

The **Mercatus Center** at George Mason University is an education, research, and outreach organization that works with scholars, policy experts, and government officials to bridge academic theory and real-world practice. The center's Regulatory Studies Program works within the university setting to improve the state of knowledge and debate about regulations and their impact on society. More information about the center can be found on the Web at www.mercatus.org. For the latest federal regulatory developments, visit www.regradar.org.

Regulatory Restraint?

STATUS: 28th annual Regulators' Budget report available at www.mercatus.org and wc.wustl.edu.

Seventy years ago, on March 10, 1936, the federal government published the first issue of the *Federal Register*, a daily newspaper designed to make the public aware of new regulation. At the end of its first year in print, the *Federal Register* contained 2,355 pages and reported about five regulations a day. By 2005, it had grown to almost 78,000 pages, printing an average 19 final regulations a day. The growth in the number of pages in the *Federal Register* is often used as a measure of

the growth in federal government regulation.

An annual report on the growth in regulation, prepared by the Mercatus Center at George Mason University and the Murray Weidenbaum Center at Washington University in St. Louis, relies on a different indicator, but one that also reveals an increase in regulatory activity over time.

Moderating Regulatory Growth: An Analysis of the U.S. Budget for Fiscal Years 2006 and 2007 examines the Budget of the U.S. Government to track the expenditures and staffing of federal regulatory agencies between 1960 and 2007. This is the 28th annual Regulators' Budget report, and con-

tinues analysis begun in 1977 by the Weidenbaum Center (formerly the Center for the Study of American Business).

Tracking the expenditures of federal regulatory agencies and the trends in regulatory spending over time helps analysts monitor the growth in regulations with which American businesses, workers, and consumers must comply. This information serves as a barometer of regulatory activity, providing policymakers and others with useful insights into the composition and evolution of regulation.

The requested budget for writing, administering, and enforcing federal regulations in fiscal year 2007 is \$44.2 billion—nominally larger than the estimated budget of \$44.0 billion in FY 2006, but a 1.4 percent decline in real, inflation-adjusted terms. (See Figure 1.) The requested level of staffing on regulatory activities in fiscal year 2007 is 245,361 fulltime-equivalent people, or 4,332 (1.8 percent) more employees



than in FY 2006. Consistent with the president's stated "highest priority: protecting our citizens and our homeland," the 2007 Budget requests the largest dollar and staff increases for regulatory components of the Department of Homeland Security.

These figures reflect the president's request to Congress, and Congress is, of course, free to appropriate more or less to executive branch programs. To date, appropriated budget outlays for the current fiscal year (2006) are \$44.0 billion—significantly higher than the FY 2006 Budget request of \$41.4 billion (a real difference of \$1.5 billion). The higher congressional appropriations reflect several factors, including emergency appropriations to respond to hurricanes Katrina and Rita, increased appropriations for several Homeland Security agencies, and appropriations associated with the 2005 highway bill. The actual Regulators' Budget for FY 2005 was \$39.1 billion.

Despite the spending restraint evident in the 2007 budget request, regulatory expenditures and staffing are 44.1 percent larger in 2007 than they were in 2000—an increase in real spending on regulatory activities of \$12.5 billion between 2000 and 2007. Driven largely by homeland security activities, staffing levels in 2007 are 40 percent larger than they were in 2000.

— Susan Dudley and Melinda Warren

Lead Paint

STATUS: EPA comment period closed May 25.

Lead has traditionally been one of the most useful of elements. Over the years it has adorned Americans' roofs, windows, plumbing, and "silverware." In the eighteenth century, our threadbare colonial ancestors fired it from their Pennsylvania rifles, while their high-living descendants burned it in their cars and trucks until the mid 1990s.

Unfortunately, despite its inherent usefulness, lead is a toxic substance and its use has been much circumscribed over the years and for very good reason. Between regulatory action and the recent availability of superior and more economical alternatives (mainly plastics coupled with improved supplies of nontoxic substitute metals), Americans' contact with lead has shrunk to almost nothing with one glaring exception: lingering deposits of lead-based paint.

Although lead had long been used as a pigment, modern paint manufacturers discovered that adding lead to paint hastened drying, kept out moisture, improved durability, and gave walls a fresh, clean appearance. However, as concerns about the toxicity of lead grew, manufacturers began reducing the amount of lead in paint starting in the 1940s. In 1955, the paint industry voluntarily limited lead use in paint to one percent of weight, which

led the industry over until the first lead substitutes became widely available in the early 1960s. Lead-free paints very quickly took over the market, and lead-based paint had all but disappeared from shelves by the time the government finally banned lead paint in 1978—over 30 years

after private industry first started looking at ways to reduce the amount of lead in paint.

Lead paint is no longer available, but its legacy remains in the millions of homes painted with it. Although nowhere near the "epidemic" levels often claimed by some activists, the fact remains that every year thousands of children do suffer elevated blood-lead levels either as a result of direct ingestion of leaded paint chips or prolonged exposure to lead dust slowly atomizing off ancient, deteriorating paint.

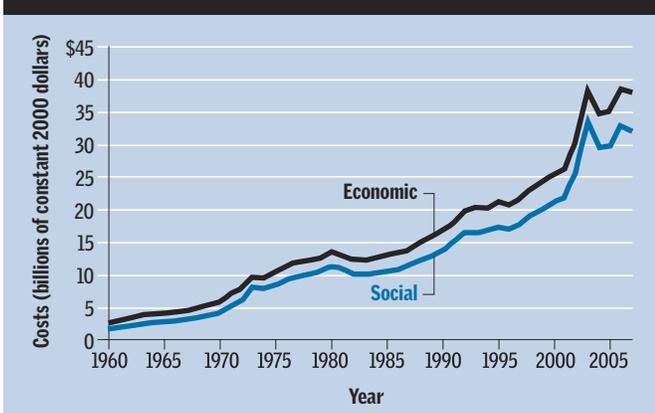
Rates of lead poisoning and elevated blood-lead levels in children are briskly winding down to zero, but the Environmental Protection Agency is making a final push to eliminate the hazards of lead dust. As part of that effort, the agency has set its sights on the renovation and remodeling (R&R) industry.

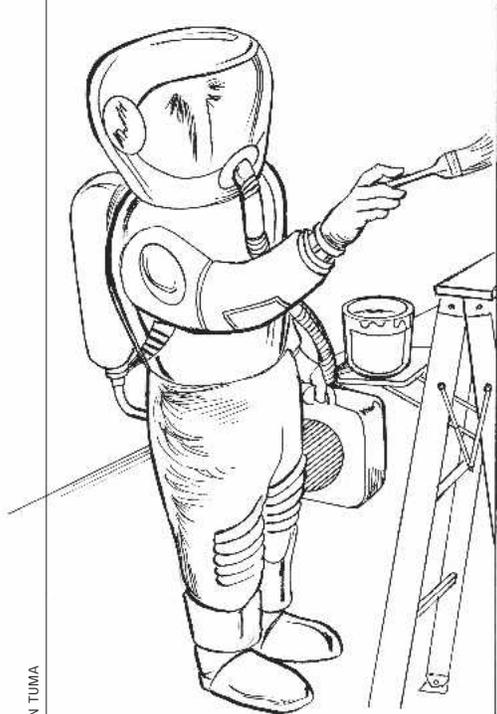
According to recently proposed EPA regulations, R&R work in older homes disturbs lead paint, which generates lead-contaminated dust, elevating blood-lead levels in young children and lowering IQ scores. For that reason, the EPA wants to require that all R&R firms doing such work "for compensation" must complete an EPA-approved certification program, use special (and very expensive) equipment, and employ time-consuming lead-safe work practices. This all appears to make sense and, admittedly, sounds like a very good idea, until we explore some of the details and discover that the sense may be common but not any good.

For starters, the EPA claims that a scientific study it conducted using the Wisconsin Bureau of Public Health's childhood blood-lead registry proved that having some form of R&R work done in one's home increased the likelihood of a child living there suffering an elevated blood-lead level by 30 percent. However, the study was far from scientific. Rather than doing the logical thing, which would have been to measure the blood-lead levels of children before and after R&R work, researchers simply selected 3,654 children whose blood-lead levels were

FIGURE 1

Administrative Costs of Federal Regulation





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already known, called their parents, and asked them survey questions about any R&R work in their homes over the previous year. Based on the raw, uncontrolled, single-variable of having “any R&R work” done, the EPA concluded the 30 percent increase in elevated blood-lead levels with statistical significance. While this figure appears in the study, it should not have made its way into the conclusion. The appropriate variable to use would have been this figure after it had been adjusted for the presence of various confounding variables, such as income, race, home age, or the presence of peeling paint. These confounding variables made up the study’s “baseline,” and are known to also influence the probability of elevated blood-lead levels. Simply put, researchers had to figure out whether the renovations themselves were causing elevated blood-lead, or whether other factors known to elevate blood-lead might just happen to be more prevalent in homes experiencing renovations. For example, poor people live in old homes with deteriorating paint, and deteriorating paint requires renovation. If a child in the home experiences an elevated blood-lead level, is it because of the renovation? Or has the

elevated blood-lead level resulted from the years of deteriorating paint that prompted the renovation?

Unfortunately for the EPA, its contention that R&R work increases the chances of elevated blood-lead evaporated once the appropriate baseline controls were added. Yet the agency chose to ignore the proper finding and instead drew its conclusion from the questionable, uncontrolled initial data. What is even more interesting about the Wisconsin study is that it came on the heels of two previous EPA studies that examined the relationship between lead-contaminated dust and elevated blood-lead levels in R&R workers. Known as Phase I and Phase II of a much larger EPA R&R project (the Wisconsin study is considered Phase III), these two studies found that R&R workers working in buildings built before 1950 kicked up plenty of dust and took few precautions but, surprisingly, this did not translate into elevated blood-lead levels.

Another interesting aspect of the Wisconsin study is its “finding” that the link between renovations and elevated lead levels in blood proved just as persistent in homes built after 1980 as in those built before. This is indeed strange, as homes built after 1980 are unlikely to contain any lead paint. The EPA explained that this discrepancy might be a result of either old stocks of lead paint being used in newer housing, or that respondents simply miscalculating the age of their homes. However, both explanations are unlikely. The manufacture of lead paint may have been banned in 1978, but it had essentially disappeared from the market years before. Of course, it is possible that residents may not know the age of their homes, but this seems a rather dubious explanation of the anomaly. For one thing, Wisconsin residents are reminded of the age of their homes every time their property valuation changes, and according to those who handle property taxes in Wisconsin, people generally do know how old their homes are.

Even though the details of their own studies show little in the way of

a link between R&R work and elevated blood-lead, the EPA is persisting with its planned certification of R&R workers. These proposed rules may not produce lower blood-lead levels, but they will raise the cost of renovation and remodeling. Conventional wisdom is that the extra time, training, specialty equipment, and insurance (new regulations means new potential legal liabilities) will increase the price of R&R work by between 20 to 30 percent. There is little reason to impose these costs on society. Most R&R work is conducted by very small firms or even lone handymen, who do not bear regulatory costs well. Furthermore, those paying for R&R are overwhelmingly older baby boomers, whose children have long since grown up and left home. Those with young children or couples looking to start families typically conduct renovations themselves and usually only call in professionals for highly specialized tasks, such as electrical work, which generate little in the way of dust. Not only do families with young children already carry out most R&R work themselves, but increasing the cost of professional services is likely to cause them to substitute even more of their own work. Moreover, as flaking or deteriorating paint is definitely proven to elevate blood-lead while R&R work is not, then children arguably face a greater threat from renovations deferred because of higher costs.

The EPA’s motives for pushing new regulations onto the nation’s R&R workers are undoubtedly pure. But this policy is likely to do much more harm than good. The proposed rules are chasing a problem that does not exist and will hurt both workers and consumers, while doing little for America’s children. There is a time and a place for regulations, but they should be employed when they are needed, where they are effective, and only if their costs are low and their benefits high. Despite good intentions, the EPA’s proposed rules for renovation and remodeling work meet none of these criteria.

—Alastair Walling