

Calendar No. 1097

110TH CONGRESS
2D SESSION**S. 3639****[Report No. 110-515]**

To protect pregnant women and children from dangerous lead exposures.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 26 (legislative day, SEPTEMBER 17), 2008

Mrs. BOXER, from the Committee on Environment and Public Works, reported the following original bill; which was read twice and placed on the calendar

A BILL

To protect pregnant women and children from dangerous
lead exposures.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Protect Pregnant
5 Women and Children from Dangerous Lead Exposures
6 Act of 2008”.

7 **SEC. 2. FINDINGS.**

8 Congress finds that—

1 (1) the Centers for Disease Control and Preven-
2 tion recognize that lead is a poison that—

3 (A) affects virtually every system in the
4 human body; and

5 (B) is particularly harmful to the devel-
6 oping brains and nervous systems of fetuses
7 and young children;

8 (2) the Administrator has determined that
9 lead—

10 (A) is associated with a wide array of
11 harmful impacts, including damage to the nerv-
12 ous system, the reproductive system, the cardio-
13 vascular system, physical development, the kid-
14 neys, hearing, and the immune system; and

15 (B) can cause adverse behavioral impacts.

16 (3) the Centers for Disease Control and Preven-
17 tion and the Administrator have determined that
18 children in general, and children in low socio-
19 economic conditions and minority children in par-
20 ticular, are at increased risk of lead exposure and
21 adverse health impacts from that exposure;

22 (4) the Census Bureau estimates that in 2006
23 more than 12,800,000 children under the age of 18
24 lived in poverty;

1 (5) in 1991, the Centers for Disease Control
2 and Prevention recognized that 10 micrograms per
3 deciliter of lead in blood should prompt public health
4 actions, but that harmful impacts may occur at
5 blood lead levels below 10 micrograms per deciliter;

6 (6) the Environmental Protection Agency (in-
7 cluding the Children’s Health Protection Advisory
8 Committee of the Environmental Protection Agency)
9 and other Federal entities recognize that scientific
10 studies since 1991 have strengthened the evidence
11 that blood lead levels below 10 micrograms per deci-
12 liter, particularly in children, can harm human
13 health;

14 (7) the Administrator recognizes that recent
15 studies have demonstrated that some reductions in
16 cognitive function can occur at the initial and lowest
17 levels of lead exposure, though additional harm can
18 occur with continued exposure to lead;

19 (8) according to the Administrator, approxi-
20 mately 310,000 children in the United States be-
21 tween the ages of 1 and 5 years have blood-lead lev-
22 els greater than 10 micrograms per deciliter;

23 (9) the Administrator has determined that lead-
24 based paint can pose a health threat through various

1 types of exposure, including through indoor dust and
2 paint chips following renovation activities;

3 (10) in 1992, Congress passed Public Law
4 102–550 (106 Stat. 3672), title X of which is cited
5 as the Residential Lead-Based Paint Hazard Reduc-
6 tion Act of 1992 (42 U.S.C. 4851 et seq.);

7 (11) section 1021(a) of the Residential Lead-
8 Based Paint Hazard Reduction Act of 1992 amend-
9 ed the Toxic Substances Control Act (15 U.S.C.
10 2601 et seq.) by adding a title IV to that Act relat-
11 ing to lead exposure reduction (106 Stat. 3912);

12 (12) title IV of the Toxic Substances Control
13 Act (15 U.S.C. 2681 et seq.) required the Adminis-
14 trator to undertake a number of actions to protect
15 individuals, including pregnant women and children,
16 from dangerous lead exposures, including by requir-
17 ing the Administrator—

18 (A) by not later than April 28, 1994, to
19 promulgate regulations identifying lead-based
20 paint hazard standards for use in determining
21 standards and regulations for reducing the risk
22 of exposure to those hazards;

23 (B) by not later than April 28, 1995, to
24 conduct and publish a study on the extent to
25 which persons engaged in various types of ren-

1 ovation and remodeling activities in target
2 housing, public buildings constructed before
3 1978, and commercial buildings are exposed to
4 lead in the conduct of the activities, or disturb
5 lead and create a lead-based paint hazard, on a
6 regular or occasional basis; and

7 (C) by not later than October 28, 1996, to
8 revise the regulations that apply to renovation
9 and remodeling activities in target housing, pub-
10 lic buildings constructed before 1978, and com-
11 mercial buildings that create lead-based paint
12 hazards;

13 (13) on January 5, 2001, the Administrator
14 promulgated the lead-based paint hazard regulations
15 required under section 403 of the Toxic Substances
16 Control Act (15 U.S.C. 2683), which identified dan-
17 gerous levels of lead dust on floors at 40 micrograms
18 per square foot or greater and for window sills at
19 250 micrograms per square foot or greater;

20 (14) in promulgating the regulations, the Ad-
21 ministrator stated that the “standards [were] based
22 on the best science available to the Agency. The En-
23 vironmental Protection Agency recognizes, however,
24 that the science is constantly developing. . . If new
25 data become available (e.g., empirical data showing

1 that very small amounts of deteriorated paint pose
2 a serious health risk or data showing that hazard
3 control activities are more effective at reducing long-
4 term dust-lead levels than assumed by the Environ-
5 mental Protection Agency), the Agency will consider
6 changing the standards to reflect these data.”;

7 (15) on January 23, 2007, the Administrator
8 issued a draft final dust study examining renovation
9 and remodeling activities and lead-contaminated
10 dust hazards;

11 (16) on August 30, 2007, the Clean Air Science
12 Advisory Committee of the Environmental Protec-
13 tion Agency—

14 (A) reviewed the study on renovation and
15 remodeling activities and lead-contaminated
16 dust hazards and the approach of the Environ-
17 mental Protection Agency to characterizing
18 lead-contaminated dust levels after renovation
19 and remodeling activities; and

20 (B) concluded that—

21 (i) “[s]tandards need to be strength-
22 ened in view of recent epidemiological data
23 indicating that children are more suscep-
24 tible to effects from lead than was pre-
25 viously thought.”;

1 (ii) “[t]he lead dust loading values of
2 40 $\mu\text{g}/\text{ft}^2$ for floors and 250 $\mu\text{g}/\text{ft}^2$ for win-
3 dow sills are presented as adequately pro-
4 tective of children against lead poisoning,
5 i.e., to guard against blood lead levels of
6 greater than 10 (>10) $\mu\text{g}/\text{dL}$. However,
7 the Panel notes that these residual surface
8 contamination standards are obsolete on
9 the basis of recent epidemiology findings
10 that indicate that adverse health effects
11 are found in children with blood lead levels
12 less than five (<5) $\mu\text{g}/\text{dL}$. . .”;

13 (iii) “[t]he cleaning procedures em-
14 ployed are inadequate, such that post-
15 cleaning lead levels do not even meet the
16 existing Environmental Protection Agency
17 standards. Moreover, the qualitative and
18 simplistic method used to verify the effec-
19 tiveness of these cleaning procedures, i.e.,
20 the ‘white cloth verification tests’, does not
21 yield consistently reliable results, leading
22 to an inaccurate assessment of cleaning ef-
23 ficiency after repair and renovation activi-
24 ties.”; and

1 (iv) “[t]he Panel strongly feels that it
2 is imprudent to substitute a simplistic and
3 qualitative white cloth test for highly spe-
4 cific, analytical measures of lead in house
5 dust.”;

6 (17) on March 31, 2008, the Administrator
7 issued final lead-based paint renovation, repair, and
8 painting regulations that are based on—

9 (A) cleaning practices that—

10 (i) the scientific advisors of the Ad-
11 ministrator have criticized as “inad-
12 equate”; and

13 (ii) are based on the goal of meeting
14 the lead dust loading values of 40
15 micrograms per square foot for floors and
16 250 micrograms per square foot for win-
17 dow sills, which those scientific advisors
18 have called “obsolete” based on studies
19 demonstrating that the values may be in-
20 adequately protective of children’s health;
21 and

22 (B) the “white cloth” method to verify the
23 effectiveness of cleaning practices, which the
24 scientific advisors of the Administrator have
25 called “inaccurate” and “simplistic”; and

1 (18) the revised lead-based paint renovation, re-
2 pair, and painting rule of the Environmental Protec-
3 tion Agency fails—

4 (A) to use the best available science on the
5 adverse impacts of lead on children’s health;

6 (B) to adequately protect the health of
7 pregnant women and children from lead poi-
8 soning; and

9 (C) to contain enforceable methods of
10 verifying that lead levels in homes and other fa-
11 cilities are safe following lead-based paint ren-
12 ovation, repair, and painting activities.

13 **SEC. 3. DEFINITIONS.**

14 In this Act:

15 (1) **ADMINISTRATOR.**—The term “Adminis-
16 trator” means the Administrator of the Environ-
17 mental Protection Agency.

18 (2) **BEST AVAILABLE SCIENCE.**—The term
19 “best available science” includes, with respect the
20 establishment of standards for the protection of indi-
21 viduals from exposure to lead, studies on the health
22 effects of lead completed since the Environmental
23 Protection Agency last updated the lead-based paint
24 hazard standard under section 403 of the Toxic
25 Substances Control Act (15 U.S.C. 2683), including

1 especially recent epidemiological studies, dem-
2 onstrating that lead levels below 10 micrograms per
3 deciliter of blood pose a threat to children's health.

4 **SEC. 4. PROTECTION OF PREGNANT WOMEN AND CHIL-**
5 **DREN.**

6 (a) BEST AVAILABLE SCIENCE.—

7 (1) FINAL REGULATIONS.—Not later than April
8 30, 2009, the Administrator shall use the best avail-
9 able science—

10 (A) to promulgate a final rule revising the
11 lead-based paint hazard standard of the Envi-
12 ronmental Protection Agency promulgated
13 under section 403 of the Toxic Substances Con-
14 trol Act (15 U.S.C. 2683) to a more protective
15 level that safeguards the health of pregnant
16 women and children; and

17 (B) to require the use of a lead dust clean-
18 ing clearance methodology that ensures lead
19 dust levels meet the standard revised under
20 subparagraph (A).

21 (2) PEER REVIEW OF ANALYSES.—The Admin-
22 istrator shall ensure that the Clean Air Science Ad-
23 visory Committee of the Environmental Protection
24 Agency peer reviews the analyses that the Adminis-
25 trator uses—

1 (A) to revise the lead-based paint hazard
2 standard; and

3 (B) to require the use of a lead dust clean-
4 ing clearance methodology.

5 (b) IMPLEMENT PROTECTIONS FOR PREGNANT
6 WOMEN AND CHILDREN.—Not later than April 22, 2010,
7 the Administrator shall integrate into the revised rules of
8 the Environmental Protection Agency on renovation and
9 remodeling activities that create lead-based paint haz-
10 ards—

11 (1) the lead-based paint hazard standard re-
12 vised under subsection (a)(1)(A); and

13 (2) the lead dust cleaning clearance method-
14 ology required under subsection (a)(1)(B).

15 (c) PERIODIC REEVALUATION.—The Administrator
16 shall review and reevaluate the health protectiveness of the
17 rule promulgated under subsection (a)(1)(A), for the sole
18 purpose of determining whether to increase protections for
19 the health of pregnant women and children, with the re-
20 view and reevaluation occurring—

21 (1) at least once every 5 years; or

22 (2) more frequently, as necessary, if significant
23 scientific findings indicate that the standard de-
24 scribed in subsection (a)(1)(A) should be revised to

1 increase protections for the health of pregnant
2 women and children.

3 **SEC. 5. REGULATIONS RELATING TO LEAD-BASED PAINT**
4 **HAZARDS, LEAD-CONTAMINATED DUST, AND**
5 **LEAD-CONTAMINATED SOIL.**

6 (a) DEFINITIONS.—In this section:

7 (1) FINAL RULE.—The term “final rule” means
8 the final rule promulgated by the Administrator en-
9 titled “Lead; Renovation, Repair, and Painting Pro-
10 gram” (73 Fed. Reg. 21692 (April 22, 2008)).

11 (2) INDEPENDENT CLEARANCE.—The term
12 “independent clearance” means clearance of a ren-
13 ovation performed by a certified assessor or certified
14 sampling technician who was not an individual per-
15 forming the renovation.

16 (b) RENOVATION AND REMODELING REGULA-
17 TIONS.—Not later than 90 days after the date of enact-
18 ment of this Act, the Administrator shall update the final
19 rule to include requirements that—

20 (1) independent clearance shall be performed by
21 a certified risk assessor or certified sampling techni-
22 cian to ensure compliance with lead hazard stand-
23 ards relating to lead, lead dust, and lead-based paint
24 in effect as of the date of enactment of this Act,
25 such that—

1 (A) ongoing, periodic random sampling
2 shall be permitted so long as a sufficient num-
3 ber of samples are selected to provide a 95-per-
4 cent level of confidence that none of the renova-
5 tions completed by a certified renovation firm
6 would result in levels that exceed the standards,
7 as determined by the Administrator; and

8 (B) if random sampling indicates that a
9 group of particular renovations results in a level
10 that exceeds the standards, until such time as
11 the Administrator determines that the renova-
12 tions of the individual or entity achieve the level
13 of confidence described in subparagraph (A),
14 the individual or entity that completed the ren-
15 ovations shall be responsible for providing for
16 independent clearance of—

17 (i) each subsequent renovation com-
18 pleted by the individual or entity; and

19 (ii) each unit renovated during the pe-
20 riod beginning on the date of the most re-
21 cent clear inspection and ending on the
22 date of failure of clearance, including offer-
23 ing to perform recleaning on any unit that
24 exceeds standards;

1 (2) a written renovation completion report shall
2 be provided to both owners and occupants of a cov-
3 ered property describing all the actions that were
4 performed to reduce lead hazards during the work
5 and the results of all tests performed as part of ef-
6 forts to ensure compliance with the final rule and
7 other applicable regulations;

8 (3) work practices used shall be at least as pro-
9 tective as those of the Department of Housing and
10 Urban Development described in 35.1350 of title 24,
11 Code of Federal Regulations (or successor regula-
12 tions); and

13 (4) an individual who has completed a lead-
14 based paint training and certification program shall
15 be present at all times that work is undertaken at
16 a work site.

17 (c) TRAINING OPPORTUNITIES.—

18 (1) GRANT PROGRAM TO EXPAND TRAINING OP-
19 PORTUNITIES.—

20 (A) ESTABLISHMENT.—The Administrator
21 shall establish a grant program to expand train-
22 ing opportunities relating to lead-based paint
23 that are available at the State and tribal level.

1 (B) USE OF FUNDS.—Funds provided
2 through grants under the program established
3 under subparagraph (A)—

4 (i) shall be used by a recipient to pro-
5 vide no-cost, culturally and linguistically
6 appropriate lead-based paint training and
7 certification opportunities, giving priority
8 to those opportunities established and car-
9 ried out in partnership with nongovern-
10 mental organizations, for low-income work-
11 ers, in order to ensure the presence, at all
12 times that work is undertaken at a work
13 site, of an individual who has completed a
14 lead-based paint training and certification
15 program; and

16 (ii) may be used by a recipient—

17 (I) to expand new and supple-
18 mental training opportunities to in-
19 crease the number of individuals who
20 have completed lead-based paint train-
21 ing and certification programs that
22 are in compliance with updates to the
23 final rule required under subsection
24 (b);

1 (II) to maintain, improve, or de-
2 velop infrastructure and oversight to
3 ensure that—

4 (aa) individuals engaged in
5 renovation activities are properly
6 trained;

7 (bb) lead-based paint train-
8 ing programs are accredited;

9 (cc) contractors and firms
10 engaged in renovation activities
11 are certified; and

12 (dd) renovation activities are
13 carried out in accordance with
14 the final rule (including updates
15 to that final rule required under
16 subsection (b)) and other applica-
17 ble regulations;

18 (III) to provide for training of
19 sampling technicians and enforcement
20 personnel in compliance and lead dust
21 sampling techniques;

22 (IV) to implement lead-based
23 paint compliance assistance programs;
24 and

1 (V) to engage in education and
2 outreach activities regarding the final
3 rule.

4 (C) TREATMENT OF FUNDS.—The pro-
5 gram established under subparagraph (A), and
6 funds provided through grants under that pro-
7 gram, shall supplement, and not supplant, lead-
8 based paint training programs and grants avail-
9 able as of the date of enactment of this Act.

10 (D) AUTHORIZATION OF APPROPRIA-
11 TIONS.—There is authorized to be appropriated
12 to carry out this paragraph \$7,000,000 for the
13 period of fiscal years 2009 through 2012.

14 (2) REPORT.—Not later than 1 year after the
15 date of enactment of this Act, the Administrator, in
16 collaboration with the Secretary of Housing and
17 Urban Development, shall prepare, publish, and sub-
18 mit to the appropriate committees of Congress a re-
19 port that—

20 (A) analyzes the impact of the final rule on
21 preventing lead poisoning;

22 (B) analyzes training opportunities for
23 contractors and renovators; and

1 (C) makes recommendations for expansion
2 and coordination of that training in a manner
3 that, to the maximum extent practicable—

4 (i) maximizes coordination between
5 the Department of Housing and Urban
6 Development and the Environmental Pro-
7 tection Agency to ensure standard training
8 and curriculum development;

9 (ii) ensures that contractors, ren-
10 ovators, owners, occupants, and State,
11 tribal, and local governments are aware of
12 training and certification activities pro-
13 vided through the Department of Housing
14 and Urban Development and the Environ-
15 mental Protection Agency;

16 (iii) expands the number of individ-
17 uals who have completed lead-based paint
18 training and certification programs so as
19 to ensure that such an individual is avail-
20 able to be present at a work site at all
21 times that work is undertaken during ren-
22 ovations; and

23 (iv) expands the number of individuals
24 who have completed sampling technician
25 training.

1 **SEC. 6. NO EFFECT ON OTHER EFFECTIVE DATES.**

2 Except as provided in section 5, nothing in this Act
3 or any amendment made by this Act modifies or otherwise
4 affects any effective date described in the final rule (as
5 defined in section 5(a)).

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