

read “example, § 1.355–3(c) *Example 9*”.

§ 1.355–3 [Corrected]

13. On page 26026, column 2, § 1.355–3(b)(1)(i), lines eight and nine of the paragraph, the language “355(b)(1). Sections 355(b)(2)(A) and (b)(3)(A) provide that a corporation is” is corrected to read “355(b)(1). Section 355(b)(2)(A) and (b)(3)(A) provides that a corporation is”.

14. On page 26026, column 2, § 1.355–3(b)(1)(i), seventh line from the bottom of the paragraph, the language “sections solely as a result of” is corrected to read “section solely as a result of”.

15. On page 26028, column 1, § 1.355–3(b)(4)(i)(A), fourth line of the paragraph, the language “Under sections 355(b)(2)(C) and (b)(3), a” is corrected to read “Under section 355(b)(2)(C) and (b)(3), a”.

16. On page 26028, column 1, § 1.355–3(b)(4)(i)(A), last line of the column, the language “by reasons of such transactions” is corrected to read “by reason of such transactions”.

17. On page 26030, column 2, § 1.355–3(d)(1)(iv), third line, the language “within the meeting of section 368(c).” is corrected to read “within the meaning of section 368(c).”.

18. On page 26031, column 3, § 1.355–3(d)(2) *Example 9*.(iii), fourth line from the bottom of paragraph, the language “is engaged the active conduct of ATB2.” is corrected to read “is engaged in the active conduct of ATB2.”.

19. On page 26033, column 2, § 1.355–3(d)(2) *Example 24*., lines six through twelve, the language “Partnership, each of X, Y, and Z satisfy the requirements of paragraph (b)(2)(v)(B) of this section. Accordingly, each of X, Y, and Z are attributed the trade or business assets and activities of Partnership, satisfy the requirements of paragraph (b)(2)(i) of this section, and are engaged in the active” is corrected to read “Partnership, each of X, Y, and Z satisfies the requirements of paragraph (b)(2)(v)(B) of this section. Accordingly, each of X, Y, and Z is attributed the trade or business assets and activities of Partnership, satisfies the requirements of paragraph (b)(2)(i) of this section, and is engaged in the active”.

20. On page 26034, column 1, § 1.355–3(d)(2) *Example 27*., sixth line from the bottom of paragraph, the language “recognized. Accordingly, if the D were to” is corrected to read “recognized. Accordingly, if D were to”.

21. On page 26034, column 1, § 1.355–3(d)(2) *Example 29*., seventh

line, the language “under section 357(c) gain on the transfer of” is corrected to read “under section 357(c) on the transfer of”.

22. On page 26034, column 2, § 1.355–3(d)(2) *Example 32*., sixth line from the bottom of paragraph, the language “neither ATB1 nor control of C were acquired” is corrected to read “neither ATB1 nor control of C was acquired”.

23. On page 26034, column 3, § 1.355–3(d)(2) *Example 35*., second line from the bottom of paragraph, the language “distribution, it can rely on ATB1 to satisfy” is corrected to read “distribution, it could rely on ATB1 to satisfy”.

24. On page 26034, column 3, § 1.355–3(d)(2) *Example 36*., second line, the language “*reorganization and distributions*. For more” is corrected to read “*reorganization and distribution*. For more”.

25. On page 26035, column 2, § 1.355–3(d)(2) *Example 39*., fifth line from the bottom of paragraph, the language “The result would also be the same if prior to” is corrected to read “The result would be the same if prior to”.

26. On page 26035, column 2, § 1.355–3(d)(2) *Example 40*., fourth line from the bottom of paragraph, the language “The result would be the same if P acquired” is corrected to read “The results would be the same if P acquired”.

27. On page 26035, column 3, § 1.355–3(d)(2) *Example 42*., third line of the column, the language “distributes all the C stock, C could not rely” is corrected to read “distributes all the C stock, C cannot rely”.

28. On page 26036, column 3, § 1.355–3(d)(2) *Example 50*., fifteenth line from the bottom of paragraph, the language “if X, instead if S, merged into D, S would” is corrected to read “if X, instead of S, merged into D, S would”.

LaNita Van Dyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

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BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 745

[EPA–HQ–OPPT–2005–0049; FRL–8132–7]

RIN 2070–AC83

Lead; Renovation, Repair, and Painting Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Supplemental Notice of Proposed Rulemaking.

SUMMARY: On January 10, 2006, EPA proposed new requirements under the authority of section 402(c)(3) of the Toxic Substances Control Act (TSCA) to reduce exposure to lead hazards created by renovation, repair, and painting activities that disturb lead-based paint in target housing. “Target housing” is defined in TSCA section 401 as any housing constructed before 1978, except housing for the elderly or persons with disabilities (unless any child under age 6 resides or is expected to reside in such housing) or any 0-bedroom dwelling. The 2006 proposal would establish requirements for training renovators and dust sampling technicians; for certifying renovators, dust sampling technicians, and renovation firms; for accrediting providers of renovation and dust sampling technician training; for renovation work practices; and for recordkeeping. That proposal would also allow interested States, Territories, and Indian Tribes the opportunity to apply for and receive authorization to administer and enforce all of the elements of the new renovation requirements. This supplemental notice contains EPA’s proposal to add child-occupied facilities to the buildings covered by the 2006 proposal. Child-occupied facilities may be located in public or commercial buildings or in target housing. A child-occupied facility would be defined as a building, or a portion of a building, constructed prior to 1978, visited regularly by the same child, under 6 years of age, on at least two different days within any week (Sunday through Saturday period), provided that each day’s visit lasts at least 3 hours and the combined weekly visits last at least 6 hours, and the combined annual visits last at least 60 hours.

DATES: Comments must be received on or before July 5, 2007.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2005–0049, by one of the following methods:

• *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

• *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

• *Hand Delivery:* OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID number EPA-HQ-OPPT-2005-0049. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564-8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA-HQ-OPP-2005-0049. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [regulations.gov](http://www.regulations.gov) or e-mail. The [regulations.gov](http://www.regulations.gov) website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: All documents in the docket are listed in the docket index available in [regulations.gov](http://www.regulations.gov). To access the electronic docket, go to [http://](http://www.regulations.gov)

www.regulations.gov, select "Advanced Search," then "Docket Search." Insert the docket ID number where indicated and select the "Submit" button. Follow the instructions on the [regulations.gov](http://www.regulations.gov) web site to view the docket index or access available documents. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at <http://www.regulations.gov>, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566-1744, and the telephone number for the OPPT Docket is (202) 566-0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

FOR FURTHER INFORMATION CONTACT: *For general information contact:* Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 554-1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: Mike Wilson, National Program Chemicals Division (7404T), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 566-0521; e-mail address: wilson.mike@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you perform renovations of child-occupied facilities for compensation or dust sampling in child-occupied facilities. EPA is proposing to define a child-occupied facility as a building, or a portion of a building,

constructed prior to 1978, visited regularly by the same child, under 6 years of age, on at least two different days within any week (Sunday through Saturday period), provided that each day's visit lasts at least 3 hours and the combined weekly visits last at least 6 hours, and the combined annual visits last at least 60 hours. Examples of child-occupied facilities are day-care centers, preschools, and kindergarten classrooms. Child-occupied facilities may be located in target housing or in public or commercial buildings. Potentially affected entities may include, but are not limited to:

- Building construction (NAICS 236), e.g., single family housing construction, multi-family housing construction, residential remodelers, nonresidential construction.
- Specialty trade contractors (NAICS 238), e.g., plumbing, heating, and air-conditioning contractors, painting and wall covering contractors, electrical contractors, finish carpentry contractors, drywall and insulation contractors, siding contractors, tile and terrazzo contractors, glass and glazing contractors.
- Real estate (NAICS 531), e.g., lessors of residential and nonresidential buildings, property managers.
- Child day care services (NAICS 624410).
- Elementary and secondary schools (NAICS 611110), e.g., elementary schools with kindergarten classrooms.
- Other technical and trade schools (NAICS 611519), e.g., training providers.
- Engineering services (NAICS 541330) and building inspection services (NAICS 541350), e.g., dust sampling technicians.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in Units IV.B. and IV.C. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through [regulations.gov](http://www.regulations.gov) or e-mail. Clearly mark

the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. *What Action is the Agency Taking?*

EPA is proposing to add child-occupied facilities to the universe of buildings covered by a prior proposal. EPA would apply all of the training, certification, accreditation, work practice, and recordkeeping requirements of the January 10, 2006 proposal ("2006 Proposal", Ref. 1) to child-occupied facilities. A child-occupied facility would be defined as "a building, or a portion of a building, constructed prior to 1978, visited regularly by the same child, under 6 years of age, on at least two different days within any week (Sunday through Saturday period), provided that each day's visit lasts at least 3 hours and the

combined weekly visits last at least 6 hours, and the combined annual visits last at least 60 hours." Examples of child-occupied facilities are day-care centers, preschools, and kindergarten classrooms. Child-occupied facilities may be located in target housing or in public or commercial buildings.

The purpose of the 2006 Proposal was to establish new requirements to reduce exposure to lead hazards created by renovation, repair, and painting activities that disturb lead-based paint. The proposal contained requirements for training renovators and dust sampling technicians; certifying renovators, dust sampling technicians, and renovation firms; accrediting providers of renovation and dust sampling technician training; for renovation work practices; and for recordkeeping. These requirements would apply in "target housing," which is defined in TSCA section 401 as "any housing constructed before 1978, except housing for the elderly or persons with disabilities (unless any child under age 6 resides or is expected to reside in such housing) or any 0-bedroom dwelling." Initially the rule would apply to all renovations for compensation performed in (1) target housing where a child with an increased blood lead level resides; (2) rental target housing built before 1960; and (3) owner-occupied target housing built before 1960, unless, with respect to owner-occupied target housing, the person performing the renovation obtains a statement signed by the owner-occupant that the renovation will occur in the owner's residence and that no child under age 6 resides there. EPA proposed a subsequent phase-in for target housing built in the years 1960 through 1977, with certain exemptions. The training, certification, accreditation, work practice, and recordkeeping requirements of the 2006 Proposal would apply to all persons who do renovation for compensation, including renovation contractors, maintenance workers in multi-family housing, painters and other specialty trades, with certain exceptions. The 2006 Proposal contains exemptions for owner-occupied target housing where no children under age 6 reside, minor repair and maintenance activities that disrupt two square feet or less of painted surfaces per component, or renovations where specified methods have been used to determine that the areas affected by the renovation are free of lead-based paint.

In this document, EPA is proposing to apply these same training, certification, accreditation, work practice, and recordkeeping requirements and

exemptions to firms and individuals who perform renovations for compensation in child-occupied facilities. EPA welcomes comment on this supplemental proposal by entities, such as day care providers, elementary schools, and public or commercial building owners, who would be affected by the expanded scope of coverage. EPA intends to review the comments received on this supplementary proposal and then promulgate a final rule addressing both the 2006 Proposal and this proposal.

B. *What is the Agency's Authority for Taking this Action?*

These training, certification and accreditation requirements and work practice standards are being proposed pursuant to the authority of TSCA section 402(c)(3), 15 U.S.C. 2682(c)(3), as amended by Title X of the Housing and Community Development Act of 1992, Public Law 102-550 (also known as the Residential Lead-Based Paint Hazard Reduction Act of 1992) ("the Act" or "Title X"). The notification and recordkeeping requirements associated with child-occupied facilities are being proposed pursuant to section 407 of TSCA. The Model State Program and amendments to the regulations on the authorization of State and Tribal programs with respect to renovators and dust sampling technicians are being proposed pursuant to section 404 of TSCA, 15 U.S.C. 2684.

III. Introduction

A. *Reason for this Supplemental Notice*

On January 10, 2006, EPA issued a notice of proposed rulemaking for requirements to reduce exposure to lead hazards created by renovation, repair, and painting activities that disturb lead-based paint in target housing (Ref. 1). EPA received approximately 250 comments from a wide variety of commenters, including State and local governments, industry groups, advocacy groups, renovation contractors, training providers, and individuals. Twenty-nine of those commenters observed that the proposal did not cover buildings where children under age 6 spend a great deal of time, such as day care centers and schools. Commenters noted that the risk posed to children from lead-based paint hazards in schools and day-care centers is likely to be equal to, if not greater than, the risk posed from these hazards at home. These commenters suggested that EPA expand its proposal to include such places. Several suggested that EPA use the definition of "child-occupied facility" in 40 CFR § 745.223 to define the expanded scope of coverage.

EPA believes that the suggestions regarding day care centers and schools have merit. EPA is therefore issuing this supplemental proposal to specifically propose expanding the scope of the renovation, repair and painting program to these facilities. EPA believes that the proposed findings underlying the 2006 Proposal also support the expansion of coverage to child-occupied facilities.

B. Development of the Final Rule

It is EPA's intention to issue a final rule based on the 2006 Proposal and this supplemental proposal. As EPA moves forward with the development of the final rule, the Agency is considering the comments and information received during the public comment periods in 2006, and expects to consider the comments related to child-occupied facilities and any new information received on this supplemental proposal. In addition, as discussed in the 2006 Proposal, EPA intends to prepare further analyses and updated assessments for the final rule that will use the information received, as well as the data generated by the EPA study "Characterization of Dust Lead Levels after Renovation, Repair, and Painting Activities" ("Dust Study", Ref. 10), and by the National Association of Home Builders' (NAHB) "Lead Safe Work Practices Survey" ("NAHB Survey", Ref. 11). EPA will also consider the comments received on proposed work practice standards in light of the results of these studies.

EPA is also updating the hazard and exposure assessments it used as a basis for estimating the benefits of the rulemaking. This benefits analysis is part of the economic analysis for the rulemaking. The hazard assessment for the final rule will be based on a hazard assessment that has recently undergone peer review by the Clean Air Science Advisory Committee (CASAC) Lead Review Panel. The revised exposure assessment for the final rule, which will use the data generated by EPA's Dust Study, the NAHB Survey, and other available information, will also undergo a peer review by the CASAC Lead Review Panel. The CASAC, which is comprised of seven members appointed by the EPA Administrator, was established under the Clean Air Act as an independent scientific advisory committee. More information on the CASAC consultation process, along with background documents, is available on EPA's website at <http://www.epa.gov/lead/pubs/casac.htm>.

EPA is not yet able to say with any certainty how the economic analyses or proposed requirements might change for the final rule as a result of the

additional analyses underway or planned, or EPA's consideration of comments or new information received on this supplemental proposal. The Agency does, however, expect that changes may occur.

C. Previous EPA Rulemakings on Lead-based Paint and Lead-based Paint Hazards in Child-Occupied Facilities

In 1996, EPA promulgated the final lead-based paint activities regulations under TSCA section 402(a), codifying them at 40 CFR part 745, subpart L. These regulations were designed to protect the public from the hazards of improperly conducted lead-based paint inspections, risk assessments and abatement projects. The regulation includes:

- Training and certification requirements to ensure the proficiency of contractors who offer these services.
- Accreditation requirements to ensure that training programs provide quality instruction in current and effective work practices.
- Work practice standards to ensure that these lead-based paint activities are conducted safely, reliably and effectively.

As initially proposed in 1994, requirements for the training and certification of contractors and the accreditation of training programs, as well as specific work practice standards would have applied to lead-based paint activities conducted in target housing and public buildings (Ref. 2). A slightly different set of requirements would have applied to lead-based paint activities conducted in commercial buildings and on bridges and other structures. The 1994 proposal would have defined public buildings to include all buildings generally open to the public or occupied or visited by children, such as stores, museums, airports, offices, restaurants, hospitals, and government buildings, as well as schools and day-care centers. During the comment period, a significant majority of commenters expressed the concern that applying these regulations to activities in all of the buildings that EPA would consider public would result in significant costs without a comparable reduction in lead-based paint exposures for children under age 6, the population most vulnerable to lead exposures. Many of these commenters recommended that EPA focus its attention on buildings that are frequented by children, rather than on buildings that may be briefly visited by children. In response to these comments, EPA established, in the final rule, a subset of the buildings EPA had intended to define as public. This subset, called "child-occupied

facilities," was delineated in terms of the frequency and duration of visits by children (Ref. 3). "Child-occupied facility" is defined in 40 CFR 745.223 as "a building, or portion of a building, constructed prior to 1978, visited regularly by the same child, 6 years of age or under, on at least two different days within any week (Sunday through Saturday period), provided that each day's visit lasts at least 3 hours and the combined weekly visits last at least 6 hours, and the combined annual visits last at least 60 hours. Child-occupied facilities may include, but are not limited to, day care centers, preschools and kindergarten classrooms." The training, certification, accreditation, and work practice requirements of the final lead-based paint activities regulations, codified at 40 CFR part 745, subpart L, apply only to activities in target housing and child-occupied facilities.

Subsequently, in 1998, EPA initiated rulemaking under TSCA section 403 to identify lead-based paint hazards. The final standards, promulgated in 2001 and codified at 40 CFR part 745, subpart D, define paint-lead, dust-lead, and soil-lead hazards (Ref. 4). Under 40 CFR 745.61(b), these standards are applicable to target housing and child-occupied facilities. The definition of paint-lead hazard refers to the presence of damaged or deteriorated lead-based paint, as well as lead-based paint on surfaces where it can be damaged, abraded, or ingested. A dust-lead hazard is defined as surface dust that contains a mass-per-area concentration of lead equal to or exceeding 40 micrograms per square foot ($\mu\text{g}/\text{ft}^2$) on floors or 250 $\mu\text{g}/\text{ft}^2$ on interior window sills based on wipe samples. A soil-lead hazard is defined as bare soil that contains total lead equal to or exceeding 400 parts per million ($\mu\text{g}/\text{g}$) in a play area or an average of 1,200 parts per million in the rest of the yard based on soil samples. As discussed in detail in the preamble to the final TSCA section 403 regulations, the dust-lead and soil-lead hazard standards were set with reference to the likelihood that an exposure to such a level would result in a blood lead level above 10 micrograms per deciliter ($\mu\text{g}/\text{dL}$) in a child (Ref. 4 at 1216–1217). This was based on the level that the Centers for Disease Control and Prevention had set as the level of concern for community action. This level is not a threshold for toxicity.

IV. Renovation Activities in Child-occupied Facilities

A. TSCA Section 402(c)(3) Determination

The 2006 Proposal was issued under the authority of TSCA section 402(c), which directs EPA to revise its TSCA section 402(a) lead-based paint activities regulations to apply to renovation activities that create lead-based paint hazards. The revisions proposed in the 2006 Proposal were based on, among other things, a study of renovation activities that EPA conducted as directed by TSCA section 402(c)(2). This study is discussed in greater length in the 2006 Proposal (Ref. 1 at 1591). In this study, EPA found that the following renovation activities, when conducted where lead-based paint is present, generated lead loadings on floors that exceeded 40 µg/ft², the dust-lead hazard standard for floors in 40 CFR 745.65(b):

- Paint removal by abrasive sanding.
- Window replacement.
- HVAC duct work.
- Demolition of interior plaster walls.
- Drilling into wood.
- Sawing into wood.
- Sawing into plaster.

These results, along with the results of other phases of the study, which evaluated worker exposures and the blood lead levels of children in homes where renovations have taken place, led EPA to propose to conclude that renovation activities that disturb lead-based paint cause lead dust in amounts that will create, or could reasonably be anticipated to create, dust-lead hazards.

The dust-lead hazard standards are the same for target housing and child-occupied facilities. EPA believes that the individual activities examined in its renovation study are likely to be part of renovation activities in child-occupied facilities as well as in target housing. EPA is therefore proposing to find that renovation activities that disturb lead-based paint in child-occupied facilities will create, or are reasonably anticipated to create, lead-based paint hazards. EPA requests comment on this proposed finding as well as any available data or studies on the similarities and differences between renovation activities in target housing and renovation activities in child-occupied facilities.

B. Buildings Covered

1. *Buildings covered by the 2006 Proposal.* The requirements of the 2006 Proposal would take effect in two major phases. In the first phase, the proposed requirements would apply to

renovations performed for compensation in:

- Target housing where the firm performing the renovation obtains information indicating that a child under age 6 resides there, if the child has a blood-lead level greater than or equal to 10 µg/dL or a State or local government level of concern, if lower, or the firm does not provide the owners and occupants with the opportunity to inform the firm that a child under age 6 with such a blood-lead level resides there.
- Owner-occupied target housing built before 1960, unless the firm performing the renovation obtains a statement signed by the owner that the renovation will occur in the owner's residence and no child under age 6 resides there.

- Rental target housing built before 1960.

The second phase, which would take effect 1 year after the first phase takes effect, would extend the proposed requirements to:

- Owner-occupied target housing built between 1960 and 1978, unless the firm performing the renovation obtains a statement signed by the owner that the renovation will occur in the owner's residence and no child under age 6 resides there.
- Rental target housing built between 1960 and 1978.

EPA proposed the two-phase approach primarily because of the reduced prevalence of lead-based paint in housing constructed between 1960 and 1978. According to the National Survey of Lead and Allergens in Housing, 24% of the housing constructed between 1960 and 1978 contains lead-based paint (Ref. 5). As discussed in the 2006 Proposal, EPA is working toward the development of improved test kits that could be used to determine whether or not lead-based paint is present in an area to be renovated (Ref. 1 at 1599). These kits are expected to be commercially available by the time that the second phase of the proposal would take effect, and thus could be used to accurately exclude the 76% of housing constructed between 1960 and 1978 that does not contain lead-based paint.

The 2006 Proposal also discussed several other options for applicability based on the age of the housing, including a single phase regulation covering pre-1960 target housing or pre-1978 target housing. EPA received a great many comments on this aspect of the proposal and the merits of these comments are still being considered.

2. *Buildings covered by this proposal—*a. *Background.* This proposal

would extend the coverage of the training, certification, accreditation, work practice, and recordkeeping requirements of the 2006 Proposal to buildings that children under age 6 frequent, such as day care centers, preschools, and kindergarten classrooms. To accomplish this, EPA is proposing to incorporate into 40 CFR 745.83 the definition of "child-occupied facility" from 40 CFR 745.223, with two modifications. The proposed definition would refer to visits by children under age 6, rather than to visits by children 6 and under, to make the definition consistent with the other scope provisions of the 2006 Proposal. In addition, the proposed definition would clarify that child-occupied facilities may be located in target housing or public or commercial buildings.

The preamble to the 1996 final lead-based paint activities regulations referred to child-occupied facilities as a subset of buildings that EPA had initially proposed to call "public buildings" (Ref. 3 at 45780). The proposed definition of "public building" in the lead-based paint activities rulemaking included buildings that may also be thought of as commercial buildings, such as office buildings. In order to avoid any potential confusion over the scope of buildings covered by this supplemental proposal, EPA is proposing to use the phrase "public or commercial building" to denote buildings generally open to the public or occupied or visited by children. Public or commercial buildings would include stores, museums, airport terminals, convention centers, office buildings, restaurants, hospitals, schools, government buildings, and day care centers.

EPA is proposing to use the term "child-occupied facility" in this rulemaking to identify buildings, or portions of buildings, that would be covered by the rule, regardless of whether those buildings are target housing or public or commercial buildings. EPA is proposing to use the term this way to ensure that day care centers located in target housing would be covered.

One of the elements of the 2006 Proposal is a provision allowing owners of target housing to opt out of the rule if they occupy the housing to be renovated and there is no child under age 6 in residence. If this provision were retained in the final rule, and the definition of "child-occupied facility" did not apply in target housing, the rule would not cover child care centers in owner-occupied target housing where no children under age 6 reside. To ensure that these types of day care

centers are covered, EPA is proposing to add a sentence to the definition of "child-occupied facility" that states: "Child-occupied facilities may be located in target housing or in public or commercial buildings."

b. *Child-occupied facilities in target housing.* This supplemental proposal would cover owner-occupied target housing that meets the definition of "child-occupied facility" in the same way that EPA would cover owner-occupied target housing where a child under age 6 resides. The 2006 Proposal, in effect, would require a renovation firm to assume that target housing is the residence of a child under age 6 unless the firm obtains a statement signed by the owner that the owner resides in the housing to be renovated and no child under age 6 also resides there. With this proposal, EPA would require a similar assumption on the part of the renovation firm with respect to whether target housing is also a child-occupied facility. A renovation firm would be required to assume that target housing is either the residence of a child under age 6 or a child-occupied facility unless the firm obtains a statement signed by the owner that the owner resides in the housing to be renovated, no child under age 6 also resides there, and the housing is not a child-occupied facility. The 2006 Proposal would cover rental target housing regardless of the presence of a child under age 6, so it is not necessary to require a similar assumption in that case. EPA believes that it is reasonable to require renovators to assume that a child-occupied facility exists in owner-occupied target housing.

An alternative approach would merely require the renovation firm to give the owner an opportunity to inform the firm that child care for children under age 6 is provided in the housing. This is the approach that EPA is proposing to use with respect to children under age 6 with increased blood lead levels for the purpose of determining whether target housing or child-occupied facilities built between 1960 and 1978 would be covered in the first phase of the rule. In the 2006 Proposal, EPA did not propose to require a renovation firm to assume that a child under age 6 with an increased blood lead level resides in all target housing. Rather, the renovation firm would only be required to provide the owner and occupant with an opportunity to inform the firm that such a child is in residence. Likewise, EPA is proposing to require a renovation firm to provide the owner and occupant of a child-occupied facility with an opportunity to inform the firm that a child under age 6 with an increased

blood lead level uses the facility. If the firm is so informed, the target housing or child-occupied facility would be covered during the first phase of the rule. If not, and the target housing or child-occupied facility was built between 1960 and 1978, it would not be covered until the second phase of the rule.

However, EPA is not proposing to allow renovation firms to assume that a child-occupied facility is not present in owner-occupied target housing unless the owner informs the firm that such a facility is present. EPA is concerned that this approach for child care facilities in target housing would result in a large number of these facilities being eliminated from coverage by the proposed rule. As described in Unit VI.A. and in the document entitled "Economic Analysis for the Supplemental Proposed Rule on Child-Occupied Facilities Under the TSCA Lead Renovation, Repair, and Painting Program" ("Supplemental Economic Analysis", Ref. 6), EPA estimates that approximately 1,559,000 of the child-occupied facilities across the country are located in target housing, of which an estimated 726,000 were covered by the 2006 Proposal (either because they are in rental housing or because they are in owner-occupied housing where a child under age 6 resides). This supplemental proposal will cover an additional 833,000 child-occupied facilities located in target housing (*i.e.*, in owner-occupied target housing where no child under age 6 resides). EPA requests comment on the proposed requirement that a renovation firm assume that owner-occupied target housing contains a child-occupied facility, and on other possible ways that a renovation firm could determine whether a child-occupied facility is present in target housing.

As discussed in the 2006 Proposal, the Pre-Renovation Education Rule, promulgated under the authority of TSCA section 406(b) and codified at 40 CFR part 745, subpart E, requires owners and occupants of target housing to be informed of the potential risks from renovation projects by providing them with a lead hazard information pamphlet. Persons performing renovations covered by the existing regulations must already either obtain a signed acknowledgment from the owner indicating that the pamphlet has been received, or a certificate of mailing indicating that the pamphlet was mailed at least 7 days before the renovation. EPA has modified the sample acknowledgment form it developed for the 2006 Proposal to add information on child-occupied facilities. This sample

could be used to not only record the owner's receipt of the lead hazard information pamphlet, but to obtain additional information on the housing to be renovated, its residents, and whether the housing is a child-occupied facility (Ref. 7). EPA seeks comment on this sample acknowledgment, a copy of which is available in the docket for this proposed rule and on the Agency's Web page at <http://www.epa.gov/lead/pubs/pre-renovationform.pdf>.

c. *Child-occupied facilities in public or commercial buildings.* This proposal would treat child-occupied facilities that are not in target housing somewhat differently. As discussed in Unit IV.D.2., EPA is proposing to require renovation firms working in child-occupied facilities in public or commercial buildings to distribute lead hazard information to owners and occupants and obtain acknowledgments, like those required under the Pre-Renovation Education Rule for target housing. However, EPA is not proposing to exempt only those projects in public or commercial buildings where the renovation firm has obtained a signed statement by the owner of the building indicating that no child-occupied facility is present in the building. Rather, the firm would be able to determine whether or not a particular renovation in a public or commercial building involves a child-occupied facility. EPA chose this approach for two reasons. First, it should be much easier for the firm to determine whether it is renovating a child-occupied facility in a public or commercial building than it would be for the firm to determine whether the target housing it is to renovate is also a child-occupied facility. A stand-alone day care center is likely to have a name that suggests that it provides day care, and the center's status as a child-occupied facility should be obvious upon entering the center. Day care centers in office buildings are likely to have informational signs posted and the centers are likely to be identified in the building directory. Elementary schools are likely to have kindergarten classrooms. The other reason for not imposing a requirement for firms to obtain a signed owner's statement for each public or commercial building they renovate is the burden of such a requirement. The alternative to allowing the firm to determine that a particular building does not contain a child-occupied facility is to require the firm to obtain signed statements from the owners of all public or commercial buildings renovated. These buildings would include factories, office

buildings, department stores, restaurants, and service stations, many of which do not contain child-occupied facilities.

Under the proposed approach, the firm would have to take appropriate steps to determine whether or not a building is or contains a child-occupied facility, including asking the building's owner, or the person contracting for the renovation, whether a child-occupied facility is present. For example, if a renovation firm accepts a contract for a project in an elementary school, the firm would have to determine whether a kindergarten classroom was present, which common areas the kindergarten children used, and, for exterior projects, which exterior walls were immediately adjacent to the kindergarten classroom and associated common areas. Libraries and recreational facilities may have after-care programs that would cause these buildings to be considered child-occupied facilities; a renovation firm hired to renovate a building of this type would have to make inquiries about the use of the facility by children under age 6. EPA requests comment on its proposed approach, on the alternative of exempting only those public or commercial buildings for which the firm has obtained a signed statement from the owner indicating that there is no child-occupied facility present, and on any other methods for making the determination that a child-occupied facility is or is not present in a public or commercial building.

d. *Applicability based on age of building.* For the purpose of determining applicability of the proposed rule, it is EPA's intention to treat child-occupied facilities, whether they are in target housing or public or commercial buildings, much the same as covered target housing. For example, if EPA retains the phase-in approach discussed previously, the first phase would cover:

- Target housing where a child under age 6 with an increased blood lead level resides.
- Rental target housing built before 1960.
- Owner-occupied target housing built before 1960 where a child under age 6 resides.
- Child-occupied facilities used by a child under age 6 with an increased blood lead level.
- Child-occupied facilities built before 1960.

The second phase would add:

- Rental target housing built between 1960 and 1978.
- Owner-occupied target housing built between 1960 and 1978 where a child under age 6 resides.

- Child-occupied facilities built between 1960 and 1978.

As discussed in the Supplemental Economic Analysis (Ref. 6), EPA has estimated that there are approximately 833,000 child-occupied facilities in target housing that would be covered by this proposal. EPA assumes that the prevalence of lead-based paint in target housing where child care is provided is the same as the prevalence of lead-based paint in target housing as a whole, so there is no reason to treat these child-occupied facilities differently. In addition, the First National Environmental Health Survey of Child Care Centers indicates that 22% of non-home-based child care centers built between 1960 and 1978 contain lead-based paint (Ref. 8). This is slightly less than the 24% of target housing built between 1960 and 1978 that contains lead-based paint, but this difference is not sufficient to justify a difference in regulatory applicability.

e. *Common areas.* The 2006 Proposal would cover renovations in common areas in multi-family rental target housing. EPA requested comment on whether to exempt renovations in common areas in owner-occupied multi-family target housing if the renovation firm has obtained the signature of every owner with access to the common area, stating that the units are owner-occupied and no child under age 6 is in residence. The term "common area" is defined in 40 CFR 745.223 as "a portion of a building that is generally accessible to all occupants. Such an area may include, but is not limited to, hallways, stairways, laundry and recreational rooms, playgrounds, community centers, garages, and boundary fences." In order to exempt from this supplemental proposal a renovation in a common area in owner-occupied multi-family target housing, EPA is proposing to require the renovation firm to obtain the signature of every owner with access to the common area, stating that, in addition to the units being owner-occupied with no children under age 6 in residence, no child care for children under age 6 is provided in the units.

The lead-based paint activities regulations at 40 CFR part 745, subpart L, apply to common areas in multi-family target housing as well as to common areas in child-occupied facilities. With this supplemental proposal, EPA is not proposing to cover all common areas in public or commercial buildings that contain child-occupied facilities. Rather, EPA is most concerned with those common areas that are actually used by children under age 6, such as classrooms, bathrooms, and cafeterias, and not

common areas that the children merely pass through. Similarly, EPA is not proposing to cover all exterior renovation projects on public or commercial buildings that contain child-occupied facilities. EPA is primarily concerned about the projects on the exteriors of public or commercial buildings that are most likely to affect the children visiting a child-occupied facility. An exterior renovation project on the opposite side of a large office building from the child-occupied facility within the building is far less likely to affect the children at the facility than an exterior renovation project on the same side of the building as the children's outdoor playground. For this reason, EPA is proposing to cover only those exterior renovation projects that are performed on the same side or sides of the building as the child-occupied facility or common area. This proposal would, therefore, incorporate additional text into the definition of "child-occupied facility" to clarify the scope of projects associated with child-occupied facilities in public or commercial buildings. This text would read:

In public or commercial buildings that contain child-occupied facilities, the child-occupied facility encompasses only those common areas that are routinely used by children under age 6, such as restrooms and cafeterias. Common areas that children under age 6 only pass through, such as hallways, stairways, and garages, are not included. In addition, for public or commercial buildings that contain child-occupied facilities, the child-occupied facility encompasses only the exterior sides of the building that are immediately adjacent to the child-occupied facility or the common areas routinely used by children under age 6.

EPA requests comment on the likelihood that renovation projects in hallways and stairways, or in rooms not used by children under age 6, will affect the children using a child-occupied facility in a public or commercial building. EPA also requests comment on whether all exterior projects on public or commercial buildings that contain child-occupied facilities should be covered, whether all common areas in such buildings should be covered and whether hallways, stairways, and other areas adjacent to rooms used by children under age 6 should be treated differently than more remote areas of the building. EPA is particularly interested in peer-reviewed studies or data that shed light on the potential exposures and hazards to children under age 6 presented by renovation projects in areas not used by the children. EPA also requests other comments on these limitations,

including the extent to which States, Territories, and Tribes with authorized lead-based paint activities programs might apply this term differently.

C. Activities Covered by this Proposal

The 2006 Proposal would cover activities covered by the Pre-Renovation Education Rule, those activities that meet the definition of "renovation" in 40 CFR 745.83. In general, renovations are activities that modify an existing structure and that result in the disturbance of painted surfaces. In addition, like the Pre-Renovation Education Rule, the 2006 Proposal would cover only renovations performed for compensation. This includes renovations performed by renovation firms and their employees, as well as renovations performed by owners of rental property and their employees. Although the owner of rental property may not be compensated for maintenance and repair work at the time that the work is performed, tenants generally pay rent for the right to occupy a rental unit as well as for maintenance services in that unit. Therefore, EPA considers the payment of rent to be compensation to the owner of rental property for any renovations performed on the property.

Likewise, this proposal would only cover activities that fit within the definition of "renovation" in 40 CFR 745.83 and that are performed for compensation in child-occupied facilities. Compensation includes pay for work performed, such as that paid to contractors; wages, such as those paid to employees of contractors, building owners, and child-occupied facility operators; and rent for target housing or public or commercial building space. Thus, renovations performed by renovation contractors and their employees in child-occupied facilities would be covered, as would be renovations by building owners in child-occupied facilities, if the building owner receives rent for the child-occupied facility's space. Renovations in child-occupied facilities that are performed by employees of the building owner or of the child-occupied facility would be covered if the employees receive wages or other compensation for the work performed.

EPA does not, however, consider child care payments to be compensation for renovations. EPA believes that an agreement to provide child care in exchange for a payment is not a contract for building maintenance services in the same way that a lease or other agreement between a landlord and a tenant generally is. If EPA were to consider payments for child care as

compensation for the purposes of this regulation, this proposal would cover a great many do-it-yourself renovations by the owners of target housing in housing they own and occupy. In 1994, in Unit III.B. of the preamble to the proposed lead-based paint activities regulations, EPA reviewed section 1021 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, the section that added Title IV to TSCA, and determined that the emphasis under section 402 of TSCA ought to be the certification and training of contractors, not homeowners. In the course of that review, EPA stated its belief that TSCA section 402(c)(3), the section under which this supplemental proposal is being issued, shows that "Congress" focus was on the need to regulate contractors doing renovation and remodeling activities, and not homeowners doing renovation and remodeling of their own homes" (Ref. 2). Considering payments for child care to be compensation for renovations for the purpose of this supplemental proposal would make this proposal inconsistent with Congressional intent.

This proposal would also cover renovations that are being performed in order to turn a public or commercial building, or part of such a building, into target housing or a child-occupied facility. EPA has always understood the lead-based paint activities regulations in 40 CFR part 745, subpart L, to apply to lead-based paint activities being conducted as part of the conversion of a building into target housing or a child-occupied facility. EPA believes that it is especially important to ensure that renovations done in preparation for use by children under age 6 are done in a lead-safe manner. Therefore, EPA proposes to add the following sentence at the end of the definition of "renovation" in 40 CFR 745.83:

A renovation performed for the purpose of converting a building, or part of a building, into target housing or a child-occupied facility is a renovation under this subpart.

EPA is proposing to apply the same exemptions proposed for target housing in 2006 to child-occupied facilities. This proposal would exempt renovations in child-occupied facilities that affect components that have been determined to be free of lead-based paint by a certified lead-based paint inspector or risk assessor, or by a certified renovator using an EPA-approved test kit. Likewise, minor maintenance and repair activities in child-occupied facilities would be exempt. The 2006 Proposal would limit minor maintenance and repair activities to those activities that affect 2 square feet or less of painted surface per component, the current limitation in the Pre-Renovation

Education Rule. However, comment was requested on whether a different exemption for small projects should be used, such as the small project exception from EPA's lead-based paint activities regulations at 40 CFR 745.65(d) and HUD's Lead-Safe Housing Rule at 24 CFR 35.1350(d), which exempt activities that disturb less than 2 square feet of painted surface per room or 20 square feet of painted exterior surfaces. Finally, under this proposal, EPA would apply the same standard to emergency renovation operations in child-occupied facilities as it would under the 2006 Proposal to target housing. The 2006 Proposal would require emergency renovations to be performed in compliance with the notification, training, certification, and work practice requirements to the extent practicable. EPA is still evaluating the numerous comments it received on this aspect of the 2006 Proposal, but it is EPA's intention to cover emergency renovations in child-occupied facilities in the same manner that such renovations in target housing would be covered. EPA requests comment on whether emergency renovation operations should be treated differently in child-occupied facilities than in target housing.

D. Requirements for Renovations in Child-Occupied Facilities

1. *Training, certification, accreditation, work practice, and recordkeeping requirements.* With this proposal, EPA would extend the training, certification, accreditation, and work practice standard requirements of the 2006 Proposal to renovations for compensation in child-occupied facilities. The 2006 Proposal would require that renovators be trained in the use of lead safe work practices, that renovators and firms be certified, that providers of renovation training be accredited, and that renovators follow renovation work practice standards. The work practices in the 2006 Proposal included the posting of warning signs, isolation of the work area, containment of waste, cleaning, and post-renovation cleaning verification. The 2006 Proposal also would establish a dust sampling technician discipline and would allow certified dust sampling technicians to collect optional dust clearance samples after renovations. Consult the 2006 Proposal for more information on each of these proposed requirements (Ref. 1).

The 2006 Proposal described how the proposed training elements for renovators as well as most of the proposed work practice standards were developed with reference to the EPA-HUD model curriculum entitled "Lead

Safety for Remodeling, Repair, & Painting” and the technical documents used to develop the curriculum, including the “Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing” (HUD Guidelines) developed by HUD as directed by the Residential Lead-Based Paint Hazard Reduction Act of 1992 (Ref. 1 at 1608). As discussed in the Supplemental Economic Analysis for this proposal (Ref. 6), EPA has determined that approximately 90% of the child-occupied facilities that would be covered by this proposal are located in target housing. (Roughly half of the child-occupied facilities in target housing were covered by the 2006 Proposal either because they are in rental housing or because they are in owner-occupied housing where a child under age 6 resides.) EPA knows of no reason why the requirements for renovations conducted in target housing that is also a child-occupied facility should be different from the requirements in the 2006 Proposal for renovations in rental target housing and target housing where children under age 6 reside.

EPA also believes that the training, certification, accreditation, work practice, and recordkeeping requirements of the 2006 Proposal are equally applicable to renovations conducted in child-occupied facilities in public or commercial buildings. The HUD Guidelines were also used to develop the required training elements in 40 CFR 745.225 for certified lead-based paint activities professionals, such as abatement supervisors and workers. These individuals, after completing the required training and being certified by EPA, may perform abatements in child-occupied facilities as well as in target housing. Likewise, EPA specifically referenced the HUD Guidelines in 40 CFR 745.227(a)(3) in describing the methods that certified professionals must follow in performing lead-based paint activities in target housing or in child-occupied facilities. Thus, EPA did not distinguish between target housing and child-occupied facilities in designing the training, certification, and accreditation requirements of the lead-based paint activities regulations. In addition, the only way that EPA distinguished between child-occupied facilities and multi-family target housing in the work practice requirements of 40 CFR 745.227 was in incorporating special instructions at 40 CFR 745.227(d)(7) for dust sampling in child-occupied facilities when performing a risk assessment. In promulgating the lead-

based paint activities regulations under TSCA section 402(a), EPA determined that the same training, certification, and accreditation requirements would apply in target housing and child-occupied facilities. In addition, EPA found that the same work practice requirements would be equally reliable, effective and safe in target housing and child-occupied facilities. EPA noted that commenters did not support the development of different sets of work practices for target housing and child-occupied facilities.

In late 2006, EPA conducted an additional renovation study, which was designed to characterize dust lead levels at various stages of renovation projects. As part of this study, renovation projects were performed in child-occupied facilities in public or commercial buildings. In a March 16, 2007 Notice of Availability (Ref. 9), EPA described its intention to consider the results of its Dust Study (Ref. 10), along with the NAHB Survey (Ref. 11), in the development of the final rule. In the March 2007 notice, EPA requested comment from the public on the work practice provisions of the 2006 Proposal in light of the results of these studies.

TSCA section 402(a)(1) directs EPA to promulgate regulations that, among other things, contain standards for performing lead-based paint activities, taking into account reliability, effectiveness, and safety. In revising those regulations to apply to renovation activities in child-occupied facilities, EPA is proposing to find that the same work practice requirements would be equally reliable, effective, and safe in target housing and child-occupied facilities. EPA therefore is proposing to extend the work practice standards of the 2006 Proposal to firms and individuals performing renovations in child-occupied facilities. This proposal would also impose the training, certification, accreditation, work practice and recordkeeping requirements of the 2006 Proposal on firms and individuals performing renovations in child-occupied facilities, because EPA has determined that the same requirements should apply in child-occupied facilities and target housing. EPA requests comment on these proposed findings. EPA also invites commenters to identify peer-reviewed studies and data, of which EPA may not be aware, that shed light on potential differences between renovations in target housing and renovations in child-occupied facilities.

EPA remains concerned about the potential exposures to lead hazards that may be created by untrained homeowners doing work in the presence

of lead-based paint. EPA specifically requests comment on whether any aspects of the proposed requirements, such as training, certification, work practices, or recordkeeping, should be modified to make compliance more feasible for target housing owner-occupants who provide child care for compensation and who choose to undertake their own renovations.

2. Information distribution requirements. TSCA section 406(b) directs EPA to promulgate regulations requiring that every person who performs renovations for compensation in target housing provide a lead-hazard information pamphlet to the owner and the occupant of the housing before the renovation commences. The Pre-Renovation Education Rule, which implements this directive, was promulgated in 1998 and codified at 40 CFR part 745, subpart E. Much of the proposed regulatory text in the 2006 Proposal would be codified in that subpart along with the existing information distribution regulations.

Under today's proposal, firms and individuals performing renovations for compensation in target housing, whether or not the target housing contains a child-occupied facility, would still be required to provide the lead-hazard information pamphlet as required by TSCA section 406(b) and its implementing regulations. Today's proposal would also require a similar information distribution for renovation projects in child-occupied facilities in public or commercial buildings. EPA has previously used the authority of TSCA section 407 to impose notification requirements for lead-based paint training course providers and for firms performing lead-based paint abatements (Ref. 12). TSCA section 407 authorizes EPA to promulgate recordkeeping or reporting requirements as necessary for the effective implementation of TSCA Title IV. EPA finds that the distribution of lead hazard information, before renovation projects begin, to the owners and occupants of child-occupied facilities as well as the owners of public or commercial buildings that contain child-occupied facilities is necessary to ensure effective implementation of this proposed regulation. Information on lead hazards, and lead safe work practices that minimize the creation of hazards, will stimulate interest on the part of child-occupied facilities and public or commercial building owners in these work practices and increase the demand for their use. In addition, providing information to the parents and guardians of children frequenting child-occupied facilities will enable the

parents and guardians to make decisions regarding their children's welfare.

Under this proposal, unless they own the building being renovated, firms and individuals performing renovation projects in child-occupied facilities would be required to provide a lead hazard information pamphlet to the owner of the building and either obtain a signed acknowledgment that the owner received the pamphlet or document through a certificate of mailing that the pamphlet was mailed to the owner at least 7 days, but no more than 60 days, before the date that the renovation begins. In addition, if the renovation is not being performed by the entity that operates the child-occupied facility, a lead hazard information pamphlet must be provided to an adult representative of the child-occupied facility and a signed acknowledgment obtained, the reason for the lack of a signed acknowledgment documented, or a certificate of mailing obtained. EPA is also proposing to require that the renovation firm either distribute the pamphlet and general information on the renovation project to the parents or guardians of children using the facility or post, while the project is ongoing, informational signs describing the general nature and locations of the project and the anticipated completion date. These signs must be posted in areas where they can be seen by the parents or guardians of the children frequenting the child-occupied facility. The signs must be accompanied by a posted copy of the lead hazard information pamphlet or information on how interested parents and guardians can review a copy of the pamphlet or obtain a copy from the renovation firm at no cost to the parents or guardians. EPA requests comment on the utility of this kind of information for child-occupied facilities and public or commercial building owners, and on the usefulness of informational signs for parents and guardians of children visiting the child-occupied facility.

E. State Renovation Model Program and Authorization Process

As described in Unit IV.F. of the 2006 Proposal, EPA would give interested States, Territories, and Indian Tribes the opportunity to apply for, and receive authorization to administer and enforce all of the elements of the revised 40 CFR part 745, subpart E (Ref. 1 at 1616). This would include the existing elements of subpart E, the Pre-Renovation Education Rule, as well as the new training, certification, accreditation, work practice, and recordkeeping requirements of the proposed

renovation, repair, and painting program. The 2006 Proposal would allow States, Territories and Tribes to choose to administer and enforce just the existing requirements of subpart E, the pre-renovation education elements, or all of the requirements of the proposed subpart E, as amended. EPA did not propose to allow States, Territories, and Tribes to seek authorization to administer and enforce only the training, certification, accreditation, work practice, and recordkeeping requirements of the 2006 Proposal and not the pre-renovation education provisions of existing subpart E.

This supplemental proposal would not fundamentally change the authorization scheme in the 2006 Proposal. Interested States, Territories, and Indian Tribes would still be given the opportunity to apply for, and receive authorization to, administer and enforce just the pre-renovation education provisions of revised 40 CFR part 745, subpart E, or both the pre-renovation education provisions and the training, certification, accreditation, work practice, and recordkeeping provisions of subpart E, as amended. However, this supplemental proposal would mean that States, Territories, and Tribes that wish to administer and enforce the pre-renovation education provisions of subpart E, as amended, would have to include both target housing and child-occupied facilities within the scope of their program. Similarly, States, Territories, and Tribes that are also interested in obtaining authorization to administer and enforce the training, certification, accreditation, work practice, and recordkeeping elements of subpart E, as amended, would have to include both target housing and child-occupied facilities within the scope of their program. States with existing authorized pre-renovation education programs would be required to demonstrate that they have modified their programs to include child-occupied facilities. These States would have to provide this demonstration in the first report that they submit pursuant to 40 CFR 745.324(h) more than one year after the final rule is promulgated.

V. References

1. U.S. Environmental Protection Agency (USEPA). Lead; Renovation, Repair, and Painting Program: Proposed Rule. **Federal Register** (71 FR 1587, January 10, 2006).
2. USEPA. Lead; Requirements for Lead-Based Paint Activities: Proposed Rule. **Federal Register** (59 FR 45872, September 2, 1994).

3. USEPA. Lead; Requirements for Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities: Final Rule. **Federal Register** (61 FR 45778, August 29, 1996).

4. USEPA. Lead; Identification of Dangerous Levels of Lead: Final Rule. **Federal Register** (66 FR 1206, January 5, 2001).

5. U.S. Department of Housing and Urban Development (HUD). National Survey of Lead and Allergens in Housing, Volume I: Analysis of Lead Hazards, Final Report, Revision 7.1. (October 31, 2002).

6. USEPA, Office of Pollution Prevention and Toxics (OPPT). Economic Analysis for the Supplemental Proposed Rule on Child-Occupied Facilities Under the TSCA Lead Renovation, Repair, and Painting Program (January 2007).

7. USEPA, OPPT. Sample acknowledgment form (2007).

8. HUD. First National Environmental Health Survey of Child Care Centers, Volume I: Analysis of Lead Hazards, Final Report. (July 15, 2003).

9. USEPA. Lead; Renovation, Repair, and Painting Program; Notice of Availability. **Federal Register** (72 FR 12582, March 16, 2007).

10. USEPA, Office of Pollution Prevention and Toxics (OPPT). Characterization of Dust Lead Levels after Renovation, Repair, and Painting Activities; Draft Final Report (January 2007).

11. National Association of Home Builders. Lead Safe Work Practice Survey Project Report (November 2006).

12. USEPA. Lead; Notification Requirements for Lead-Based Paint Abatement Activities and Training: Final Rule. **Federal Register** (69 FR 18489, April 8, 2004).

13. USEPA, Office of Pollution Prevention and Toxics (OPPT). Economic Analysis for the Renovation, Repair, and Painting Program Proposed Rule (February 2006).

14. USEPA. Second Proposed Rule Related Addendum to Existing EPA ICR entitled: TSCA section 402/404 Training and Certification, Accreditation, and Standards for Lead-Based Paint Activities (January 2007).

15. ASTM International. Standard Practice for Clearance Examinations Following Lead Hazard Reduction Activities in Single-Family Dwellings and Child-Occupied Facilities (E 2271-05).

16. ASTM International. Standard Guide for Evaluation, Management, and Control of Lead Hazards in Facilities (E 2052-99).

17. ASTM International. Standard Practice for Evaluating the Performance

Characteristics of Qualitative Chemical Spot Test Kits for Lead in Paint (E 1828-01).

VI. Statutory and Executive Order Reviews

A. Executive Order 12866

Under Executive Order 12866, entitled "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), it has been determined that this supplemental proposed rule is a "significant regulatory action" under section 3(f)(1) of the Executive Order because EPA estimates that, when considered in conjunction with the 2006 proposal, it will have an annual effect on the economy of \$100 million or more. Accordingly, this action was submitted to the Office of Management and Budget (OMB) for review under Executive Order 12866 and any changes made based on OMB recommendations have been documented in the public docket for this rulemaking as required by section 6(a)(3)(E) of the Executive Order.

In addition, EPA has prepared an analysis of the potential costs and benefits associated with this proposed rulemaking. This analysis is contained in the Supplemental Economic Analysis (Ref. 6), which is available in the docket for this action and is briefly summarized here.

1. *Types of facilities.* This supplemental proposed rule applies to an estimated 930,000 child-occupied facilities, of which approximately 833,000 are in target housing where child care is provided. The 2006 Proposal covered child-occupied facilities in rental housing and in owner-occupied housing where a child under age 6 resides. This supplemental proposed rule covers additional child-occupied facilities that were not covered by the 2006 Proposal because they are located in target housing where no child under age 6 resides. This supplemental proposal also applies to child-occupied facilities in public or commercial buildings.

2. *Options evaluated.* EPA considered a variety of options for addressing the risks presented by renovation, repair, and painting actions where lead-based paint is present. The Supplemental Economic Analysis analyzed several different options for the rule. Option A applies to renovation, repair, and painting activities performed for compensation in all child-occupied facilities built before 1978. Option B has 2 phases. The first phase applies to child-occupied facilities built before 1960 as well as child-occupied facilities built between 1960 and 1978 that are

used by a child under age 6 with an increased blood lead level. The second phase, which takes effect a year after the first phase, adds the remaining child-occupied facilities built between 1960 and 1978. Option C also has 2 phases. The first phase applies to child-occupied facilities built before 1950, and the second phase, which takes effect a year after the first phase, applies to child-occupied facilities built before 1978. Option D covers the same facilities and phases as Option B, and differs only in the amount of flexibility allowed a certified renovator in selecting appropriate work practices for each individual job. Option D prescribes the practices to be followed, so does not provide flexibility. Option E has the same phases as Option B, but considers child care payments to be compensation for renovations. Thus, for example, this option covers a renovation by a homeowner in owner-occupied target housing if the housing qualifies as a child-occupied facility and the homeowner provides paid child care. The proposed rule is Option B.

3. *Number of events and individuals affected.* Under the supplemental proposal, in Phase 1 there will be 243,000 events in child-occupied facilities where lead-safe work practices will be used due to the rule. As a result, there will be approximately 633,000 exposures avoided in children under age 6. In Phase 2, lead-safe work practices will be used in about 140,000 events as a result of the supplemental proposed rule. About 916,000 exposures will be avoided in children under age 6 each year as a result. There will also be about 166,000 exposures avoided in adults in Phase 1, and about 224,000 per year in Phase 2. The affected adults are the staff of child-occupied facilities in public or commercial buildings (such as schools and day care centers) and the residents of target housing where child care is provided.

4. *Benefits.* The Supplemental Economic Analysis describes the estimated benefits of the proposed rulemaking in qualitative and quantitative terms. Benefits result from the prevention of adverse health effects attributable to lead exposure. These health effects include impaired cognitive function in children and several illnesses in children and adults. One of the stated purposes of Title X is to prevent childhood lead poisoning. EPA considered the potential benefits to children separately from adults, because the reduction in the threat of childhood lead poisoning is a focus of Title X, and because of uncertainties about the exposure of adults to lead in dust from renovation, repair, and painting

activities in these facilities, and the resulting health effects. The Agency specifically seeks comment on its consideration of potential benefits to both children and adults, as well as comments and information about the potential uncertainties associated with adult exposures and health effects.

Quantifying the adverse health effects associated with renovation, repair, and painting projects involves 4 steps: first, estimating the amount of lead contamination due to the renovation project under various assumptions about cleaning; second, estimating the blood-lead levels resulting from this contamination; third, estimating the adverse health effects (such as loss in IQ points) due to increased blood-lead levels using dose-response functions; and fourth, assigning medical costs, reduced income, or another proxy for willingness-to-pay to avoid the adverse health effects.

The Supplemental Economic Analysis estimates the benefits of avoided incidence of IQ loss due to reduced lead exposure to children. The analysis was limited to the avoided incidence of IQ loss because there are not sufficient data at this time to develop dose-response functions for other health effects in children. The Supplemental Economic Analysis provides six alternative estimates of children's benefits, depending on which of two models is used to relate exposure to blood-lead levels, which of two age groups the model is applied to, and which of two exposure metrics is used. Furthermore, benefits are estimated using two different scenarios for cleaning assumptions. The range of benefits estimates described below reflects the minimum and maximum of the six alternative blood-lead estimates and the two cleaning scenarios. The benefits of avoided exposure to adults were not quantified due to uncertainties about the estimation of such exposure.

Depending on which blood-lead model and exposure assumptions are used, the quantified IQ benefits to children for the supplemental proposed rule range from \$64 million to \$257 million per year when annualized using a 3% discount rate, and from \$68 million to \$272 million per year when using a 7% discount rate. The estimated benefits for the other options range from \$64 million to \$386 million using a 3% discount rate and from \$67 million to \$408 million using a 7% discount rate. There are additional unquantified benefits, including avoided health effects in adults.

5. *Costs.* The Supplemental Economic Analysis estimates the potential costs of complying with the training,

certification, and work practice requirements in the supplemental proposed rule. Costs may be incurred by child-occupied facilities that use their own staff for renovation, repair, and painting events; landlords that use their own staff for renovation, repair, and painting events in public or commercial buildings that they lease to child-occupied facilities; and contractors that perform renovation, repair, and painting work for compensation in child-occupied facilities.

The supplemental proposed rule, if finalized as proposed, is estimated to result in a total potential cost of \$53 million in Phase 1. The 50-year annualized costs provide a measure of the steady-state cost. Annualized costs of the supplemental proposed rule are estimated to be \$39 million per year using a 3% discount rate and \$43 million per year using a 7% discount rate. Annualized costs for the other options range from \$39 million to \$92 million per year using a 3% discount rate and \$42 million to \$102 million per year using a 7% discount rate.

6. *Net benefits.* Net benefits are the difference between benefits and costs. The supplemental proposed rule, if finalized as proposed, is estimated to result in potential net benefits of \$1 million to \$157 million in Phase 1 based on children's benefits alone. The 50-year annualized net benefits for the proposed rule based on children's benefits are estimated to be \$25 million to \$218 million per year using a 3% discount rate and \$25 million to \$229 million per year using a 7% discount rate. The net benefits for the other options range from -\$8 million to \$293 million per year using a 3% discount rate and -\$12 million to \$306 million per year using a 7% discount rate. There are additional unquantified benefits, including avoided health effects in adults, that are not included in the net benefits estimates.

7. *Request for comment.* To improve the analysis for the final rule, the Agency conducted a number of sensitivity analyses in its Supplemental Economic Analysis (Ref. 6). These analyses examined the sensitivity of the overall costs and benefits of the rule to selected parameters which appear to be important and for which relatively few supporting data are available. These include alternative assumptions regarding compliance with this rule, the effectiveness of daily cleaning, areas of schools other than pre-kindergarten and kindergarten classrooms that are routinely used by children under age 6, the number of unscheduled maintenance events in child-occupied facilities in public or commercial

buildings, the effectiveness of current work practices in child-occupied facilities in public or commercial buildings, and how lead loadings from renovation events may vary with the age of a building. The Agency is specifically interested in comments on these sensitivity analyses and supporting information, particularly peer-reviewed studies and data, on the following questions related to the Agency's analysis:

- How often are unplanned maintenance activities that would be covered by this supplemental proposal performed in child care centers and schools?
- How often are classrooms in child-occupied facilities in public or commercial buildings swept and how often are they mopped? Do janitorial staff use single bucket mopping or the two bucket mopping method required by the rule and how frequently do they change the water? What are the efficiencies of the various cleaning methods?
- What share of the renovations in schools and child care centers use work practices required by this supplemental proposal, and which particular work practices do they use?
- How do renovations performed by contractors and those performed by homeowners differ, particularly with respect to the frequency with which work practices required by this proposal are already being used and the expected compliance rates if homeowner renovations were covered by the regulation? (This supplemental proposal would not cover persons who perform renovations in housing that they own and occupy, but one of the regulatory options evaluated in EPA's Supplemental Economic Analysis covered renovations by homeowners who provide child care for compensation in their homes.)
- When estimating the lead loadings from renovations, how should EPA's analysis take into account variations in the amount of lead in paint by component type and building age?

B. Paperwork Reduction Act

The information collection requirements contained in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 USC 3501 *et seq.* An Information Collection Request (ICR) document prepared by EPA, an amendment to an existing ICR and referred to as the Second ICR Addendum (EPA ICR No. 1715.08, OMB Control Number 2070-0155) has been placed in the public docket for this proposed rule (Ref. 14).

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations codified in Chapter 40 of the CFR, after appearing in the preamble of the final rule, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

The new information collection activities contained in this supplemental proposed rule are designed to assist the Agency in meeting the core objectives of TSCA section 402, including ensuring the integrity of accreditation programs for training providers, providing for the certification of renovators, and determining whether work practice standards are being followed. EPA has carefully tailored the proposed recordkeeping and recordkeeping requirements so they will permit the Agency to achieve statutory objectives without imposing an undue burden on those firms that choose to be involved in renovation, repair, and painting activities.

Burden under the PRA means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Under this supplemental proposal, the new information collection requirements may affect training providers and firms that perform renovation, repair, or painting for compensation in child-occupied facilities. Although these firms have the option of choosing to engage in the covered activities, once a firm chooses to do so, the information collection activities contained in this rule become mandatory for that firm.

The ICR document provides a detailed presentation of the estimated burden and costs for 3 years of the program. The

aggregate burden varies by year due to changes in the number of firms that will seek certification each year. The burden and cost to training providers and firms engaged in renovation, repair, and painting activities is summarized in this section.

There are an average of 145 training providers that are estimated to incur burden to notify EPA (or an authorizing State, Tribe, or Territory) before and after training courses. The average burden for training provider notifications as a result of the supplemental proposed rule is estimated at 7 to 18 hours per year, depending on the number of additional training courses provided. Total training provider burden is estimated to average 1,700 hours per year.

There are an average of 38,000 firms estimated to become certified to engage in renovation, repair, or painting activities in child-occupied facilities under the supplemental proposed rule. The average certification burden is estimated to be 3.5 hours per firm in the year a firm is initially certified, and 0.5 hours in years that it is re-certified (which occurs every 3 years). Firms must also distribute lead hazard information to the owners and occupants of public or commercial buildings that contain child-occupied facilities. Finally, firms must keep records of the work they perform in child-occupied facilities; this recordkeeping is estimated to typically take approximately 5 hours per year. Total burden for these firms is estimated to average 280,000 hours per year.

Total respondent burden as a result of the supplemental proposed rule during the period covered by the ICR is estimated to average approximately 281,000 hours per year.

There are also government costs to administer the program. States, Tribes, and Territories are allowed, but are under no obligation, to apply for and receive authorization to administer these proposed requirements. EPA will directly administer programs for States, Tribes, and Territories that do not become authorized. Because the number of States, Tribes, and Territories that will become authorized is not known, administrative costs are estimated assuming that EPA will administer the program everywhere. To the extent that other government entities become authorized, EPA's administrative costs will be lower.

Direct your comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated

collection techniques, to EPA using the public docket that has been established for this proposed rule (Docket ID No. EPA-HQ-OPPT-2005-0049). In addition, send a copy of your comments about the ICR to OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW., Washington, DC 20503, Attention: Desk Office for EPA. Since OMB is required to complete its review of the ICR between 30 and 60 days after June 5, 2007, please submit your ICR comments for OMB consideration to OMB by July 5, 2007.

The Agency will consider and address comments received on the information collection requirements contained in this proposal when it develops the final rule.

C. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (RFA), 5 U.S.C.601 *et seq.*, and the Agency's long-standing policy of always considering whether there may be a potential for adverse impacts on small entities, the Agency has evaluated the potential small entity impacts of its 2006 Proposal and this supplemental proposal. The Agency's analysis of the potentially adverse economic impacts of this supplemental proposal is contained in the Supplemental Economic Analysis (Ref. 6). The analysis of the potentially adverse economic impacts of the 2006 Proposal is contained in the document entitled "Economic Analysis for the Renovation, Repair, and Painting Program Proposed Rule" (Ref. 13). Because EPA intends to promulgate a single final rule that encompasses both the 2006 Proposal and this supplemental proposal, EPA has evaluated the small entity impacts for the combined effects of the two proposals. The initial regulatory flexibility analysis was reviewed in the preamble to the 2006 Proposal. This analysis has been revised to include information on this supplemental proposal. The following is an overview of the revised analysis.

1. *Legal basis and objectives for the proposed rule.* As discussed in Unit IV.A. of this preamble, TSCA section 402(c)(2) directs EPA to study the extent to which persons engaged in renovation, repair, and painting activities are exposed to lead or create lead-based paint hazards regularly or occasionally. After concluding this study, TSCA section 402(c)(3) further directs EPA to revise its lead-based paint activities regulations under TSCA section 402(a) to apply to renovation or remodeling activities that create lead-based paint hazards. Because EPA's study found

that activities commonly performed during renovation and remodeling create lead-based paint hazards, EPA is proposing to revise the TSCA section 402(a) regulatory scheme to apply to individuals and firms engaged in renovation, repair, and painting activities. The primary objective of the combined proposals is to prevent the creation of new lead-based paint hazards from renovation, repair, and painting activities in housing where children under age 6 reside and in housing or other buildings frequented by children under age 6.

2. *Potentially affected small entities.* Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of this proposed rule on small entities, small entity is defined in accordance with section 601 of the RFA as:

(1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

The small entities that are potentially directly regulated by this proposed rule include: small businesses (including contractors and non-residential property owners and managers); small non-profits (certain daycare centers and private schools); and small governments (school districts).

In determining the number of small businesses affected by the proposed rule, the Agency applied U.S. Economic Census data to the SBA's definition of small business. However, applying the U.S. Economic Census data requires either under or overestimating the number of small businesses affected by the proposed rule. For example, for many construction establishments, the SBA defines small businesses as having revenues of less than \$13 million. With respect to those establishments, the U.S. Economic Census data groups all establishments with revenues of \$10 million or more into one revenue bracket. On the one hand, using data for the entire industry would overestimate the number of small businesses affected by the proposed rule and would defeat the purpose of estimating impacts on small business. It would also underestimate the proposed rule's impact on small businesses because the impacts would be calculated using the revenues of large businesses in addition to small businesses. On the other hand, applying the closest, albeit lower,

revenue bracket would underestimate the number of small businesses affected by the proposed rule while at the same time overestimating the impacts.

Similar issues arose in estimating the fraction of non-residential commercial property owners and managers that are small businesses. For other sectors (non-profits operating daycare centers or private schools), EPA assumed that all affected firms are small, which may overestimate the number of small entities affected by the rule. The Agency requests comments and information regarding available data to better estimate the number of small entities affected by the rule.

The vast majority of entities in the industries affected by this rule are small. Using EPA's estimates, when the supplemental proposal is combined with the 2006 Proposal, the renovation, repair, and painting program will affect an average of approximately 186,000 small entities.

3. *Potential economic impacts on small entities.* EPA evaluated two factors in its analysis of the rule's requirements on small entities, the number of firms that would experience the impact, and the size of the impact. Annual compliance costs as a percentage of annual revenues were used to assess the potential impacts of the rule on small businesses and small governments. This ratio is a good measure of entities' ability to afford the costs attributable to a regulatory requirement, because comparing compliance costs to revenues provides a reasonable indication of the magnitude of the regulatory burden relative to a commonly available measure of economic activity. Where regulatory costs represent a small fraction of a typical entity's revenues (for example, less than 1%, and not greater than 3%), the financial impacts of the regulation on such entities may be considered as not significant. For non-profit organizations, impacts were measured by comparing rule costs to the organization's annual expenditures. When expenditure data were not available, however, revenue information was used as a proxy for expenditures. It is appropriate to calculate the impact ratios using annualized costs, because these costs are more representative of the continuing costs entities face to comply with the rule.

EPA estimates that there are an average of 186,000 small entities that would be affected by the combined renovation, repair, and painting activities program. Of these, there are an estimated 163,000 small businesses with an average impact of 0.9%, 17,000 small non-profits with an average impact of

0.1%, and 6,000 small governments with an average impact of 0.004%.

4. *Relevant Federal rules.* The proposed requirements in this rulemaking will fit within an existing framework of other Federal regulations that address lead-based paint.

The Pre-Renovation Education Rule, discussed in Unit IV.A.2. of this preamble, requires renovators to distribute a lead hazard information pamphlet to owners and occupants before conducting a renovation in target housing. This proposal has been carefully crafted to harmonize with the existing pre-renovation education requirements.

Disposal of waste from renovation projects that would be regulated by this proposal is covered by the Resource Conservation and Recovery Act (RCRA) regulations for solid waste. This proposal does not contain specific requirements for the disposal of waste from renovations.

HUD has extensive regulations that address the conduct of interim controls, as well as other lead-based paint activities, in Federally assisted housing. Some of HUD's interim controls would be regulated under this proposal as renovations, depending upon whether the particular interim control measure disturbs more than the threshold amount of paint. In most cases, the HUD regulations are comparable to, or more stringent than this proposal. In general, persons performing HUD-regulated interim controls must have taken a course in lead-safe work practices, which is also a requirement of this proposal. However, this proposal would not require dust clearance testing, a process required by HUD after interim control activities that disturb more than a minimal amount of lead-based paint.

Finally, OSHA's Lead Exposure in Construction standard covers potential worker exposures to lead during many construction activities, including renovation, repair, and painting activities. Although this standard may cover many of the same projects as today's proposal, the requirements themselves do not overlap. The OSHA rule addresses the protection of the worker, this EPA proposal addresses the protection of the building occupants, particularly children under age 6.

5. *Skills needed for compliance.* This proposal would establish requirements for training renovators and dust sampling technicians; certifying renovators, dust sampling technicians, and entities engaged in renovation, repair, and painting activities; accrediting providers of renovation and dust sampling technician training; and for renovation work practices.

Renovators and dust sampling technicians would have to take a course to learn the proper techniques for accomplishing the tasks they will perform during renovations. These courses are intended to provide them with the information they would need to comply with the rule based on the skills they already have. Entities would be required to apply for certification to perform renovations; this process does not require any special skills other than the ability to complete the application. They would also need to document the work they have done during renovations. This does not require any special skills. Training providers must be knowledgeable about delivering technical training. Training providers would be required to apply for accreditation to offer renovator and dust sampling technician courses. They would also be required to provide prior notification of such courses and provide information on the students trained after each such course. Completing the accreditation application and providing the required notification information does not require any special skills.

6. *Small Business Advocacy Review Panel.* Since the earliest stages of planning for this regulation under Section 402(c)(3) of TSCA, EPA has been concerned with potential small entity impacts. EPA conducted outreach to small entities, and, in 1999, convened a Small Business Advocacy Review Panel to obtain advice and recommendations of representatives of the small entities that would potentially be subject to this regulation's requirements. At that time, EPA was planning an initial regulation that would apply to renovations in target housing, with requirements for public and commercial building renovations, including child-occupied facility renovations, to follow at a later date. The small entity representatives (SERs) chosen for consultation reflect that initial emphasis. They included maintenance and renovation contractors, painting and decorating contractors, multi-family housing owners and operators, training providers/consultants, and representatives from several national contractor associations, the National Multi-Housing Council, and the National Association of Home Builders.

After considering the existing lead-based paint activities regulations, and taking into account preliminary stakeholder feedback, EPA identified eight key elements of a potential renovation and remodeling regulation for the Panel's consideration. These elements were:

- Applicability and scope.

- Firm certification.
- Individual training and certification.
- Accreditation of training courses.
- Work practice standards.
- Prohibited practices.
- Exterior clearance.
- Interior clearance.

EPA also developed several options for each of these key elements. Although the scope and applicability options specifically presented to the Panel covered only target housing, background information presented to the SERs and to the Panel members shows that EPA was also considering a regulation covering child-occupied facilities. More information on the Panel, its recommendations, and how EPA implemented them in the development of the program, are provided in Unit VIII.C.6 of the preamble to the 2006 Proposal (Ref. 1).

EPA invites comments on all aspects of the supplemental proposal and its impacts on small entities.

D. Unfunded Mandates Reform Act

Under Title II of the Unfunded Mandates Reform Act (UMRA) (Public Law 104–4), EPA has determined that when this supplemental proposed rule is considered by itself, it does not contain a Federal mandate that may result in expenditures that exceed the inflation-adjusted UMRA threshold of \$100 million in any 1 year by the private sector or by State, local, and Tribal governments in the aggregate. (When adjusted for inflation, the value of the UMRA threshold is over \$118 million.) However, when considered in conjunction with the 2006 Proposal, the combined requirements will result in annual expenditures by the private sector above the UMRA threshold. Accordingly, EPA has prepared a written statement under section 202 of the UMRA which has been placed in the public docket for this rulemaking and is summarized here.

1. *Authorizing legislation.* This proposal is issued under the authority of TSCA sections 402(c)(3) and 404.

2. *Cost-benefit analysis.* EPA has prepared an analysis of the costs and benefits associated with this supplemental proposal, a copy of which is available in the docket for this rulemaking (Ref. 6). The Supplemental Economic Analysis presents the costs of the proposal as well as various regulatory options and is summarized in Unit VII.A. of this preamble. EPA has estimated that the total annualized costs of this supplemental proposal when using a 3% discount rate are \$39 million per year, and that benefits are \$64 million to \$257 million per year. Using

a 7% discount rate, costs are \$43 million per year and benefits are \$68 million to \$272 million per year.

3. *State, local, and Tribal government input.* EPA has sought input from State, local and Tribal government representatives throughout the development of the renovation, repair, and painting program. EPA's experience in administering the existing lead-based paint activities program under TSCA section 402(a) suggests that these governments will play a critical role in the successful implementation of a national program to reduce exposures to lead-based paint hazards associated with renovation, repair, and painting activities. Consequently, as discussed in Unit III.C.2. of the preamble to the 2006 Proposal (Ref. 1), the Agency has met with State, local, and Tribal government officials on numerous occasions to discuss renovation issues.

4. *Least burdensome option.* EPA considered a wide variety of options for addressing the risks presented by renovation activities where lead-based paint is present. The Supplemental Economic Analysis analyzed several different options for the scope of the supplemental rule. As part of the development of the renovation, repair, and painting program, EPA has considered different options for the scope of the rule, various combinations of training and certification requirements for individuals who perform renovations, various combinations of work practice requirements, and various methods for ensuring that no lead-based paint hazards are left behind by persons performing renovations. Additional information on the options considered is available in Unit VIII.C.6. of the preamble to the 2006 Proposal (Ref. 1), and in the Supplemental Economic Analysis (Ref. 6). EPA has determined that the proposed option is the least burdensome option available that achieves the objective of this supplemental rule, which is to prevent the creation of new lead-based paint hazards from renovation, repair, and painting activities in child-occupied facilities.

This rule does not contain a significant Federal intergovernmental mandate as described by section 203 of UMRA. Based on the definition of "small government jurisdiction" in RFA section 601, no State governments can be considered small. Small Territorial or Tribal governments could apply for authorization to administer and enforce this program, which would entail costs, but these small jurisdictions are under no obligation to do so.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Small governments operate schools that are child-occupied facilities. EPA generally measures a significant impact under UMRA as being expenditures, in the aggregate, of more than 1% of small government revenues in any one year. As explained in Unit VI.C.3., the rule is expected to result in small government impacts well under 1% of revenues. So EPA has determined that the rule does not significantly affect small governments.

Nor does the rule uniquely affect small governments, as the rule is not targeted at small governments, does not primarily affect small governments, and does not impose a different burden on small governments than on other entities that operate child-occupied facilities.

E. Federalism

Pursuant to Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), EPA has determined that this proposed rule does not have "federalism implications," because it will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, Executive Order 13132 does not apply to this proposed rule.

States would be able to apply for, and receive authorization to administer these proposed requirements, but would be under no obligation to do so. In the absence of a State authorization, EPA will administer these requirements.

Nevertheless, in the spirit of the objectives of this Executive Order, and consistent with EPA policy to promote communications between the Agency and State and local governments, EPA has consulted with representatives of State and local governments in developing the renovation, repair, and painting program. These consultations are as described in the preamble to the 2006 Proposal (Ref. 1).

EPA specifically solicits additional comment on this proposed rule from State and local officials. EPA is particularly interested in information on the number of public housing agencies who own or operate detached or off-site child-occupied facilities and this regulation's potential impacts on those agencies.

F. Tribal Implications

As required by Executive Order 13175, entitled "Consultation and

Coordination with Indian Tribal Governments” (59 FR 22951, November 6, 2000), EPA has determined that this proposed rule does not have tribal implications because it will not have substantial direct effects on tribal governments, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in the Order. Tribes would be able to apply for, and receive authorization to administer these proposed requirements on Tribal lands, but Tribes would be under no obligation to do so. In the absence of a Tribal authorization, EPA will administer these requirements. While Tribes may operate child-occupied facilities covered by the rule such as kindergartens, pre-kindergartens, and daycare facilities, EPA has determined that this proposal would not have substantial direct effects on the tribal governments that operate these facilities.

Thus, Executive Order 13175 does not apply to this rule. Although Executive Order 13175 does not apply to this rule, EPA consulted with Tribal officials and others by discussing potential renovation regulatory options for the renovation, repair, and painting program at several national lead program meetings hosted by EPA and other interested Federal agencies.

EPA specifically solicits additional comment on this proposed rule from Tribal officials.

G. Children's Health Protection

Executive Order 13045, entitled “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997) applies to this supplemental rule because, when considered in conjunction with the 2006 Proposal, the combination would be designated as an “economically significant regulatory action” as defined by Executive Order 12866, and because the environmental health or safety risk addressed by this action have a disproportionate effect on children. Accordingly, EPA has evaluated the environmental health or safety effects of renovation, repair, and painting projects on children. Various aspects of this evaluation are discussed in the preamble to the 2006 Proposal (Ref. 1).

The primary purpose of this supplemental proposed rule is to prevent the creation of new lead-based paint hazards from renovation, repair, and painting activities in child-occupied facilities. In the absence of this regulation, adequate lead-safe work

practices are not likely to be employed during renovation, repair, and painting activities. EPA's analysis indicates that there will be approximately 916,000 exposures avoided per year to children under age 6 as a result of the rule. These children are projected to receive considerable benefits due to this regulation.

H. Energy Effects

This rule is not a “significant energy action” as defined in Executive Order 13211, entitled “Actions concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001) because it is not likely to have any adverse effect on the supply, distribution, or use of energy.

I. Technology Standards

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104-113, 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

In the 2006 Proposal, EPA proposed to adopt a number of work practice requirements that could be considered technical standards for performing renovation projects in residences that contain lead-based paint. This supplemental proposal would extend those work practice requirements to child-occupied facilities that contain lead-based paint. As discussed in Unit VIII.I. of the 2006 Proposal, EPA identified two potentially-applicable voluntary consensus standards (Ref. 1 at 1626). ASTM International (formerly the American Society for Testing and Materials) has developed 2 potentially-applicable documents: “Standard Practice for Clearance Examinations Following Lead Hazard Reduction Activities in Single-Family Dwellings and Child-Occupied Facilities” (Ref. 15), and “Standard Guide for Evaluation, Management, and Control of Lead Hazards in Facilities” (Ref. 16). With respect to the first document, EPA did not propose to require traditional clearance examinations, including dust sampling, following renovation projects.

However, EPA did propose to require that a visual inspection for dust, debris, and residue be conducted after cleaning and before post-renovation cleaning verification is performed. The first ASTM document does contain information on conducting a visual inspection before collecting dust clearance samples. The second ASTM document is a comprehensive guide to identifying and controlling lead-based paint hazards. Some of the information in this document is relevant to the work practices that EPA proposed to require. Each of these ASTM documents represents state-of-the-art knowledge regarding the performance of these particular aspects of lead-based paint hazard evaluation and control practices and EPA continues to recommend the use of these documents where appropriate. However, because each of these documents is extremely detailed and encompasses many circumstances beyond the scope of this rulemaking, EPA determined that it would not be practical to incorporate these voluntary consensus standards into the 2006 Proposal.

In addition, the 2006 Proposal contained a provision for EPA to recognize test kits that could be used by certified renovators to determine whether components to be affected by a renovation contain lead-based paint. Under that proposal, EPA would recognize those kits that meet certain performance standards for limited false positives and negatives. Further, EPA would also recognize only those kits that have been properly validated by a laboratory independent of the kit manufacturer. Although EPA did not propose to establish a particular method to be used for validating kits, for chemical spot test kits, EPA announced its intention to look to the ASTM document entitled “Standard Practice for Evaluating the Performance Characteristics of Qualitative Chemical Spot Test Kits for Lead in Paint” (Ref. 17) to determine whether a particular kit's validation is adequate.

The provisions discussed here would apply equally to renovation projects in child-occupied facilities. EPA welcomes comments from entities potentially regulated by this supplemental proposal on this aspect of the proposed rulemaking. EPA specifically invites these entities to identify potentially applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

J. Environmental Justice

Under Executive Order 12898, entitled “Federal Actions to Address

Environmental Justice in Minority Populations and Low-Income Populations" (59 FR 7629, February 16, 1994), the Agency has assessed the potential impact of this proposal on minority and low-income populations. The results of this assessment are presented in the Supplemental Economic Analysis for this proposal, which is available in the public docket for this rulemaking (Ref. 6). The rule will not have disproportionately high and adverse human health or environmental effects on minority populations and low-income populations.

List of Subjects in 40 CFR Part 745

Child-occupied facility, Environmental protection, Housing renovation, Lead, Lead-based paint, Renovation, Reporting and recordkeeping requirements.

Dated: May 24, 2007.

Stephen L. Johnson,
Administrator.

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

PART 745—[AMENDED]

1. The authority citation for part 745 continues to read as follows:

Authority: 15 U.S.C. 2605, 2607, 2681–2692 and 42 U.S.C. 4852d.

2. Section 745.80 is revised to read as follows:

§ 745.80 Purpose.

This subpart contains regulations developed under sections 402 and 406 of the Toxic Substances Control Act (15 U.S.C. 2682 and 2686) and applies to all renovations performed for compensation in target housing and child-occupied facilities. The purpose of this subpart is to ensure the following:

(a) Owners and occupants of target housing and child-occupied facilities receive information on lead-based paint hazards before these renovations begin; and

(b) Persons performing renovations regulated in accordance with § 745.82 are properly trained; renovators, dust sampling technicians, and firms performing these renovations are certified; and lead-safe work practices are followed during these renovations.

3. Section 745.81 is revised to read as follows:

§ 745.81 Effective dates.

(a) *Training, certification and accreditation requirements and work practice standards.* The training, certification and accreditation requirements and work practice

standards in this subpart are applicable as of [insert date 1 year after date of publication of the final rule in the **Federal Register**] in any State or Indian Tribal area that does not have a renovation program that is authorized under subpart Q of this part. The training, certification and accreditation requirements and work practice standards in this subpart will become effective as follows:

(1) *Training programs.* Effective [insert date 60 days after date of publication of the final rule in the **Federal Register**], no training program may provide, offer, or claim to provide training or refresher training for EPA certification as a renovator or a dust sampling technician without accreditation from EPA under § 745.225. Training programs may apply for accreditation under § 745.225 beginning [insert date 1 year after date of publication of the final rule in the **Federal Register**].

(2) *Firms.* Firms may apply for certification under § 745.89 beginning [insert date 18 months after date of publication of the final rule in the **Federal Register**].

(i) No firm may perform, offer, or claim to perform renovations, as defined in this subpart, without certification from EPA under § 745.89 on or after [insert date 2 years after date of publication of the final rule in the **Federal Register**]:

(A) In any target housing where the firm obtains information indicating that a child under age 6 with a blood lead level greater than or equal to 10 µg/dL or the applicable State or local government level of concern, if lower, resides there, or in any target housing where the firm has not provided the owners and occupants with the opportunity to inform the firm that a child under age 6 with such a blood lead level resides there;

(B) In any child-occupied facility where the firm obtains information indicating that the facility is used by a child under age 6 with a blood lead level greater than or equal to 10 µg/dL or the applicable State or local government level of concern, if lower, or in any child-occupied facility where the firm has not provided the owners and occupants with the opportunity to inform the firm that the facility is used by a child under age 6 with such a blood lead level; or

(C) In target housing or child-occupied facilities constructed before 1960, unless, in the case of owner-occupied target housing, the firm has obtained a statement signed by the owner that the renovation will occur in the owner's residence and no child

under age 6 resides or is provided child care there.

(ii) No firm may perform, offer, or claim to perform renovations, as defined in this subpart, without certification from EPA under § 745.89 on or after [insert date 3 years after date of publication of the final rule in the **Federal Register**] in any target housing or child-occupied facility, unless, in the case of owner-occupied target housing, the firm has obtained a statement signed by the owner that the renovation will occur in the owner's residence and no child under age 6 resides or is provided child care there.

(3) *Individuals.* (i) All renovations, as defined in this subpart, must be directed by renovators certified in accordance with § 745.90(a) and performed by certified renovators or individuals trained in accordance with § 745.90(b)(2) on or after [insert date 2 years after date of publication of the final rule in the **Federal Register**]:

(A) In any target housing where the firm performing the renovation obtains information indicating that a child under age 6 with a blood lead level greater than or equal to 10 µg/dL or the applicable State or local government level of concern, if lower, resides there, or in any target housing where the firm has not provided the owners and occupants with the opportunity to inform the firm that a child under age 6 with such a blood lead level resides there;

(B) In any child-occupied facility where the firm obtains information indicating that the facility is used by a child under age 6 with a blood lead level greater than or equal to 10 µg/dL or the applicable State or local government level of concern, if lower, or in any child-occupied facility where the firm has not provided the owners and occupants with the opportunity to inform the firm that the facility is used by a child under age 6 with such a blood lead level; or

(C) In target housing or child-occupied facilities constructed before 1960, unless, in the case of owner-occupied target housing, the firm performing the renovation has obtained a statement signed by the owner that the renovation will occur in the owner's residence and no child under age 6 resides or is provided child care there.

(ii) All renovations, as defined in this subpart, must be directed by renovators certified in accordance with § 745.90(a) and performed by certified renovators or individuals trained in accordance with § 745.90(b)(2) on or after [insert date 3 years after date of publication of the final rule in the **Federal Register**] in any target housing or child-occupied

facility, unless, in the case of owner-occupied target housing, the firm performing the renovation has obtained a statement signed by the owner that the renovation will occur in the owner's residence and no child under age 6 resides or is provided child care there.

(4) *Work practices.* (i) All renovations, as defined in § 745.83, must be performed in accordance with the work practice standards in § 745.85 and the associated recordkeeping requirements in § 745.86(b)(6) and (b)(7) on or after [insert date 2 years after date of publication of the final rule in the **Federal Register**]:

(A) In any target housing where the firm performing the renovation obtains information indicating that a child under age 6 with a blood lead level greater than or equal to 10 µg/dL or the applicable State or local government level of concern, if lower, resides there, or in any target housing where the firm has not provided the owners and occupants with the opportunity to inform the firm that a child under age 6 with such a blood lead level resides there;

(B) In any child-occupied facility where the firm obtains information indicating that the facility is used by a child under age 6 with a blood lead level greater than or equal to 10 µg/dL or the applicable State or local government level of concern, if lower, or in any child-occupied facility where the firm has not provided the owners and occupants with the opportunity to inform the firm that the facility is used by a child under age 6 with such a blood lead level; or

(C) In target housing or child-occupied facilities constructed before 1960, unless, in the case of owner-occupied target housing, the firm performing the renovation has obtained a statement signed by the owner that the renovation will occur in the owner's residence and no child under age 6 resides or is provided child care there.

(ii) All renovations, as defined in this subpart, must be performed in accordance with the work practice standards in § 745.85 and the associated recordkeeping requirements in § 745.86(b)(6) and (b)(7) on or after [insert date 3 years after date of publication of the final rule in the **Federal Register**] in any target housing or child-occupied facility, unless, in the case of owner-occupied target housing, the firm performing the renovation has obtained a statement signed by the owner that the renovation will occur in the owner's residence and no child under age 6 resides or is provided child care there.

(5) The suspension and revocation provisions in § 745.91 are effective [insert date 2 years after date of publication of the final rule in the **Federal Register**].

(b) *Renovation-specific pamphlet.* Before [insert date 8 months after date of publication of the final rule in the **Federal Register**], renovators or firms performing renovations in States and Indian Tribal areas without an authorized program may provide owners and occupants with either of the following EPA pamphlets: *Protect Your Family From Lead in Your Home* or *Protect Your Family from Lead During Renovation, Repair & Painting*. After that date, *Protect Your Family from Lead During Renovation, Repair & Painting* must be used exclusively.

(c) *Pre-Renovation Education Rule.* With the exception of the requirement to use the pamphlet titled *Protect Your Family from Lead During Renovation, Repair & Painting*, the provisions of the Pre-Renovation Education Rule in this subpart have been in effect since June 1999.

4. Section 745.82 is revised to read as follows:

§ 745.82 Applicability.

(a) This subpart applies to all renovations performed for compensation in target housing and child-occupied facilities, except for the following:

(1) Minor repair and maintenance activities (including minor electrical work and plumbing) that disrupt 2 square feet or less of painted surface per component.

(2) Renovations in target housing or child-occupied facilities in which a written determination has been made by an inspector (certified pursuant to either Federal regulations at § 745.226 or a State or Tribal certification program authorized pursuant to § 745.324) that the components affected by the renovation are free of paint or other surface coatings that contain lead equal to or in excess of 1.0 milligrams per square centimeter (mg/cm²) or 0.5% by weight, where the firm performing the renovation has obtained a copy of the determination.

(3) Renovations in target housing or child-occupied facilities in which a certified renovator, using an acceptable test kit and following the kit manufacturer's instructions, has determined that the components affected by the renovation are free of paint or other surface coatings that contain lead equal to or in excess of 1.0 mg/cm² or 0.5% by weight.

(b) The information distribution requirements in § 745.84 do not apply to

emergency renovation operations, which are renovation activities that were not planned but result from a sudden, unexpected event (such as non-routine failures of equipment) that, if not immediately attended to, presents a safety or public health hazard, or threatens equipment and/or property with significant damage. Interim controls performed in response to an elevated blood lead level in a resident child are also emergency renovation operations. The work practice, training, and certification requirements in §§ 745.85, 745.89, 745.90 and the recordkeeping requirements in § 745.86(b)(6) and (b)(7) apply to emergency renovation operations to the extent practicable.

(c) The work practice standards for renovation activities in § 745.85 apply to all renovations covered by this subpart, except for renovations in target housing for which the firm performing the renovation has obtained a statement signed by the owner that the renovation will occur in the owner's residence and no child under age 6 resides or is provided child care there. For the purposes of this section, a child resides in the primary residence of his or her custodial parents, legal guardians, and foster parents. A child also resides in the primary residence of an informal caretaker if the child lives and sleeps most of the time at the caretaker's residence.

5. Section 745.83 is amended as follows:

- a. Remove the definition of "Emergency renovation operations."
- b. Revise the definition of "Pamphlet" and the definition of "Renovator."
- c. Add 13 definitions in alphabetic order.

§ 745.83 Definitions.

* * * * *

Acceptable test kit means a commercially available kit recognized by EPA pursuant to section 405 of TSCA as being capable of allowing a user to accurately determine the presence of lead at levels equal to or in excess of 1.0 milligrams per square centimeter, or more than 0.5% lead by weight, in a paint chip, paint powder, or painted surface.

* * * * *

Child-occupied facility means a building, or portion of a building, constructed prior to 1978, visited regularly by the same child, under 6 years of age, on at least two different days within any week (Sunday through Saturday period), provided that each day's visit lasts at least 3 hours and the combined weekly visits last at least 6 hours, and the combined annual visits

last at least 60 hours. Child-occupied facilities may include, but are not limited to, day care centers, preschools and kindergarten classrooms. Child-occupied facilities may be located in target housing or in public or commercial buildings. In public or commercial buildings that contain child-occupied facilities, the child-occupied facility encompasses only those common areas that are routinely used by children under age 6, such as restrooms and cafeterias. Common areas that children under age 6 only pass through, such as hallways, stairways, and garages are not included. In addition, for public or commercial buildings that contain child-occupied facilities, the child-occupied facility encompasses only the exterior sides of the building that are immediately adjacent to the child-occupied facility or the common areas routinely used by children under age 6.

Cleaning verification card means a card developed and distributed, or otherwise approved, by EPA for the purpose of determining, through comparison of disposable cleaning cloths with the card, whether post-renovation cleaning has been properly completed.

Component or building component means specific design or structural elements or fixtures of a building or residential dwelling that are distinguished from each other by form, function, and location. These include, but are not limited to, interior components such as: Ceilings, crown molding, walls, chair rails, doors, door trim, floors, fireplaces, radiators and other heating units, shelves, shelf supports, stair treads, stair risers, stair stringers, newel posts, railing caps, balustrades, windows and trim (including sashes, window heads, jambs, sills or stools and troughs), built in cabinets, columns, beams, bathroom vanities, counter tops, and air conditioners; and exterior components such as: Painted roofing, chimneys, flashing, gutters and downspouts, ceilings, soffits, fascias, rake boards, cornerboards, bulkheads, doors and door trim, fences, floors, joists, lattice work, railings and railing caps, siding, handrails, stair risers and treads, stair stringers, columns, balustrades, window sills or stools and troughs, casings, sashes and wells, and air conditioners.

Dry disposable cleaning cloth means a commercially available dry, electrostatically charged, white disposable cloth designed to be used for cleaning hard surfaces such as uncarpeted floors or counter tops.

* * * * *

Firm means a company, partnership, corporation, sole proprietorship or individual doing business, association, or other business entity; a Federal, State, Tribal, or local government agency; or a nonprofit organization.

HEPA-equipped vacuum means a vacuum equipped with a high efficiency particulate air filter.

Interim controls means a set of measures designed to temporarily reduce human exposure or likely exposure to lead-based paint hazards, including specialized cleaning, repairs, maintenance, painting, temporary containment, ongoing monitoring of lead-based paint hazards or potential hazards, and the establishment and operation of management and resident education programs.

* * * * *

Pamphlet means the EPA pamphlet titled *Protect Your Family from Lead During Renovation, Repair & Painting* developed under section 406(a) of TSCA for use in complying with section 406(b) of TSCA, or any State or Tribal pamphlet approved by EPA pursuant to 40 CFR 745.326 that is developed for the same purpose. This includes reproductions of the pamphlet when copied in full and without revision or deletion of material from the pamphlet (except for the addition or revision of State or local sources of information). Before [insert date 8 months after date of publication of the final rule in the **Federal Register**], the term "pamphlet" also means any pamphlet developed by EPA under section 406(a) of TSCA or any State or Tribal pamphlet approved by EPA pursuant to § 745.326.

* * * * *

Renovation means the modification of any existing structure, or portion thereof, that results in the disturbance of painted surfaces, unless that activity is performed as part of an abatement as defined by this part (40 CFR 745.223). The term renovation includes (but is not limited to): The removal or modification of painted surfaces or painted components (e.g., modification of painted doors, surface preparation activity (such as sanding, scraping, or other such activities that may generate paint dust)); the removal of large structures (e.g., walls, ceiling, large surface replastering, major re-plumbing); and window replacement. A renovation performed for the purpose of converting a building, or part of a building, into target housing or a child-occupied facility is a renovation under this subpart.

Renovator means a person who either performs or directs uncertified workers who perform renovations. A certified

renovator is a renovator who has successfully completed a renovator course accredited by EPA or an EPA-authorized State or Tribal program.

Training hour means at least 50 minutes of actual learning, including, but not limited to, time devoted to lecture, learning activities, small group activities, demonstrations, evaluations, and hands-on experience.

Wet disposable cleaning cloth means a commercially available, pre-moistened white disposable cloth designed to be used for cleaning hard surfaces such as uncarpeted floors or counter tops.

Wet mopping system means a device with the following characteristics: A long handle, a mop head designed to be used with disposable absorbent cleaning pads, a reservoir for cleaning solution, and a built-in mechanism for distributing or spraying the cleaning solution onto a floor.

Work area means the area that the certified renovator establishes to contain all of the dust and debris generated by a renovation, based on the certified renovator's evaluation of the extent and nature of the activity and the specific work practices that will be used.

§ 745.84 [Removed]

6. Section 745.84 is removed.

§ 745.85 [Redesignated]

7. Section 745.85 is redesignated as § 745.84.

8. Newly designated § 745.84 is amended as follows:

a. Revise the introductory text of paragraph (a) and revise paragraph (a)(2)(i).

b. Revise the introductory text of paragraph (b) and revise paragraphs (b)(2) and (b)(4).

c. Redesignate paragraph (c) as paragraph (d).

d. Add a new paragraph (c).

c. Revise the introductory text of newly designated paragraph (d).

§ 745.84 Information distribution requirements.

(a) *Renovations in dwelling units.* No more than 60 days before beginning renovation activities in any residential dwelling unit of target housing, the firm performing the renovation must:

(1) * * *

(2) * * *

(i) Obtain, from the adult occupant, a written acknowledgment that the occupant has received the pamphlet; or certify in writing that a pamphlet has been delivered to the dwelling and that the firm performing the renovation has been unsuccessful in obtaining a written acknowledgment from an adult

occupant. Such certification must include the address of the unit undergoing renovation, the date and method of delivery of the pamphlet, names of the persons delivering the pamphlet, reason for lack of acknowledgment (e.g., occupant refuses to sign, no adult occupant available), the signature of a representative of the firm performing the renovation, and the date of signature.

* * * * *

(b) *Renovations in common areas.* No more than 60 days before beginning renovation activities in common areas of multi-unit target housing, the firm performing the renovation must:

(1) * * *

(2) Notify in writing, or ensure written notification of, each affected unit and make the pamphlet available upon request prior to the start of renovation. Such notification shall be accomplished by distributing written notice to each affected unit. The notice shall describe the general nature and locations of the planned renovation activities; the expected starting and ending dates; and a statement of how the occupant can obtain the pamphlet, at no charge, from the firm performing the renovation.

(3) * * *

(4) If the scope, locations, or expected starting and ending dates of the planned renovation activities change after the initial notification, the firm performing the renovation must provide further written notification to the owners and occupants providing revised information on the ongoing or planned activities. This subsequent notification must be provided before the firm performing the renovation initiates work beyond that which was described in the original notice.

(c) *Renovations in child-occupied facilities.* (1) No more than 60 days before beginning renovation activities in any child-occupied facility, the firm performing the renovation must:

(i) Provide the owner of the building with the pamphlet, and comply with one of the following:

(A) Obtain, from the owner, a written acknowledgment that the owner has received the pamphlet.

(B) Obtain a certificate of mailing at least 7 days prior to the renovation.

(ii) If the child-occupied facility is not the owner of the building, provide an adult representative of the child-occupied facility with the pamphlet, and comply with one of the following:

(A) Obtain, from the adult representative, a written acknowledgment that the adult representative has received the pamphlet; or certify in writing that a

pamphlet has been delivered to the facility and that the firm performing the renovation has been unsuccessful in obtaining a written acknowledgment from an adult representative. Such certification must include the address of the child-occupied facility undergoing renovation, the date and method of delivery of the pamphlet, names of the persons delivering the pamphlet, reason for lack of acknowledgment (e.g., representative refuses to sign), the signature of a representative of the firm performing the renovation, and the date of signature.

(B) Obtain a certificate of mailing at least 7 days prior to the renovation.

(2) Provide the parents and guardians of children using the child-occupied facility with the pamphlet and information describing the general nature and locations of the renovation and the anticipated completion date by complying with one of the following:

(i) Mail or hand-deliver the pamphlet and the renovation information to each parent or guardian of a child using the child-occupied facility.

(ii) While the renovation is ongoing, post informational signs describing the general nature and locations of the renovation and the anticipated completion date. These signs must be posted in areas where they can be seen by the parents or guardians of the children frequenting the child-occupied facility. The signs must be accompanied by a posted copy of the pamphlet or information on how interested parents or guardians can review a copy of the pamphlet or obtain a copy from the renovation firm at no cost to the parents or guardians.

(d) *Written acknowledgment.* The written acknowledgments required by paragraphs (a)(1)(i), (a)(2)(i), (b)(1)(i), (c)(1)(i)(A), and (c)(1)(ii)(A) of this section must:

* * * * *

9. Section 745.85 is added to subpart E to read as follows:

§ 745.85 Work practice standards.

(a) *Standards for renovation activities.* Renovations must be performed by certified firms using certified renovators as directed in § 745.89.

(1) *Occupant protection.* Firms must post signs clearly defining the work area and warning occupants and other persons not involved in renovation activities to remain outside of the work area. These signs must be posted before beginning the renovation and must remain in place and readable until the renovation and the post-renovation cleaning verification have been completed. If warning signs have been posted in accordance with 24 CFR

35.1345(b)(2) or 29 CFR 1926.62(m), additional signs are not required by this section.

(2) *Containing the work area.* Before beginning the renovation, the firm must isolate the work area so that no visible dust or debris leaves the work area while the renovation is being performed.

(i) *Interior renovations.* The firm must:

(A) Remove all objects from the work area, including furniture, rugs, and window coverings, or cover them with plastic sheeting or other impermeable material with all seams and edges taped or otherwise sealed.

(B) Close and cover all ducts opening in the work area with taped-down plastic sheeting or other impermeable material.

(C) Close windows and doors in the work area. Doors must be covered with plastic sheeting or other impermeable material. Doors used as an entrance to the work area must be covered with plastic sheeting or other impermeable material in a manner that allows workers to pass through while confining dust and debris to the work area.

(D) Cover the floor surface of the work area with plastic sheeting or other impermeable material with all seams taped and all edges secured at the perimeter of the work area.

(E) Ensure that all personnel, tools, and other items including waste are free of dust and debris when leaving the work area. Alternatively, the paths used to reach the exterior of the building must be covered with plastic sheeting or other impermeable material to prevent the spread of lead contaminated dust and debris outside the work area.

(ii) *Exterior renovations.* The firm must:

(A) Close all doors and windows within 20 feet of the renovation. On multi-story buildings, close all doors and windows within 20 feet of the renovation on the same floor as the renovation, and close all doors and windows on all floors below that are the same horizontal distance from the renovation.

(B) Ensure that doors within the work area that must be used while the job is being performed are covered with plastic sheeting or other impermeable material in a manner that allows workers to pass through while confining dust and debris to the work area.

(C) Cover the ground with plastic sheeting or other disposable impermeable material extending out from the edge of the structure a sufficient distance to collect falling paint debris.

(3) *Waste from renovations.* (i) Waste from renovation activities must be contained to prevent releases of dust and debris before the waste is removed from the work area for storage or disposal. If a chute is used to remove waste from the work area, it must be covered.

(ii) At the conclusion of each work day and at the conclusion of the renovation, waste that has been collected from renovation activities must be stored under containment, in an enclosure, or behind a barrier that prevents release of dust and debris out of the work area and prevents access to dust and debris.

(iii) When the firm transports waste from renovation activities, the firm must contain the waste to prevent identifiable releases of dust and debris.

(4) *Cleaning the work area.* After the renovation has been completed, the firm must clean the work area until no visible dust, debris or residue remains.

(i) *Interior and exterior renovations.* The firm must:

(A) Pick up all paint chips and debris.

(B) Remove the protective sheeting.

Mist the sheeting before folding it, fold the dirty side inward, and either tape shut to seal or seal in heavy-duty bags. Sheeting used to isolate contaminated rooms from non-contaminated rooms must remain in place until after the cleaning and removal of other sheeting. Dispose of the sheeting as waste.

(ii) *Additional cleaning for interior renovations.* The firm must clean all objects and surfaces in and around the work area in the following manner, cleaning from higher to lower:

(A) *Walls.* Clean walls starting at the ceiling and working down to the floor by either vacuuming with a HEPA-equipped vacuum or wiping with a damp cloth.

(B) *Remaining surfaces.* Thoroughly vacuum all remaining surfaces and objects in the work area, including furniture and fixtures, with a HEPA-equipped vacuum. The HEPA-equipped vacuum must be equipped with a beater bar when vacuuming carpets and rugs. Where feasible, floor surfaces underneath a rug or carpeting must also be thoroughly vacuumed with a HEPA-equipped vacuum.

(C) Wipe all remaining surfaces and objects in the work area, except for carpeted or upholstered surfaces, with a damp cloth. Mop uncarpeted floors thoroughly, using a 2-bucket mopping method that keeps the wash water separate from the rinse water, or using a wet mopping system.

(b) *Standards for post-renovation cleaning verification.* (1) *Interiors.* (i) A certified renovator must perform a

visual inspection to determine whether visible amounts of dust, debris or residue are still present. If visible amounts of dust, debris or residue are present, these conditions must be eliminated by re-cleaning and another visual inspection must be performed.

(ii) After a successful visual inspection, a certified renovator must:

(A) Verify that each windowsill in the work area has been adequately cleaned, using the following procedure.

(1) Wipe the windowsill with a wet disposable cleaning cloth that is damp to the touch. If the cloth matches the cleaning verification card, the windowsill has been adequately cleaned.

(2) If the cloth does not match the cleaning verification card, re-clean the windowsill as directed in paragraphs (a)(4)(ii)(B) and (a)(4)(ii)(C) of this section, then either use a new cloth or fold the used cloth in such a way that an unused surface is exposed, and wipe the windowsill again. If the cloth matches the cleaning verification card, that windowsill has been adequately cleaned.

(3) If the cloth does not match the cleaning verification card, clean that windowsill again as directed in paragraphs (a)(4)(ii)(B) and (a)(4)(ii)(C) of this section and wait for 1 hour or until the windowsill has dried completely, whichever is longer.

(4) After waiting for the windowsill to dry, wipe the windowsill with dry disposable cleaning cloths until a cloth, or section of cloth, used to wipe the windowsill matches the cleaning verification card.

(B) Wipe uncarpeted floors within the work area with a wet disposable cleaning cloth, using an application device with a long handle and a head to which the cloth is attached. The cloth must remain damp at all times while it is being used to wipe the floor for post-renovation cleaning verification. If the floor surface within the work area is greater than 40 square feet, the floor within the work area must be divided into roughly equal sections that are each less than 40 square feet. Wipe each such section separately with a new wet disposable cleaning cloth. If the cloth used to wipe each section of the floor within the work area matches the cleaning verification card, the floor has been adequately cleaned.

(1) If the cloth used to wipe a particular floor section does not match the cleaning verification card, re-clean that section of the floor as directed in paragraphs (a)(4)(ii)(B) and (a)(4)(ii)(C) of this section, then use a new wet disposable cleaning cloth to wipe that section again. If the cloth matches the

cleaning verification card, that section of the floor has been adequately cleaned.

(2) If the cloth used to wipe a particular floor section does not match the cleaning verification card after the floor has been re-cleaned, clean that section of the floor again as directed in paragraphs (a)(4)(ii)(B) and (a)(4)(ii)(C) of this section and wait for 1 hour or until the entire floor within the work area has dried completely, whichever is longer.

(3) After waiting for the entire floor within the work area to dry, wipe those sections of the floor that have not yet achieved post-renovation cleaning verification with dry disposable cleaning cloths until a cloth that has wiped those sections of the floor matches the cleaning verification card. This wiping must also be performed using an application device with a long handle and a head to which the cloths are attached.

(iii) Dust clearance sampling may be performed instead of, or in addition to, the procedures identified in paragraph (b)(1)(ii) of this section. If dust clearance sampling is performed, it must be performed in accordance with § 745.227(e)(8) through (e)(9), except that a dust sampling technician certified in accordance with this subpart may collect and report the results of the required samples.

(iv) When the work area passes the post-renovation cleaning verification or dust clearance sampling, remove the warning signs.

(2) *Exteriors.* A certified renovator must perform a visual inspection to determine whether visible amounts of dust, debris or residue are still present. If visible amounts of dust, debris or residue are present, these conditions must be eliminated and another visual inspection must be performed. When the area passes the visual inspection, remove the warning signs.

(c) *Activities conducted after post-renovation cleaning verification.*

Activities that do not disturb paint, such as applying paint to walls that have already been prepared, are not regulated by this subpart if they are conducted after post-renovation cleaning verification has been performed.

10. Section 745.86 is amended by revising paragraph (a) and adding new paragraphs (b)(6) and (b)(7) to read as follows:

§ 745.86 Recordkeeping requirements.

(a) Firms performing renovations or conducting dust sampling must retain and, if requested, make available to EPA all records necessary to demonstrate compliance with this subpart for a

period of 3 years following completion of the renovation or dust sampling activities. This 3-year retention requirement does not supersede longer obligations required by other provisions for retaining the same documentation, including any applicable State or Tribal laws or regulations.

(b) * * *

(6) Any signed and dated statements received from owner-occupants that no children under age 6 reside or are provided child care in housing being renovated which document that the requirements of § 745.85 do not apply. These statements must include a declaration that the renovation will occur in the owner's residence, a declaration that no children under age 6 reside or are provided child care there, the address of the unit undergoing renovation, the owner's name, the signature of the owner, and the date of signature. These statements must be written in the same language as the text of the renovation contract, if any. This requirement includes any statements received from owners or occupants that a child under age 6 with a blood lead level that equals or exceeds 10 µg/dL, or an applicable State or local government level of concern, if lower, resides or is provided child care there.

(7) Documentation of compliance with the requirements of § 745.85, including documentation that a certified renovator was assigned to the project, the certified renovator provided on-the-job training for uncertified workers used on the project, the certified renovator performed or directed uncertified workers who performed all of the tasks described in § 745.85(a), and the certified renovator performed the post-renovation cleaning verification described in § 745.85(b). This documentation must include a copy of the certified renovator's or dust sampling technician's training certificate, and signed and dated descriptions of how activities performed by the certified renovator or dust sampling technician, including worker training activities, sign posting, work area containment, waste handling, cleaning, and post-renovation cleaning verification or clearance were conducted in compliance with this subpart. The descriptions of these activities must include a certification by the record preparer that the descriptions are complete and accurate.

11. Section 745.87 is amended by revising paragraph (e) to read as follows:

§ 745.87 Enforcement and inspections.

* * * * *

(e) Lead-based paint is assumed to be present at renovations covered by this

subpart. EPA may conduct inspections and issue subpoenas pursuant to the provisions of TSCA section 11 (15 U.S.C. 2610) to ensure compliance with this subpart.

§ 745.88 [Removed]

12. Section 745.88 is removed.

13. Section 745.89 is added to subpart E to read as follows:

§ 745.89 Firm certification.

(a) *Initial certification.* (1) Firms that perform renovations for compensation must apply to EPA for certification to perform renovations or dust sampling. To apply, a firm must submit to EPA a completed "Application for Firms," signed by an authorized agent of the firm, and pay at least the correct amount of fees. If a firm pays more than the correct amount of fees, EPA will reimburse the firm for the excess amount.

(2) After EPA receives a firm's application, EPA will take one of the following actions within 90 days of the date the application is received:

(i) EPA will approve a firm's application if EPA determines that it is complete and that the environmental compliance history of the firm, its principals, or its key employees does not show an unwillingness or inability to maintain compliance with environmental statutes or regulations. An application is complete if it contains all of the information requested on the form and includes at least the correct amount of fees. When EPA approves a firm's application, EPA will issue the firm a certificate with an expiration date not more than 3 years from the date the application is approved. EPA certification allows the firm to perform renovations covered by this section in any State or Indian Tribal area that does not have a renovation program that is authorized under subpart Q of this part.

(ii) EPA will request a firm to supplement its application if EPA determines that the application is incomplete. If EPA requests a firm to supplement its application, the firm must submit the requested information or pay the additional fees within 30 days of the date of the request.

(iii) EPA will not approve a firm's application if the firm does not supplement its application in accordance with paragraph (a)(2)(ii) of this section or if EPA determines that the environmental compliance history of the firm, its principals, or its key employees demonstrates an unwillingness or inability to maintain compliance with environmental statutes or regulations. EPA will send the firm

a letter giving the reason for not approving the application. EPA will not refund the application fees. A firm may reapply for certification at any time by filing a new, complete application that includes the correct amount of fees.

(b) *Re-certification.* To maintain its certification, a firm must be re-certified by EPA every 3 years.

(1) *Timely and complete application.* To be re-certified, a firm must submit a complete application for re-certification. A complete application for re-certification includes a completed "Application for Firms" which contains all of the information requested by the form and is signed by an authorized agent of the firm, noting on the form that it is submitted as a re-certification. A complete application must also include at least the correct amount of fees. If a firm pays more than the correct amount of fees, EPA will reimburse the firm for the excess amount.

(i) An application for re-certification is timely if it is postmarked 90 days or more before the date the firm's current certification expires. If the firm's application is complete and timely, the firm's current certification will remain in effect until its expiration date or until EPA has made a final decision to approve or disapprove the re-certification application, whichever is later.

(ii) If the firm submits a complete re-certification application less than 90 days before its current certification expires, and EPA does not approve the application before the expiration date, the firm's current certification will expire and the firm will not be able to conduct renovations until EPA approves its re-certification application.

(iii) If the firm fails to obtain recertification before the firm's current certification expires, the firm must not perform renovations or dust sampling until it is certified anew pursuant to paragraph (a) of this section.

(2) *EPA action on an application.* After EPA receives a firm's application for re-certification, EPA will review the application and take one of the following actions within 90 days of receipt:

(i) EPA will approve a firm's application if EPA determines that it is timely and complete and that the environmental compliance history of the firm, its principals, or its key employees does not show an unwillingness or inability to maintain compliance with environmental statutes or regulations. When EPA approves a firm's application for re-certification, EPA will issue the firm a new certificate with an expiration date 3 years from the date that the firm's current certification

expires. EPA certification allows the firm to perform renovations or dust sampling covered by this section in any State or Indian Tribal area that does not have a renovation program that is authorized under subpart Q of this part.

(ii) EPA will request a firm to supplement its application if EPA determines that the application is incomplete.

(iii) EPA will not approve a firm's application if it is not received or is not complete as of the date that the firm's current certification expires, or if EPA determines that the environmental compliance history of the firm, its principals, or its key employees demonstrates an unwillingness or inability to maintain compliance with environmental statutes or regulations. EPA will send the firm a letter giving the reason for not approving the application. EPA will not refund the application fees. A firm may reapply for certification at any time by filing a new application and paying the correct amount of fees.

(c) *Amendment of certification.* A firm must amend its certification within 45 days of the date a change occurs to information included in the firm's most recent application. If the firm fails to amend its certification within 45 days of the date the change occurs, the firm may not perform renovations or dust sampling until its certification is amended.

(1) To amend a certification, a firm must submit a completed "Application for Firms," signed by an authorized agent of the firm, noting on the form that it is submitted as an amendment and indicating the information that has changed. The firm must also pay at least the correct amount of fees.

(2) If additional information is needed to process the amendment, or the firm did not pay the correct amount of fees, EPA will request the firm to submit the necessary information or fees. The firm's certification is not amended until the firm complies with the request.

(3) Amending a certification does not affect the certification expiration date.

(d) *Firm responsibilities.* Firms performing renovations or dust sampling must ensure that:

(1)(i) All persons performing renovation activities on behalf of the firm are either certified renovators or have been trained by a certified renovator in accordance with § 745.90.

(ii) All persons performing dust sampling on behalf of the firm are certified as either risk assessors, inspectors, or dust sampling technicians.

(2) A certified renovator is assigned to each renovation performed by the firm

and discharges all of the certified renovator responsibilities identified in § 745.90; and

(3) All renovations performed by the firm are performed in accordance with the work practice standards in § 745.85.

14. Section 745.90 is added to subpart E to read as follows:

§ 745.90 Renovator and dust sampling technician certification.

(a) *Renovator and dust sampling technician certification.* (1) To become a certified renovator or dust sampling technician, a person must successfully complete the appropriate course accredited by EPA under § 745.225 or by a State or Tribal program that is authorized under subpart Q of this part. The course completion certificate serves as proof of certification. EPA renovator certification allows the certified individual to perform renovations covered by this section in any State or Indian Tribal area that does not have a renovation program that is authorized under subpart Q of this part. EPA dust sampling technician certification allows the certified individual to perform dust sampling covered by this section in any State or Indian Tribal area that does not have a renovation program that is authorized under subpart Q of this part.

(2) To maintain renovator or dust sampling technician certification, a person must complete a renovator or dust sampling technician refresher course accredited by EPA under § 745.225 or by a State or Tribal program that is authorized under subpart Q of this part within 3 years of the date the person completed the initial course described in paragraph (a)(1) of this section. If the person does not complete a refresher course within this time, the person must re-take the initial course to become certified again.

(3) Persons who have a valid lead-based paint abatement supervisor or worker certification issued by EPA under § 745.226 or by a State or Tribal program authorized under subpart Q of this part are also deemed to be certified renovators.

(4) Persons who have a valid lead-based paint inspector or risk assessor certification issued by EPA under § 745.226 or by a State or Tribal program authorized under subpart Q of this part are also deemed to be certified dust sampling technicians.

(b) *Renovator responsibilities.* Certified renovators are responsible for ensuring compliance with § 745.85 at all renovations to which they are assigned. A certified renovator:

(1) Must perform all of the tasks described in § 745.85(b) and must either perform or direct uncertified workers

who perform all of the tasks described in § 745.85(a).

(2) Must provide training to uncertified workers on the lead-safe work practices they will be using in performing their assigned tasks, how to isolate the work area and maintain the integrity of the containment barriers, and how to avoid spreading dust or debris beyond the work area.

(3) Must be physically present at the work site when the signs required by § 745.85(a)(1) are posted, while the work area containment required by § 745.85(a)(2) is being established, and while the work area cleaning required by § 745.85(a)(4) is performed.

(4) Must direct work being performed by uncertified persons to ensure that lead-safe work practices are being followed, the integrity of the containment barriers is maintained, and dust or debris is not spread beyond the work area.

(5) Must be available, either on-site or by telephone, at all times that renovations are being conducted.

(6) When requested by the entity contracting for renovation services, must use an acceptable test kit to determine whether components to be affected by the renovation contain lead-based paint.

(7) Must have with them at the work site copies of their initial course completion certificate and their most recent refresher course completion certificate.

(c) *Dust sampling technician responsibilities.* A certified dust sampling technician:

(1) Must collect dust samples in accordance with § 745.227(e)(8), must send the collected samples to a laboratory recognized by EPA under TSCA section 405(b), and must compare the results to the clearance levels in accordance with § 745.227(e)(8).

(2) Must have with them at the work site copies of their initial course completion certificate and their most recent refresher course completion certificate.

15. Section 745.91 is added to subpart E to read as follows:

§ 745.91 Suspending, revoking, or modifying an individual's or firm's certification.

(a)(1) *Grounds for suspending, revoking or modifying an individual's certification.* EPA may suspend, revoke, or modify an individual's certification if the individual fails to comply with Federal lead-based paint statutes or regulations. EPA may also suspend, revoke, or modify a certified renovator's certification if the renovator fails to ensure that all assigned renovations

comply with § 745.85. In addition to an administrative or judicial finding of violation, execution of a consent agreement in settlement of an enforcement action constitutes, for purposes of this section, evidence of a failure to comply with relevant statutes or regulations.

(2) *Grounds for suspending, revoking or modifying a firm's certification.* EPA may suspend, revoke, or modify a firm's certification if the firm:

(i) Submits false or misleading information to EPA in its application for certification or re-certification.

(ii) Fails to maintain or falsifies records required in § 745.86.

(iii) Fails to comply, or an individual performing a renovation on behalf of the firm fails to comply, with Federal lead-based paint statutes or regulations. In addition to an administrative or judicial finding of violation, execution of a consent agreement in settlement of an enforcement action constitutes, for purposes of this section, evidence of a failure to comply with relevant statutes or regulations.

(b) *Process for suspending, revoking, or modifying certification.* (1) Prior to taking action to suspend, revoke, or modify an individual's or firm's certification, EPA will notify the affected entity in writing of the following:

(i) The legal and factual basis for the proposed suspension, revocation, or modification.

(ii) The anticipated commencement date and duration of the suspension, revocation, or modification.

(iii) Actions, if any, which the affected entity may take to avoid suspension, revocation, or modification, or to receive certification in the future.

(iv) The opportunity and method for requesting a hearing prior to final suspension, revocation, or modification.

(2) If an individual or firm requests a hearing, EPA will:

(i) Provide the affected entity an opportunity to offer written statements in response to EPA's assertions of the legal and factual basis for its proposed action.

(ii) Appoint an impartial official of EPA as Presiding Officer to conduct the hearing.

(3) The Presiding Officer will:

(i) Conduct a fair, orderly, and impartial hearing within 90 days of the request for a hearing.

(ii) Consider all relevant evidence, explanation, comment, and argument submitted.

(iii) Notify the affected entity in writing within 90 days of completion of the hearing of his or her decision and order. Such an order is a final agency

action which may be subject to judicial review.

(4) If EPA determines that the public health, interest, or welfare warrants immediate action to suspend the certification of any individual or firm prior to the opportunity for a hearing, it will:

(i) Notify the affected entity in accordance with paragraph (b)(1)(i) through (b)(1)(iii) of this section, explaining why it is necessary to suspend the entity's certification before an opportunity for a hearing.

(ii) Notify the affected entity of its right to request a hearing on the immediate suspension within 15 days of the suspension taking place and the procedures for the conduct of such a hearing.

(5) Any notice, decision, or order issued by EPA under this section, any transcript or other verbatim record of oral testimony, and any documents filed by a certified individual or firm in a hearing under this section will be available to the public, except as otherwise provided by section 14 of TSCA or by part 2 of this title. Any such hearing at which oral testimony is presented will be open to the public, except that the Presiding Officer may exclude the public to the extent necessary to allow presentation of information which may be entitled to confidential treatment under section 14 of TSCA or part 2 of this title.

(6) EPA will maintain a publicly available list of entities whose certification has been suspended, revoked, modified or reinstated.

16. Section 745.220 is amended by revising paragraph (a) to read as follows:

§ 745.220 Scope and applicability.

(a) This subpart contains procedures and requirements for the accreditation of training programs for lead-based paint activities and renovations, procedures and requirements for the certification of individuals and firms engaged in lead-based paint activities, and work practice standards for performing such activities. This subpart also requires that, except as discussed below, all lead-based paint activities, as defined in this subpart, be performed by certified individuals and firms.

* * * * *

17. Section 745.225 is amended as follows:

a. Revise paragraph (a).

b. Revise the introductory text of paragraph (b), revise paragraph (b)(1)(ii), and add paragraph (b)(1)(iv)(C).

c. Revise the introductory text of paragraph (c), add paragraphs (c)(6)(vi), (c)(6)(vii), and (c)(8)(vi), and revise paragraphs (c)(8)(iv) and (c)(10).

d. Amend paragraph (c)(13) by replacing the phrase "lead-based paint activities" with the phrase "renovator, dust sampling technician, or lead-based paint activities" wherever it appears in the paragraph.

e. Add paragraphs (d)(6) and (d)(7).

f. Revise the introductory text of paragraph (e).

g. Amend paragraph (e)(1) by removing the word "activities" wherever it appears in the paragraph.

h. Revise paragraph (e)(2).

§ 745.225 Accreditation of training programs; target housing and child-occupied facilities.

(a) *Scope.* (1) A training program may seek accreditation to offer courses in any of the following disciplines: Inspector, risk assessor, supervisor, project designer, abatement worker, renovator, and dust sampling technician. A training program may also seek accreditation to offer refresher courses for each of the above listed disciplines.

(2) Training programs may first apply to EPA for accreditation of their lead-based paint activities courses or refresher courses pursuant to this section on or after August 31, 1998. Training programs may first apply to EPA for accreditation of their renovator or dust sampling technician courses or refresher courses pursuant to this section on or after [insert date 1 year after date of publication of the final rule in the **Federal Register**].

(3) A training program must not provide, offer, or claim to provide EPA-accredited lead-based paint activities courses without applying for and receiving accreditation from EPA as required under paragraph (b) of this section on or after March 1, 1999. A training program must not provide, offer, or claim to provide EPA-accredited renovator or dust sampling technician courses without applying for and receiving accreditation from EPA as required under paragraph (b) of this section on or after [insert date 60 days after date of publication of the final rule in the **Federal Register**].

(b) *Application process.* The following are procedures a training program must follow to receive EPA accreditation to offer lead-based paint activities courses, renovator courses, or dust sampling technician courses:

(1) * * *

(ii) A list of courses for which it is applying for accreditation. For the purposes of this section, courses taught in different languages are considered different courses, and each must

independently meet the accreditation requirements.

* * * * *

(iv) * * *

(C) When applying for accreditation of a course in a language other than English, a signed statement from a qualified, independent translator that they had compared the course to the English language version and found the translation to be accurate.

* * * * *

(c) *Requirements for the accreditation of training programs.* For a training program to obtain accreditation from EPA to offer lead-based paint activities courses, renovator courses, or dust sampling technician courses, the program must meet the following requirements:

* * * * *

(6) * * *

(vi) The renovator course must last a minimum of 8 training hours, with a minimum of 2 hours devoted to hands-on training activities. The minimum curriculum requirements for the renovator course are contained in paragraph (d)(6) of this section. Hands-on training activities must cover renovation methods that minimize the creation of dust and lead-based paint hazards, interior and exterior containment and cleanup methods, and post-renovation cleaning verification.

(vii) The dust sampling technician course must last a minimum of 8 training hours, with a minimum of 2 hours devoted to hands-on training activities. The minimum curriculum requirements for the dust sampling technician course are contained in paragraph (d)(7) of this section. Hands on training activities must cover dust sampling methodologies.

* * * * *

(8) * * *

(iv) For initial inspector, risk assessor, project designer, supervisor, or abatement worker course completion certificates, the expiration date of interim certification, which is 6 months from the date of course completion.

* * * * *

(vi) The language in which the course was taught.

* * * * *

(10) Courses offered by the training program must teach the work practice standards contained in § 745.85 or § 745.227, as applicable, in such a manner that trainees are provided with the knowledge needed to perform the renovations or lead-based paint activities they will be responsible for conducting.

* * * * *

(d) * * *

(6) *Renovator.* (i) Role and responsibility of a renovator.

(ii) Background information on lead and its adverse health effects.

(iii) Background information on Federal, State, and local regulations and guidance that pertains to lead-based paint and renovation activities.

(iv) Procedures for using acceptable test kits to determine whether paint is lead-based paint.

(v) Renovation methods to minimize the creation of dust and lead-based paint hazards.

(vi) Interior and exterior containment and cleanup methods.

(vii) Methods to ensure that the renovation has been properly completed, including clean-up verification, and clearance testing.

(viii) Waste handling and disposal.

(7) *Dust sampling technician.* (i) Role and responsibility of a dust sampling technician.

(ii) Background information on lead and its adverse health effects.

(iii) Background information on Federal, State, and local regulations and guidance that pertains to lead-based paint and renovation activities.

(iv) Dust sampling methodologies.

(v) Clearance standards and testing.

(vi) Report preparation.

* * * * *

(e) *Requirements for the accreditation of refresher training programs.* A training program may seek accreditation to offer refresher training courses in any of the following disciplines: Inspector, risk assessor, supervisor, project designer, abatement worker, renovator, and dust sampling technician. To obtain EPA accreditation to offer refresher training, a training program must meet the following minimum requirements:

* * * * *

(1) * * *

(2) Refresher courses for inspector, risk assessor, supervisor, and abatement worker must last a minimum of 8 training hours. Refresher courses for project designer, renovator, and dust sampling technician must last a minimum of 4 training hours.

* * * * *

18. Section 745.320 is amended by revising paragraph (c) to read as follows:

§ 745.320 Scope and purpose.

* * * * *

(c) A State or Indian Tribe may seek authorization to administer and enforce all of the provisions of subpart E of this part or just the pre-renovation education provisions of subpart E of this part. The provisions of §§ 745.324 and 745.326

apply for the purposes of such program authorizations.

* * * * *

19. Section 745.324 is amended as follows:

a. Revise paragraph (a)(1).

b. Delete the phrase "lead-based paint training accreditation and certification" from the second sentence of paragraph (b)(1)(iii).

c. Revise paragraph (b)(2)(ii).

d. Revise paragraphs (e)(2)(i) and (e)(4).

e. Revise paragraph (f)(2).

f. Revise paragraph (i)(8).

§ 745.324 Authorization of State or Tribal programs.

(a) *Application content and procedures.* (1) Any State or Indian Tribe that seeks authorization from EPA to administer and enforce the provisions of subpart E or subpart L of this part must submit an application to the Administrator in accordance with this paragraph.

* * * * *

(b) * * *

(2) * * *

(i) * * *

(ii) An analysis of the State or Tribal program that compares the program to the Federal program in subpart E or subpart L of this part, or both. This analysis must demonstrate how the program is, in the State's or Indian Tribe's assessment, at least as protective as the elements in the Federal program at subpart E or subpart L of this part, or both. EPA will use this analysis to evaluate the protectiveness of the State or Tribal program in making its determination pursuant to paragraph (e)(2)(i) of this section.

* * * * *

(e) * * *

(2) * * *

(i) The State or Tribal program is at least as protective of human health and the environment as the corresponding Federal program under subpart E or subpart L of this part, or both; and

* * * * *

(4) If the State or Indian Tribe applies for authorization of State or Tribal programs under both subpart E and subpart L, EPA may, as appropriate, authorize one program and disapprove the other.

* * * * *

(f) * * *

(2) If a State or Indian Tribe does not have an authorized program to administer and enforce the pre-renovation education requirements of subpart E of this part by August 31, 1998, the Administrator will, by such date, enforce those provisions of subpart

E of this part as the Federal program for that State or Indian Country. If a State or Indian Tribe does not have an authorized program to administer and enforce the training, certification and accreditation requirements and work practice standards of subpart E of this part by [insert date 1 year after date of publication of the final rule in the **Federal Register**], the Administrator will, by such date, enforce those provisions of subpart E of this part as the Federal program for that State or Indian Country.

* * * * *

(i) * * *

(8) By the date of such order, the Administrator will establish and enforce the provisions of subpart E or subpart L of this part, or both, as the Federal program for that State or Indian Country.

20. Section 745.326 is revised to read as follows:

§ 745.326 Renovation: State and Tribal program requirements.

(a) *Program elements.* To receive authorization from EPA, a State or Tribal program must contain the following program elements:

(1) For pre-renovation education programs, procedures and requirements for the distribution of lead hazard information to owners and occupants of target housing and child-occupied facilities before renovations for compensation.

(2) For renovation training, certification, accreditation, and work practice standards programs:

(i) Procedures and requirements for the accreditation of renovation and dust sampling technician training programs.

(ii) Procedures and requirements for the certification of renovators and dust sampling technicians.

(iii) Procedures and requirements for the certification of individuals and/or firms.

(iv) Requirements that all renovations be conducted by appropriately certified individuals and/or firms.

(v) Work practice standards for the conduct of renovations.

(3) For all renovation programs, development of the appropriate infrastructure or government capacity to effectively carry out a State or Tribal program.

(b) *Pre-renovation education.* To be considered at least as protective as the Federal program, the State or Tribal program must:

(1) Establish clear standards for identifying renovation activities that trigger the information distribution requirements.

(2) Establish procedures for distributing the lead hazard information

to owners and occupants of housing and child-occupied facilities prior to renovation activities.

(3) Require that the information to be distributed include either the pamphlet titled *Protect Your Family from Lead During Renovation, Repair & Painting*, developed by EPA under section 406(a), or an alternate pamphlet or package of lead hazard information that has been submitted by the State or Tribe, reviewed by EPA, and approved by EPA for that State or Tribe. Such information must contain renovation-specific information similar to that in *Protect Your Family from Lead During Renovation, Repair & Painting*, must meet the content requirements prescribed by section 406(a) of TSCA, and must be in a format that is readable to the diverse audience of housing and child-occupied facility owners and occupants in that State or Tribe.

(i) A State or Tribe with a pre-renovation education program approved before [insert date 60 days after date of publication of the final rule in the **Federal Register**] must demonstrate that it meets the requirements of this section no later than the first report that it submits pursuant to § 745.324(h) of this subpart on or after [insert date 1 year after date of publication of the final rule in the **Federal Register**].

(ii) A State or Tribe with an application for approval of a pre-renovation education program submitted but not approved before [insert date 60 days after date of publication of the final rule in the **Federal Register**] must demonstrate that it meets the requirements of this section either by amending its application or in the first report that it submits pursuant to § 745.324(h) of this part on or after [insert date 1 year after date of publication of the final rule in the **Federal Register**].

(iii) A State or Indian Tribe submitting its application for approval of a pre-renovation education program on or after [insert date 60 days after date of publication of the final rule in the **Federal Register**] must demonstrate in its application that it meets the requirements of this section.

(c) *Accreditation of training programs.* To be considered at least as protective as the Federal program, the State or Tribal program must meet the requirements of either paragraph (c)(1) or (c)(2) of this section:

(1) The State or Tribal program must establish accreditation procedures and requirements, including:

(i) Procedures and requirements for the accreditation of training programs, including, but not limited to:

(A) Training curriculum requirements.

(B) Training hour requirements.

(C) Hands-on training requirements.

(D) Trainee competency and proficiency requirements.

(E) Requirements for training program quality control.

(ii) Procedures and requirements for the re-accreditation of training programs.

(iii) Procedures for the oversight of training programs.

(iv) Procedures and standards for the suspension, revocation, or modification of training program accreditations; or

(2) The State or Tribal program must establish procedures and requirements for the acceptance of renovation training offered by training providers accredited by EPA or a State or Tribal program authorized by EPA under this subpart.

(d) *Certification of renovators.* To be considered at least as protective as the Federal program, the State or Tribal program must:

(1) Establish procedures and requirements for individual certification that ensure that certified renovators are trained by an accredited training program.

(2) Establish procedures and requirements for re-certification.

(3) Establish procedures for the suspension, revocation, or modification of certifications.

(e) *Work practice standards for renovations.* To be considered at least as protective as the Federal program, the State or Tribal program must establish standards that ensure that renovations are conducted reliably, effectively, and safely. At a minimum, the State or Tribal program must contain the following requirements:

(1) Renovations must be conducted only by certified contractors.

(2) Renovations are conducted using lead-safe work practices that are at least as protective to occupants as the requirements in § 745.85.

(3) Certified contractors must retain appropriate records.

21. Section 745.327 is amended by revising paragraphs (b)(1)(iv) and (b)(2)(ii) to read as follows:

§ 745.327 State or Indian Tribal lead-based paint compliance and enforcement programs.

* * * * *

(b) * * *

(1) * * *

(iv) Requirements that regulate the conduct of renovation activities as described at § 745.326.

(2) * * *

(ii) For the purposes of enforcing a renovation program, State or Tribal

officials must be able to enter a firm's place of business or work site.

* * * * *

22. Section 745.339 is revised to read as follows:

§ 745.339 Effective dates.

States and Indian Tribes may seek authorization to administer and enforce subpart L of this part pursuant to this subpart at any time. States and Indian Tribes may seek authorization to administer and enforce subpart E of this part pursuant to this subpart effective [insert date 60 days after date of publication of the final rule in the **Federal Register**].

[FR Doc. E7-10797 Filed 6-4-07; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 367

[Docket No. FMCSA-2007-27871]

RIN 2126-AB09

Fees for Unified Carrier Registration Plan and Agreement; Correction

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: On May 29, 2007, (72 FR 29472), FMCSA published a proposed rule in the **Federal Register** that would establish annual fees and a fee bracket structure for the Unified Carrier Registration Agreement. This action is required under the Unified Carrier Registration Act of 2005, enacted as Subtitle C of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users. This document corrects some errors in that proposed rule.

DATES: The comment period has not changed. You must submit comments on the proposed rule on or before June 13, 2007.

FOR FURTHER INFORMATION CONTACT: Mr. David Miller, Regulatory Development Division, (202) 366-5370 or by e-mail at FMCSAregs@DOT.gov.

SUPPLEMENTARY INFORMATION: The Federal Motor Carrier Safety Administration (FMCSA) published a proposed rule in the **Federal Register** of May 29, 2007 (72 FR 29472). That document proposed to establish fees and a fee bracket structure for the Unified Carrier Registration Agreement.

Inadvertently, there were a number of errors in the preamble of that document.

In proposed rule FR Doc. 07-2652, beginning on page 29472 in the issue of May 29, 2007, make all the following corrections.

1. On page 29472, beginning in the first column, correct the Addresses section to read:

ADDRESSES: You may submit comments, identified by DOT DMS Docket Number FMCSA-2007-27871, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Agency Web Site:* <http://dms.dot.gov>. Follow the instructions for submitting comments on the DOT electronic docket site. *Note:* Due to the relocation of the U.S. Department of Transportation, the DOT electronic docket site will not be available between June 13 and June 17, 2007. During this time you may submit comments by one of the alternate methods listed.

- *Fax:* 1-202-493-2251.

- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Ave., SE., Washington, DC 20590.

- *Hand Delivery:* U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Ave., SE., Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the agency name and docket number (FMCSA-2007-27871). Note that all comments received will be posted without change to <http://dms.dot.gov>, including any personal information provided. Please see the Privacy Act heading for further information.

Docket: For access to the docket to read background documents or comments received, go to <http://dms.dot.gov> at any time or to U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Ave., SE, Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

Privacy Act: Anyone is able to search the electronic form for all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit <http://dms.dot.gov>.

Comments received after the comment closing date will be included in the docket and we will consider late comments to the extent practicable. FMCSA may, however, issue a final rule at any time after the close of the comment period.

Correct the **SUPPLEMENTARY INFORMATION** section by making all of the following changes.

2. On page 29472, in the third column, add this sentence to the end of the *I. Legal Basis for the Rulemaking* section, immediately above the *II. Statutory Requirements for UCR Fees* heading:

Because of this very short time period set by the statute to complete the rulemaking, the comment period for this notice of proposed rulemaking will be fifteen days.

3. On page 29472, in the third column, in the first sentence under the *II. Statutory Requirements for UCR Fees* heading, correct the U.S.C. reference to read: "(see 49 U.S.C. 14504a(d)(7)(A), (f)(1) and (g))".

4. On page 29478, under the heading *E. Carrier Population*, in the third column, change three numbers to correct an arithmetical error. On line 14, correct "6,647" to "6,665" wherever it appears. On lines 27 and 32, correct "2,532" to "2,550" wherever it appears. On line 33, correct "2,582" to "2,600."

5. On page 29480, in the third column, under the heading *National Environmental Policy Act*, correct the reference on line 4 that reads "(42 D.S.C. 4321 *et seq.*)" to read "(42 U.S.C. 4321 *et seq.*)" and the reference on line 20 that reads "(42 D.S.C. 7401 *et seq.*)" to read "(42 U.S.C. 7401 *et seq.*)".

6. On page 29481, in the first column, on line 5 under the heading *Executive Order 13211 (Energy Effects)*, correct "VSE" to read "Use."

Issued on: May 31, 2007.

William A. Quade,

Acting Associate Administrator for Enforcement and Program Delivery.

[FR Doc. 07-2787 Filed 5-31-07; 3:23 pm]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To List the Wolverine as Threatened or Endangered

AGENCY: Fish and Wildlife Service, Interior.