN: In response to the question of sort of the mass thing, again, I am thinking back to the Vermont experience, which is the only place that has something sort of vaguely comparable, people now do ask, are you an EMP trained contractor. That is what they call them, EMP trained contractor.

If you get as much mass that you start -- this is so hard for all of us, is this consumer demand thing, sort of the cart before the horse.

It is really hard to create consumer demand, but you create the people and there is no demand, and sort of you are stuck in between. So, you kind of have to do both simultaneously.

The way I think that works best is to reduce the barriers to people getting this training as much as possible, increase the conversation about this.

Consumers start to ask about it and contractors say, oh, they are interested. They are interested. I am going to send more of my guys to this training. I am going to show that I know what I am doing in this field. That is the way we are going to get most of the progress.



MR. HENSHALL: We are talking about owner occupied. What about rental housing?

MS. TOHN: I am saying the training should be mandatory. Why doesn't it work there? The tenant says to the property owner --

MR. HENSHALL: The tenant has on control over who does the work on the unit.

MS. TOHN: Let's say the tenant knows that the people doing the work are supposed to be trained, and for certain jobs --

MR. HENSHALL: They are supposed to be trained because of --

MS. TOHN: EPA regulations, EPA regulations that say that you need to show that you have successfully completed training.

You give them multiple ways of doing this because you want this to happen. You want to make it relatively easy.

The tenant can ask the property owner, you know, can you show me that this guy has completed training. You are putting more pressure on property owners to find those kinds of people.

Again, we are trying to increase the conversation

about this. The conversation isn't happening at all now. I want there to be a conversation.

MR. HENSHALL: That informed tenant doesn't exist.

PARTICIPANT: It is tough.

MS. TOHN: It is tough, but tenants say, when somebody comes in to work -- there are two types of work. The unit is vacant, at unit turnover where some work happens. There is no tenant.

I mean, they move and they have no idea what happens and that is not what we are talking about. We are talking, I guess, about occupied units.

MR. HENSHALL: We are talking about vacant units. They may be moving into a unit that hasn't been properly clean.

MS. TOHN: The tenant isn't going to have -- they wouldn't have known if any work had occurred or not. I don't know how that conversation would occur in that setting.

I think you can get tenants to be as informed as owners. We are trying to say that -- why is it so hard to believe that a tenant wouldn't say, there was water damage - - here is like the scenario.

There was water damage from an upstairs tenant.

This ceiling needs to come down because of water problems. The workman comes in.

Why do you believe it is so hard that the tenant would ask. Remember the requirement that the pamphlet be handed out.

MR. LEVITT: Just to remark on that, look at all the trouble we are having now with the enforcement of the disclosure rule.

MR. FARR: That is different. Nothing is being done to the unit.

MR. LEVITT: That is a function of owners, too, carrying out their obligations. So, we are talking about trying to say, is it likely that they will even be cognizant of this, when we are having such a hard time right now.

MS. TOHN: I agree that it is not going to be easy, but what is your alternative. The alternative is doing nothing.

So, we just want to have, when contractors walk in and say, hey, I am going to do this work, I do a good job, I am aware that this is an old building and I know what I am doing. I have been through training.

MR. GOLDSTEIN: I am just saying relying on tenants, especially when you start talking about inner city

Chicago and places like that.

MS. TOHN: We are relying on EPA to set a standard and we are hoping that that standard is many, many more people get trained, that people would become aware that it is important to take lead safety precautions during work. That is not relying on tenants to do anything here. It is EPA's role to raise the floor.

MR. NOLAN: This tenant discussion is kind of ironic. It leaves most of us contractors here out of the blue.

That work is being done by a lower end contractor, very low end. I couldn't even begin to compete in that business, a couple hundred dollars a unit to paint the unit. I would charge that much for a closet.

You have got basically people who don't pay insurance, don't pay taxes, don't really care in the world about lead. You can't go after those people.

I would suspect that you have to basically raise the level of awareness of the landlord. I am a landlord myself so I know a little bit about that.

I happen to be a good landlord. I don't know if I am a typical landlord. That is a totally different world than the typical contractor is involved in.

MR. GRAVES: Mark, any questions that you want to ask before we move into having a quick sort of summary overview of the 406 rule?

What we are going to do now is have a brief sort of overview of the 406 rule status, and then we will have final remarks from Mark or Mike.

MR. HENSHALL: I just want to introduce Dave Nicholson from my office. We alluded to earlier about requiring renovation contractors to hand out pamphlets after renovation. They go into effect in June. Dave will talk to us about 10 minutes or so about the rule, what we have done about it, what we re hoping to do in the future, and how you can help out.

**AGENDA ITEM: Final Questions, Summary and Next Steps.**

MR. NICHOLSON: I have copies of my slides here to just pass around. I think I have got enough copies.

I know it is late in the day, so I will be very brief on this and just hit the high points. If any of you are interested in following up on this with more details, I will be around afterwards.

As Mark mentioned, the 406-B rule is coming onto line very soon, June 1 to be exact. By way of introduction,

I stumbled into this whole 406-B rule about a year ago.

Mark's predecessor came into my office and said she had an interesting opportunity for me, and would I be interested in taking on this new rule that is coming down the pike here.

I was a little suspicious by her word choice of opportunity. I quickly rushed back to my office and looked up the statute, and saw exactly what I was getting myself into.

After 15 years of practicing law in this town, I looked at the 406-B and it included all of 10 lines of reg text, and all it said, essentially, is that before you begin renovation, you have to hand out a pamphlet.

I thought, no sweat, no problem. Sure, I will take this, since it will leave me plenty of spare time to follow my other pursuits.

I think that day will live in my memory as one of the biggest mistakes of my life. The more I got into this rule, and the more I realized exactly the extent of what this really means in the real world, the more I realized that I had gotten myself into quite a predicament.

Really, there are two aspects to it. One, I think the wording of this particular part of the statute, I think

has more ambiguities per square inch than just about any other reg that I have worked with over the last 15 years.

Number two, I think the cast of characters that it is aimed at is probably the most difficult set of people to get the word out to that you can imagine.

I think if Congress has been designing the most difficult set of people to educate about a rule that is going to be affecting their practices, I think they would be hard pressed to come up with some group that is more difficult than this.

Let me just quickly run through the requirements here. First of all, who does 406-B apply to. The applicability can be summed up in five or six words. All compensated renovations of target housing.

Now, in those six words, we have got about three separate tests to look at. First of all, it has to be a compensated renovation. What does that mean? What did Congress intend to exclude?

I looked at the legislative history a little bit. Like the rest of it, it is a little bit convoluted. I think that basically what they were after is to exclude the do-it-yourselfers doing work on their own houses, and to exclude the Uncle Charlies of the world. You call them up on a

Sunday afternoon and say, Uncle Charlie, I am taking a wall down here, can you give me a hand on Sunday afternoon.

Congress did not want to get in a situation where the nephews of Uncle Charlie were in a situation where they said, Uncle Charlie, you remember the time you helped me out? You didn't give me a pamphlet, and here is your lawsuit.

I have had a couple of interesting calls about exactly what compensation means in the interim. I got a call, somebody asked, well, does it have to be an exchange of money.

I looked at the wording of the statute, and the preamble and the legislative history, and the answer to that is clearly no.

It just has to be the exchange of something of value. So, it can be a barter situation. It would apply to that.

There is an open question about, if you gave somebody Redskin playoff tickets, whether that would be considered something of value, but that is a question I will not address.

Okay, renovation, the definition of renovation is up there on the screen. I will just quickly go through it.



Modification of any existing structure that disturbs painted surfaces, except abatements, and includes removal or modification of painted surfaces, components, removal of large structures and window replacements.

I think if you look at this definition, the first thing that really strikes you is how broad this definition really is.

I am very, very sure that there are a lot of people out there after June 1, who are going to be performing renovations and have no idea that what they are doing is considered renovation under this rule.

The way this definition is written, if you have a plumber that goes and disturbs more than two square feet in the process of installing a new plumbing fixture, if you have an electrician that is putting in a new breaker box, any time those types of trades get into a situation where they are disturbing more than two square feet of paint, they are on the hook.

That is going to come as a big surprise to a lot of these people who are engaged in this. That is one of the key things to take home about this reg, and one of the key headaches that is going to be bedeviling us for the next couple of years.

Lastly, it is the definition of target housing. I am sure most of you are eminently familiar with this. Basically, it is any pre-1978 housing except for housing for the elderly or disabled.

The other exemption is what is called zero bedroom dwellings. I was kind of curious about that result, the genesis of this zero bedroom dwelling concept.

I think what Congress had in mind was to exclude army barracks and college dormitories and things like that. The exact definition in the statute is a living space that does not have a separate sleeping area.

The interesting and problematic part of that definition is that you get into a situation where, under the definition, an efficiency apartment is also considered a zero bedroom dwelling.

You have a situation in many buildings where you have got both efficiencies, one, two and three bedroom apartments.

You in essence have a building where you have got part of it subject to 406 and part of it excluded from 406.

Wherever you have got that type of sort of artificial distinction, you know that there are going to be a lot of fact patterns coming down the pike here that create

a lot of problems and a lot of litigation.

This law could probably be called the lawyer's full employment act, as a separate title to it.

Another interesting situation I came across recently -- and this was only anecdotal because the person did not want to identify themselves -- apparently there was a landlord who was trying to get around the requirements, I think it was of 1018, on the zero bedroom dwelling.

They were actually going through their apartment buildings and taking off the doors to the bedrooms. By virtue of that, they were trying to come within that exclusion of not being a separate room.

We haven't found out who that was, or whether that was a real or an apocryphal story, but you always have people out there that like to find the gray areas.

Like any other statute, we have got a lot of exemptions. There are exemptions for abatements for certified contractors.

You all know, or are painfully aware, of how difficult it is at times to distinguish between where renovation starts and where abatements end.

Basically, if you don't have that type of issue involved, it is pretty straightforward.

Emergency renovation exemption, you have to have three requirements to meet that. It has to be a non-routine failure. It has to result from a sudden, unexpected event. Third, it has to threaten public safety or significant property damage.

I guess the take-home message there is you cannot plan an emergency. If something is just neglected or run down, that is not a defense. I think that one will not be as problematic as some of the other ones.

The third exemption is renovation for lead based paint-free components. The key to this, the determination that a particular component is lead free has to be done in writing and it has to be done by a certified inspector.

You cannot just go out and determine for your own purposes that something does not contain lead-based paint unless you are certified.

The fourth exemption, I think, is where a lot of the mayhem is going to revolve around. I won't get into it too much here, but if you look at the exact wording in the definition, I have been throwing out the definition, two square feet.

Actually, the wording is two square feet per component. When I first read that definition, I said, well,

what the heck constitutes a component.

I looked in some of the other regs and got this definition which is the pillar of clarity. It is the specific design or structural elements or fixtures distinguished from each other by their form, function and location.

That tells me a lot. As I was planning for this talk, I forgot exactly where it came from, but it is somewhere in the lead regs.

We are madly coming up with some guidance about exactly, in our opinion, what constitutes a component. That is going to be one of our primaries that we are going to hit with interpretive guidance, and I will talk about the interpretive guidance we are developing in a moment.

Basically, the take home message is a component is a structural part of a room. It is a wall, it is a ceiling, it is the molding, it is a door, it is a window. Basically, that is what it is.

You can get into all sorts of situations with the definitions. My favorite one to date is I got a call from somebody who said, how do I figure out the two square feet rule.

I am going to put a hole in the wall and I am

going to use -- it is just wall board and I am going to use an exacto knife and I am going to make a big hole in the wall.

To determine the two square feet, do I determine the surface area of that two square feet or do I -- which is more logical to me -- do I determine how much of that line that made that circle with the exacto knife, do I figure out that.

I told that guy that he had a very creative mind, but I didn't think that we were going to come down any other way other than that surface area, but to stay tuned for further guidance.

That is one of the things that makes my life interesting here at EPA. Just when you think you have got a definition that covers every possible scenario, a new one comes up.

Okay, let me just quickly go through the mechanics of the notification. They are pretty straightforward.

For owner occupied units, you just have to provide a pamphlet and get written acknowledgement of the receipt, or you can mail the pamphlet seven days prior to renovation and document that with a certificate of mailing from the post office.

In tenant occupied units, you have to do all of the above, plus you have to provide a pamphlet to the owner -- I am sorry, you have to provide a pamphlet not only to the owner, but also to an adult occupant of the unit by one of the above methods.

The key wording there is adult occupant. In the draft, in the proposal, I think the wording was something like head of household.

The question arose, well, how do I know that the guy or the woman answering the door is the head of household. Even if they say they are the head of household, how do I really know that.

We decided to dodge at least that bullet and said an adult occupant. I thought we had dodged the bullet and then I got a question the other day, how old is an adult.

I got to thinking, well, that is true. It used to be 21 was an adult. Now a lot of states have gone to 18, and then a lot of states have raised it back to 21 for drinking purposes. That is another question that we will be answering in interpretive guidance, before June 1.

MS. TOHN: In the pamphlet, clearly, Protect Your Family is the pamphlet that you are speaking of. Does EPA have the ability to approve alternative pamphlets?

MR. NICHOLSON: Yes, there is a provision that a state or any other entity which wants to come up with an alternative to that pamphlet, that can be approved.

To date, we have got two states that are approved and one in the pipeline that is interested in an alternative pamphlet.

MS. TOHN: How quickly are you able to approve a pamphlet? June is not that far away.

MR. NICHOLSON: The first one took over a year, but that involved a lot of issues. It was the state of Massachusetts, which had a lot of their own ideas about what constituted a proper pamphlet.

Truthfully, they had a lot of experience and did not accept our opinion about what constituted an acceptable pamphlet, because of their greater knowledge of the lead area, in their minds.

MR. HENSHALL: Just in case you don't have a chance, this is the pamphlet that is going to be required to be handed out as the basic EPA blue cover. It has a page on renovation, a page on other sources of lead, checking your family for lead, et cetera.

It is the most sort of basic piece of information that the government has on lead and lead hazards. It is not



renovation specific.

I can definitely envision a time when EPA would amend this pamphlet to reference the requirements that come out of any rule or any guidance document that the agency has.

That is one way that we see in the long term of filling this information gap, not just for homeowners but for tenants, too.

We will explain in here who is responsible for what, and what they should do and, if it is not a requirement, then what does EPA recommend that people have.

The complication comes in when we try to deal with state programs that deviate dramatically from the EPA.

MR. NICHOLSON: Let me just quickly sum up the requirements in this last part about the notification procedures and common areas.

When work is being performed not in an individual unit but in a common area of the building, there are special notifications, procedures that apply.

Basically, the common areas are defined, but not limited to, hallways, stairways, laundry and recreational rooms, playgrounds, community centers and boundary centers.

Here, for the definition of what constitutes a

common area, remember that it is not only the internal area of the unit, it is also the external unit, and the grounds of the apartment unit.

Notification procedures in the common area, as above, you do the pamphlet to the owner of the building by personal delivery or via the certified mailing seven days before the renovation begins.

The notice also has to be provided to each unit in the building. Notice, it says each unit, not each occupant or adult occupant. It is each unit.

Therefore, this notice can be slid under the doors. Actually, that is probably the most likely way that this will be complied with, is kind of a mass dropping of this notice to all the units in the affected apartment building.

This notice has to have three elements to it. It has to have the nature and the location of the renovation. It has to describe the expected starting and end dates, and it has to talk about the availability of the pamphlet free of charge.

There is also a requirement in here that if the scope or nature of the project or timing of the project changes significantly, after the notice is given, a

supplemental notice will be required.

That is the nuts and bolts of what 406 requires. Let me talk about two minutes about kind of our outreach efforts to date, because that really is going to be the key to getting this particular regulation off to a successful start.

We have got basically three separate components to our outreach efforts. The first one is some expert system - - so-called expert system software.

I don't know if any of you deal with OSHA issues, but OSHA has very similar types of software which is available on line, or I believe you can get it separate on discs.

It basically walks you through a series of questions and answers and, based on your responses, one, tell you whether you are subject to 406-B and, two, if you are subject to it, how you can comply with it.

The software is still being finished. Actually, we have got a beta version of it which we expect to have on line -- I have to talk to Mark about this a little bit, we are going to have a meeting -- but it is probably going to be on line in the next six to eight weeks.

This will be the beta. This will be the test

version that is on line. Normally, the way these programs are instituted, they put them up on the web site at OSHA.

People play with them for six months and submit comments to the agency. At that point, they finalize the version of it. That should be available on line in about one to two months, we hope.

MR. FREEDMAN: Could you let everyone here know that it is on there, so we can know where to get it.

MR. NICHOLSON: Also, on the first page of my handout, I put the web site up.

MR. FREEDMAN: I just wanted to know that it is there when it is there, so I can tell people to go to it.

MR. NICHOLSON: Yes, in fact, I can work through Mark.

MR. HENSHALL: We will probably do a press release on it.

MR. FREEDMAN: We will link it to our web site.

MR. NICHOLSON: The problem with this whole expert systems notion is the target audience. It is a great idea when we are actually thinking of doing a similar thing for the real estate rule.

The audience there is much more logical for web access because so many realtors do have web access. A lot

of the people who are renovators under this rule and are going to be subject to this rule do not have access to the web. Even if they do, they are a little bit unsure how to use it.

That is by far not the main part of our outreach effort. The real backbone will be the interpretive guidance and what we call the compliance handbook that we are developing now.

That will kind of outline what the rule is in basic terms and also provide in the back of it, it will be more or less a paper equivalent of what the expert systems will be doing.

You will be able to read the first few pages of the compliance book and figure out basically what it is about.

Then, if you have got key concepts that you wanted more information about, there will be color coded cross references to how to find out more information about key words and key terms.

The third element of our outreach is going to be a one-page flier that we have developed. That basically, on the front of it, will be pretty much designed just to catch people's attention.

It will not have a lot of detail, obviously, on one page, but will at least pique, we hope, a lot of interest out there and get people at least the understanding that there may be something out there that might apply to them and they should ask further about it.

PARTICIPANT: Who is that going to?

MR. NICHOLSON: We have got a number of different ideas about how to circulate that. I want to say at the outset we welcome any and all suggestions about how to get this into the right hands.

At this point, we have got about three or four different strategies. One is to place these one-page fliers in holders as pamphlets in the materials suppliers, the wholesale materials suppliers that a lot of these renovators will be dealing with, the Home Depots, the Durends(?), those kinds of national suppliers that we hope will be cooperative in distributing that information.

We also intend to -- and this was much more time consuming, but I think is equally important to do -- is to go through a lot of the local building permit and other permit issuing offices.

We are hoping eventually that a lot of these offices will incorporate a lot of this basic information as

part of their basic application packages.

Whenever the particular trade or, say it is a plumber that needs to be recertified or whatever, whatever materials go out to the plumber or electrician or whatever other licensing authority, as a routine matter, they will get that information.

The problem with that, of course, is that so many of these issuing authorities are local authorities. For example, just in the state of New York someone was telling me that there are over 1,000 different entities which issue permits.

It is going to take a while to get all those channels and to get the word out through that methodology.

Interestingly, in the state of Maryland, I did find out the other night when I gave a similar talk, that their renovators are licensed on these at the state level.

I don't know how many other states are like that, but at least for the state of Maryland, and I assume a few others, there is an ability to tap into an existing list of contractors and pretty easily get the word out to them.

Another idea somebody raised the other night was, well, you know, why don't we give the information to pediatricians to hand out.

I guess my initial response was, if I could think of a set of human beings who are less likely to do what they are told, doctors would be way up there on the list.

There are all sorts of ideas like that, that are floating around and we are trying to find the most cost efficient way of getting the word out, but it really is a big task.

MR. FREEDMAN: The regs talked about being able to reprint this on their own, like associations and stuff. If we do that, and if the reg says that we have to maintain content, do we have to do it in the multiple colors or can we do it in just straight up black and white?

MR. NICHOLSON: Black and white is fine.

MR. FREEDMAN: Anything that preserves the content.

MR. NICHOLSON: Right.

MR. HENSHALL: It is camera ready.

MR. FREEDMAN: I have got it camera ready. I just didn't know whether I had to maintain the colors. It is more expensive, obviously.

MR. CURRAN: Dave, what is happening with other languages? Any considerations besides Spanish?

MR. NICHOLSON: Actually, I believe we have got



the pamphlet now in about -- the last count was four or five different languages.

MR. CURRAN: For those other languages, do you have camera ready?

MR. NICHOLSON: Camera ready, I am not certain. I know we have camera ready English and Spanish, but I am not sure about the other ones. That is a good question.

MR. CURRAN: Could that be put on the web site when you get it out?

MR. NICHOLSON: Absolutely. I guess the biggest hurdle, I guess three or four of the ones we have gotten were done by private organizations.

The problem that we have got in endorsing that is we don't have a way to readily check that the translation was done correctly.

As you all know, simple nuances and wording choice can make a big difference. So, we have been a little bit hesitant about endorsing some of the other ones until we have gotten a call on whether or not the translations are good. In fact, I think we even have it in mung, which if you are interested, I will share it with you.

MR. HOFFMAN: Could you write down a good source to give your information to is the occupational safety and

health departments in hospitals.

That is where a lot of blood testing is done. I have had good experiences with the doctors there, where they actually send me information after testing is done.

They will be notified about a rule or regulation. I think that is becoming a good place to do that.

MR. NICHOLSON: I know Dave, in the context of doing some 1018 inspections, I know that HUD and EPA have done a lot of work with local health departments to try to track down elevated blood level kids and try to find 1018 violations that way.

MR. ZILKA: The issue of volunteer work, would that be considered non-compensated, such as maybe working for Habitat for Humanity? That is the typical question I get.

MR. NICHOLSON: Yes, a Habitat for Humanity volunteer would not be subject to this.

MR. BULLIS: I have a request and then a follow up question. In the update that you anticipate, you were in contact with contractors, I was wondering if you could summarize for the group maybe the input or the feedback or the questions that you got from the contractors that were there.

MR. NICHOLSON: It was interesting. The biggest impression I came away with there -- and it kind of surprised me, maybe it shouldn't have -- the degree to which those contractors really wanted the non-compliant contractors to be turned in.

They were really interested in how to tip off a federal official about somebody that is not complying. There is a really huge concern about doing the right thing and then having the guy down the street, who is not going to follow any regs, undercut you.

I have heard a similar concern expressed here today, obviously. It really surprised me. It was one of the first times as a federal employee, to walk into a room full of people that are potentially regulated by you, and to actually have them licking their chops over us bringing federal action.

MR. BULLIS: Because we do have those regs that these folks are complying with, and they want to level the playing field.

This whole other group is out there that they are vying or competing with. Keep in mind that these people that you were talking to had been through multi-day training and were accredited through the state, what does this say to

you regarding the other folks who are out there, and their ability or interest to comply with this, and understanding and complying with it.

MR. NICHOLSON: I don't know exactly what conclusion I should draw, or whether you are trying to lead me to a conclusion, but I really was struck by the level of concern over that one issue and really, the desire to see a strong federal enforcement effort to see that they are not complying with these rules for nothing.

MR. NOLAN: Could you please explain the delivery process again?

MR. NICHOLSON: Okay, if you are doing work in a unit --

MR. NOLAN: In a home.

MR. NICHOLSON: In a home, say it is an owner occupied home.

MR. NOLAN: Yes.

MR. NICHOLSON: You provide the pamphlet.

MR. NOLAN: Do you need a receipt?

MR. NICHOLSON: Yes, they will sign a receipt. In fact, there is a provision that if they refuse to sign the receipt, for example, in a tenant situation, tenants are real suspicious about signing anything.

If you get into a situation where you have handed over the pamphlet and say, hey, can you please acknowledge that you have received this pamphlet and the tenant says, no way, the deliverer can certify that on such and such a date I did deliver a pamphlet to an adult occupant here, and that adult occupant refused to sign the acknowledgement and receipt.

So, basically, you hand over the pamphlet. If it is an owner, you hand over the pamphlet and get them to sign the receipt.

If you don't want to do that, you can mail via certified mail, send them the pamphlet and then keep the certified mailing.

MR. HOFFMAN: The receipt would say what, just I acknowledge that I received this paper.

MR. NICHOLSON: Yes, that is all it says.

MR. FREEDMAN: Dave, one more question. At one point EPA was revising this with the phone number for the information sources here. Has that been done? Are those now available?

MR. NICHOLSON: That is almost ready to go to print. We have to convince our office of general counsel about one small change.

MR. FREEDMAN: It is a phone number.

MR. NICHOLSON: There are several changes that we are making in the revised pamphlet.

MR. FREEDMAN: Are the previous versions still legitimate?

MR. HENSHALL: Yes.

MR. FREEDMAN: If we have a stash of those, we are okay?

MR. NICHOLSON: Yes.

MR. FREEDMAN: Can we get a bigger stash, because you guys are trying to unload the 500,000 that you printed up?

MR. NICHOLSON: The previous versions will continue to be effective. You will not be cited for a violation for handing out an old version of the handout.

MR. FREEDMAN: Are you going to have like a fire sale? Are you guys going to throw the old ones out?

MR. NICHOLSON: Make us an offer and we will consider it.

MR. HENSHALL: Two things Dave is looking for. One is questions, obviously, to help him write the interpretive guidance.

The other is interesting novel ideas for

dissemination of basic information on how to comply with this rule to people that you come in contact with, contractors, anyone who is affected.

So, if you have ideas about how to get the rule out, and if you have questions, please call Dave. The only way he is going to write an intelligent interpretive guidance document is to know some of these nuance issues. The more questions you can ask him, the better.

I am going to take three minutes here so we can get out 15 minutes early. I want to thank everybody for coming today. I know we have lost a few people and I am sorry about that. You have taken time out of your busy schedules.

I know that this meeting at times has appeared to be disjointed, but we have tried to cover a lot of ground. What we have tried to do is not restrict the conversation too much in terms of what we think, or where we think we are headed.

In fact, I am not sure that we have a real good sense of that now. We are still very much in the mode of trying to figure out what the issues are.

I guess as we got toward the end of the day, we began to sort of crystallize the decisions facing the

agency.

It is clearly one of balance. It is one of, do we try to get a lot of information to a lot of people and cover a lot of jobs.

The only way we can do that is to make the requirements effectively minimal, much closer to the awareness end of things.

Do we want to cover a smaller number of jobs that are large scale, that we know involve lead-based paint. Maybe we know children are involved, and those kinds of things, and do a more thorough job of training and putting into practice the work practice standards.

Clearly, the agency has to balance those two needs. I think a lot of the things that we have heard here today and a lot of the things we have gotten out of some of our other meetings are going to help us make some sense of where to draw the line.

So, while today's meeting did seem to, in your eyes, maybe bounce around a lot, I think when we go back and read through the transcript, I am beginning to see some very definitive threads that are coming out, and I think stuff that we are really going to be able to take back in the next couple of weeks and months and really refine.



Our goal is to get a proposal out. It is critical to understand at this point, if you haven't dealt with rules before, that a proposal is just that.

It is a straw man. It is a place to start, and it is going to have options in it. It is not going to be the final rule.

When we wrote the original 402 rule, some states in the northeast didn't understand that, and took the proposed 402 rule and adopted it wholesale.

Then we cut half the rule out and didn't regulate steel structures and commercial buildings, and they haven't forgiven us to this day for that.

The important thing is that we are trying to get to a proposed rule and not a final rule, and that distinction may be lost on you.

The proposal is more flexible. It is more open ended. It asks a lot of questions.

I think it is okay for EPA to be in this mode of not having a good sense yet of what this thing is going to look like. We are still trying to get our hands around this.

If we were trying to get a final rule ready and we were still at this degree of disarray, I would be a little

nervous.

We are not. I think we have got a lot of fodder to throw into the proposal, to throw into the preamble, and I think a lot of the discussions that you see here, you will recognize them in the preamble.

You are going to see a lot of sort of pros and cons laid out. We are going to be asking the general public how do we reconcile this.

I think there is no right answer. I think that everyone here wants to do the right thing, or we wouldn't have taken the time you spent here and the time you spent thinking about this issue.

The question is, what is the best answer that we can come up with given the resources, given the available infrastructure, and given the goal that we all have of minimizing risk to children from renovation activities from lead.

That being said, I want to again thank you for coming. If you didn't get a chance -- I know some people spoke more than others.

If you feel that you didn't get a chance to express your views, if something strikes you on the way home, please feel free to call Mike, call myself.

Put it in writing. That always helps us because it is something that we can go back to over time. We will put it in the docket. It will support the decisions that we make in the proposal.

If anything sort of strikes you in the next several months, feel free to pick up the phone or send us an e mail.

It is very quick. We can print the e mail out, we can put it in the docket. It is a permanent record of your thoughts.

That helps us, because we have very short memories and we have a lot of information coming in to us from a lot of different perspectives.

All your names are on a mailing list. You will be getting any updated information on the rule. At a minimum, you get the proposal when that comes out and a notification, when the proposal has come out, where to get it, get it off the web site, how to comment.

I don't think we are going to hold another meeting of this group between now and proposal time. We are going to have to go back and give some serious thought to that.

Given the schedule that we want to get something out in the fall time frame, and we have got to sit down and

start writing, and we can't have these meetings while we are sort of mid-writing.

I don't think we are going to have another meeting. There is an outside possibility that we may do a short mailing and ask people some questions that we may have some issues that we would like you to respond to.

Sort of watch your mail for that. If not, wait for the proposal and, when you get it, please take the time to comment. This group is assured at least a 90-day comment period.

Any final questions before we get out of here? You have all our numbers and e mail and stuff, so stay in touch.

[Whereupon, at 4:50 p.m., the meeting was adjourned.]