

hazardous air pollutants (NESHAP) for those sources. The EPA is then required to review these technology-based standards and to revise them “as necessary (taking into account developments in practices, processes, and control technologies)” no less frequently than every 8 years, under CAA section 112(d)(6). The second stage in standard-setting focuses on reducing any remaining “residual” risk according to CAA section 112(f).

On January 16, 2009, then Administrator Stephen Johnson signed a final rule amending the National Emission Standards for Hazardous Air Pollutants From Petroleum Refineries and the signed rule was made publicly available on EPA’s Web site. The signed rule included several different actions. First, it promulgated maximum achievable control technology (MACT) standards under sections 112(d)(2) and (3) for heat exchange systems, which EPA had not addressed in the original Refinery MACT 1 rule. Second, pursuant to CAA section 112(f)(2), the rule addressed residual risk for all Refinery MACT 1 sources, including heat exchange systems, and it addressed the technology review pursuant to CAA section 112(d)(6) for all sources addressed in the original Refinery MACT 1 rule. Additionally, we updated the table in the Refinery MACT 1 standards (Table 6) that cross-references the General Provisions in 40 CFR part 63, subpart A, and made a few additional clarifications to dates and cross-references in the Refinery MACT 1 standards.

The signed rule was submitted to the Office of the Federal Register for publication. Rahm Emanuel, Assistant to the President and Chief of Staff, issued a memorandum on January 20, 2009, directing Agencies to withdraw from the Office of the Federal Register “all proposed or final regulations that have not been published in the **Federal Register** so that they can be reviewed and approved by a department or agency head.” Although there was an exception for “regulations subject to statutory or judicial deadlines,” the Agency chose not to apply the exception in this case. One portion of the final rule, the CAA section 112(d)(6) review, was performed pursuant to the terms of a Consent Decree, which, as modified, required that by January 16, 2009, EPA “shall sign and promptly forward to the **Federal Register** for publication either final revisions to the standards for petroleum refineries in 40 CFR Part 63, Subpart CC pursuant to 42 U.S.C. 7412(d)(6) or a final determination that no revisions are necessary.” Former Administrator Stephen Johnson signed

the rule on January 16, 2009, and promptly forwarded it to the **Federal Register** office, thus, fulfilling this obligation.<sup>1</sup>

Upon further review, EPA has determined that the residual risk and technology reviews may not accurately characterize the risk posed by this source category. We recently responded to a Request for Correction under EPA’s Information Quality Guidelines from the City of Houston. (Letter to U.S. EPA Information Quality Guidelines staff from the Honorable Bill White, Mayor of Houston, July 9, 2008.) In that response, we recognized that we are currently taking action (and plan to take additional action) to gather better emissions information from the refining industry. Additionally, we note that during the comment period on the proposed rule, similar issues were raised concerning the representativeness of the emissions data, and whether they provide an accurate basis for characterizing the risks posed. Accordingly, after additional consideration of these issues, we believe it is necessary to withdraw the rule that was signed on January 16, 2009, so that we may develop a more robust analysis based on the improved information we are developing.

For these reasons, EPA is proposing to withdraw the signed final rule that included the residual risk and technology review for Refinery MACT 1 sources to provide the Agency with time to collect additional data and perform these analyses. Once EPA has undertaken these activities, we will provide the public with an opportunity to comment on a new proposed rule that would be issued.

Simultaneous with the issuance of this proposal, we are publishing in the **Federal Register** a final rule identical in substance to that signed on January 16, 2009, for: (1) The technology-based MACT standards for heat exchange systems under section 112(d)(2) and (3) of the CAA; (2) revisions to Table 6 of the existing Refinery MACT 1 rule (subpart CC), which describes the application of the NESHAP General Provisions in 40 CFR part 63, subpart A to subpart CC; and (3) the other conforming changes and corrections that were included as part of the January 16, 2009 rule. The portions of the January 16, 2009 rule that are being published as a final rule are included in a new **Federal Register** notice signed by

<sup>1</sup> We note that on January 30, 2009, the litigants notified EPA by letter that they believed the Agency had discharged its obligation under the consent decree and that “further review of the rule pursuant to the Emanuel memo will not violate the consent decree.”

Administrator Jackson and, regarding those issues, are identical in substance to the final rule that was signed by former Administrator Stephen Johnson.

#### List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: October 15, 2009.

**Lisa P. Jackson,**

*Administrator.*

[FR Doc. E9–25453 Filed 10–27–09; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 745

[EPA–HQ–OPPT–2005–0049; FRL–8795–9]

RIN 2070–AJ55

### Lead; Amendment to the Opt-out and Recordkeeping Provisions in the Renovation, Repair, and Painting Program

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing several revisions to the Lead Renovation, Repair, and Painting Program (RRP) rule that published in the **Federal Register** on April 22, 2008. The rule establishes accreditation, training, certification, and recordkeeping requirements as well as work practice standards on persons performing renovations for compensation in most pre-1978 housing and child-occupied facilities. In this document, EPA is proposing to eliminate the “opt-out” provision that currently exempts a renovation firm from the training and work practice requirements of the rule where the firm obtains a certification from the owner of a residence he or she occupies that no child under age 6 or pregnant woman resides in the home and the home is not a child-occupied facility. EPA is also proposing to require renovation firms to provide a copy of the records demonstrating compliance with the training and work practice requirements of the RRP rule to the owner and, if different, the occupant of the building being renovated or the operator of the child-occupied facility.

**DATES:** Comments must be received on or before November 27, 2009.

**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-OPPT-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 [www.regulations.gov](http://www.regulations.gov) or e-mail. The [www.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 [www.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.

*Docket:* All documents in the docket are listed in the docket index available at <http://www.regulations.gov>. Although listed in the index, some information is not publicly available, e.g., 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 legal 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](mailto:TSCA-Hotline@epa.gov).

*For technical information contact:* Marc Edmonds, National Program Chemicals Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 566-0758; e-mail address: [edmonds.marc@epa.gov](mailto:edmonds.marc@epa.gov).

Hearing- or speech-challenged individuals may access the numbers in this unit through TTY by calling the toll-free Federal Relay Service at 1-800-877-8339.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. General Information**

###### **A. Does this Action Apply to Me?**

You may be potentially affected by this action if you operate a training program required to be accredited under 40 CFR 745.225, if you are a firm who must be certified to conduct renovation activities in accordance with 40 CFR 745.89, or if you are a professional (individual or firm) who must be certified to conduct lead-based paint activities in accordance with 40 CFR 745.226.

This proposed rule applies only in States, Territories, and Indian Tribal areas that do not have authorized programs pursuant to 40 CFR 745.324.

For further information regarding the authorization status of States, Territories, and Indian Tribes, contact the National Lead Information Center (NLIC) at 1-800-424-LEAD [5323]. Hearing- or speech-challenged individuals may access this number through TTY by calling the toll-free Federal Relay Service at 1-800-877-8339. Potentially affected categories and entities may include, but are not limited to:

- Building construction (NAICS code 236), e.g., single-family housing construction, multi-family housing construction, residential remodelers.

- Specialty trade contractors (NAICS code 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 code 531), e.g., lessors of residential buildings and dwellings, residential property managers.

- Child day care services (NAICS code 624410).

- Elementary and secondary schools (NAICS code 611110), e.g., elementary schools with kindergarten classrooms.

- Other technical and trade schools (NAICS code 611519), e.g., training providers.

- Engineering services (NAICS code 541330) and building inspection services (NAICS code 541350), e.g., dust sampling technicians.

- Lead abatement professionals (NAICS code 562910), e.g., firms and supervisors engaged in lead-based paint activities.

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 40 CFR 745.89, 40 CFR 745.225, and 40 CFR 745.226. 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 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 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. Agency's Authority for Taking this Action*

This proposed rule is being issued under the authority of the Toxic Substances Control Act (TSCA) sections 402(c)(3), 404, 406, and 407 (15 U.S.C. 2682(c)(3), 2684, 2686, and 2687).

### *B. Introduction*

In the **Federal Register** issue of April 22, 2008, under the authority of sections 402(c)(3), 404, 406, and 407 of TSCA,

EPA issued its final RRP rule (Ref. 1). The final RRP rule, codified in 40 CFR part 745, subparts E, L, and Q, addresses lead-based paint hazards created by renovation, repair, and painting activities that disturb painted surfaces in target housing and child-occupied facilities.

Shortly after the RRP rule was published, several petitions were filed challenging the rule. These petitions were consolidated in the Circuit Court of Appeals for the District of Columbia Circuit. On August 24, 2009, EPA signed an agreement with the environmental and children's health advocacy groups in settlement of their petitions. In this agreement EPA committed to propose several changes to the RRP rule, including the changes discussed in this document.

The RRP rule establishes requirements for training renovators, other renovation workers, 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. Interested States, Territories, and Indian Tribes may apply for and receive authorization to administer and enforce all of the elements of the new renovation requirements. More information on the RRP rule may be found in the **Federal Register** document announcing the RRP rule or on EPA's website at <http://www.epa.gov/lead/pubs/renovation.htm>.

Many provisions of the RRP rule were derived from the existing lead-based paint activities regulations at 40 CFR part 745, subpart L (Ref. 2). These existing regulations were promulgated in 1996 under TSCA section 402(a), which defines lead-based paint activities in target housing as inspections, risk assessments, and abatements. The 1996 regulations cover lead-based paint activities in target housing and child-occupied facilities, along with limited screening activities called lead hazard screens. These regulations established an accreditation program for training providers and a certification program for individuals and firms performing these activities. Training course accreditation and individual certification was made available in five disciplines: Inspector, risk assessor, project designer, abatement supervisor, and abatement worker. In addition, these lead-based paint activities regulations established work practice standards and recordkeeping requirements for lead-

based paint activities in target housing and child-occupied facilities.

The RRP rule created two new training disciplines in the field of lead-based paint: Renovator and dust sampling technician. Persons who successfully complete renovator training from an accredited training provider are certified renovators. Certified renovators are responsible for ensuring that renovations to which they are assigned are performed in compliance with the work practice requirements set out in 40 CFR 745.85. Persons who successfully complete dust sampling technician training from an accredited training provider are certified dust sampling technicians. Certified dust sampling technicians may be called upon to collect dust samples after renovation activities have been completed.

The RRP rule contains a number of work practice requirements that must be followed for every covered renovation in target housing and child-occupied facilities. These requirements pertain to warning signs and work area containment, the restriction or prohibition of certain practices (e.g., high heat gun, torch, power sanding, power planing), waste handling, cleaning, and post-renovation cleaning verification. The firm must ensure compliance with these work practices. Although the certified renovator is not required to be on-site at all times, while the renovation project is ongoing, a certified renovator must nonetheless regularly direct the work being performed by other workers to ensure that the work practices are being followed.

### *C. Opt-out Provision*

The RRP rule included a provision that exempts a renovation firm from the training and work practice requirements of the rule where the firm obtains a certification from the owner of a residence he or she occupies that no child under age 6 or pregnant women resides in the home and the home is not a child-occupied facility. Unless the target housing meets the definition of a child-occupied facility, if an owner-occupant signed a statement that no child under age 6 and no pregnant woman reside there and an acknowledgment that the renovation firm will not be required to use the lead-safe work practices contained in EPA's RRP rule, the renovation activity is not subject to the training, certification, and work practice requirements of the rule. Conversely, if the owner-occupant does not sign the certification and acknowledgement (even if no children under age 6 or no pregnant women reside there), or if the owner-occupant

chooses not sign the opt-out certification and acknowledgement for other reasons, the renovation is subject to the requirements of the RRP rule.

After further consideration of the opt-out provision, the Agency believes it is in the best interest of the public to remove the provision. EPA has decided it is important to require the RRP work practices and training and certification requirements in target housing even if there is no child under age 6 or pregnant woman residing there. While the RRP rule focused mainly on protecting young children and pregnant women from lead hazards, exposure can result in adverse health effects for older children and adults as well. By removing the opt-out provision the rule will go farther toward protecting older children and adults occupants of target housing where no child under age 6 or pregnant woman resides.

In addition, the opt-out provision may not be sufficiently protective for children under age 6 and pregnant women, the vulnerable populations identified in the RRP rule, given that no known safe level of lead exposure has been identified. The potential adverse health effects of lead exposure are explained in the preamble to the RRP final rule (Ref. 1, p. 21693). As pointed out by a number of commenters on the RRP rule, the opt-out provision does not protect families with young children who may purchase recently renovated target housing. Removal of the opt-out will result in fewer homes being purchased with pre-existing lead hazards. Under the RRP rule, the opt-out provision was limited to owner-occupied target housing and did not extend to vacant rental housing because of the concern that future tenants could unknowingly move into a rental unit where dust-lead hazards created by the renovation are present. In the same way, dust-lead hazards created during renovations in an owner-occupied residence conducted prior to a sale will be present for the next occupants. It is common for home owners to perform activities that disturb paint before selling a house, thus increasing the likelihood of lead hazards being present for someone buying a home, which may include a family with a child under age 6 or a pregnant woman.

Renovations performed under the opt-out provision are also likely to result in exposures for vulnerable populations in other ways. Visiting children who do not spend enough time in the housing to render it a child-occupied facility may nevertheless be exposed to lead from playing in dust-lead hazards created by renovations. For example, children may spend time in the homes

of grandparents, but those homes may be eligible for the opt-out provision of the RRP rule. A homeowner who signs an opt-out statement may not realize that she is pregnant. Eliminating the opt-out provision will also protect families with young children residing near or adjacent to homes undergoing renovations. Under the RRP rule, an owner occupant can take advantage of the opt-out provision even if a child under age 6 or a pregnant woman lives in an adjacent home. Renovations on the exterior of a residence can spread lead dust and debris some distance from the renovation activity, which is why, for regulated renovations, EPA requires renovation firms to cover the ground with plastic sheeting or other impermeable material a distance of 10 feet from the renovation and take extra precautions when in certain situations to ensure that dust and debris does not contaminate other buildings or other areas of the property or migrate to adjacent properties. There are approximately 2 million owner-occupied, single-family attached homes built before 1978. Renovations on the exteriors of these homes are likely to contaminate neighboring yards and porches resulting in exposure outside the house as well as inside because dust can be tracked into the home. Many more owner-occupied, single-family detached homes are located in close proximity to each other, and renovations performed under the opt-out provision present a similar risk for these homes.

Moreover, EPA believes that implementing the regulations without the opt-out provision promotes, to a greater extent, the statutory directive to promulgate regulations covering renovation activities in target housing. Section 401(17) of TSCA defines target housing as "any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing for the elderly or persons with disabilities) or any 0-bedroom dwelling." Among other things, TSCA section 403(c)(3), in turn, directs EPA to promulgate regulations that apply to renovation activities in target housing.

Taking these factors into consideration, EPA is proposing to remove the opt-out provision. EPA requests comment on the appropriateness of removing this provision from the RRP rule.

#### *D. Alternative Approaches*

In addition to the approach being proposed, EPA is considering other

alternative approaches or work practice requirements for owner-occupied target housing that is not a child-occupied facility and where no children younger than 6 or pregnant women reside. EPA is therefore requesting comment on other possible approaches that would meet EPA's statutory obligation to apply the regulations to target housing and that the standards be safe, reliable, and effective. EPA's request is expressly limited to approaches that might apply to this subset of target housing and EPA is not reopening any issue related to the work practices or other requirements of the rule applicable to housing other than owner-occupied target housing that is not a child-occupied facility and where no children under 6 or pregnant women reside.

For example, EPA is requesting comment on an option that requires the RRP work practices only for exterior renovations. Under this option, unless the target housing meets the definition of a child-occupied facility, if an owner-occupant signed a statement that no child under 6 and no pregnant woman reside there and an acknowledgment that the renovation firm will only be required to use the lead-safe work practices contained in EPA's RRP rule when renovating exteriors then the renovation firm would only be required to follow the RRP work practices when doing exterior renovations, but not when doing interior renovations. This option would address exposures to lead dust from exterior renovations for people living in neighboring homes, particularly attached homes or homes in close physical proximity. EPA examined both interior and exterior work practices in EPA's study entitled "Characterization of Dust Lead Levels after Renovation, Repair, and Painting Activities" (the "Dust Study," Ref. 11). According to the Dust Study, exterior work practices were generally effective at reducing lead dust levels generated by exterior renovation activities, which the Dust Study showed can travel far enough from the work site to create lead hazards on or in attached homes or homes in close physical proximity. Additionally, while EPA has not conducted an exposure assessment for any of the options being considered for this proposed rule, individuals residing in homes in close physical proximity could be exposed during the entire renovation and post-renovation phase, and their exposure would not necessarily be considered by an owner-occupant in choosing not to require lead-safe work practices. The duration of exposure will vary under the different scenarios for which EPA is requesting

comment. For example, individuals visiting the interior of the home, or moving in after the completion of renovations, may not generally be exposed for the full duration of the renovation and post-renovation phase. Limiting the work practice requirements to exterior renovations (with the owner-occupant's permission) would address these particular exposures to individuals residing in closely neighboring homes, while significantly reducing the cost of this proposed rule.

EPA is requesting comment on an alternative option under which the only work practices applicable to housing that is not a child-occupied facility and where no children or pregnant women reside would be the restriction or prohibition on certain work practice found at 40 CFR 745.85(a)(3). These include:

1. Open-flame burning or torching of lead-based paint is prohibited.
2. The use of machines that remove lead-based paint through high speed operation such as sanding, grinding, power planing, needle gun, abrasive blasting, or sandblasting, is prohibited unless such machines are used with HEPA exhaust control.
3. Operating a heat gun on lead-based paint is permitted only at temperatures below 1,100 degrees Fahrenheit.

All the other work practice requirements in 40 CFR 745.85 would not be required in target housing that is not a child-occupied facility and where no children or pregnant women reside. Under this option, unless the target housing meets the definition of a child-occupied facility, if an owner-occupant signed a statement that no child under 6 and no pregnant woman reside there and an acknowledgment that the renovation activity is only subject to the specific practices contained in 40 CFR 745.85(a)(3), then the renovation activity would not be subject to the other work practice requirements of 40 CFR 745.85. This option would prohibit or restrict the highest dust generating practices, while reducing costs by not requiring the full suite of practices under 40 CFR 745.85.

EPA is requesting comment on another option under which this subset of target housing would not be subject to the RRP work practices but would instead be subject to dust wipe testing to be performed after the renovation. Under this option, unless the target housing meets the definition of a child-occupied facility, if an owner-occupant signed a statement that no child under 6 and no pregnant woman reside there and an acknowledgment that the renovation activity is only subject to

dust wipe testing after the renovation and providing the results to the owner-occupant, then the renovation firm would not be required to conduct the training, certification, and work practice requirements of the rule. The testing results would become part of the record for that house that must be disclosed under section 1018 of Title X of the Residential Lead-Based Paint Hazard Reduction Act of 1992 (Public Law 102-550). This option would provide information that could protect potential buyers of a home where renovation was completed prior to the sale, because they would be notified of the results of the dust wipe tests before purchase and could take appropriate action (e.g., thorough cleaning and retesting of the home, or selecting a different home) if the lead results were at a level that raised concerns for them. This group could be of particular concern if the move occurred shortly after the renovation.

EPA is requesting comment on other options that could apply to this category of houses, including any combination of the alternatives described in this unit. Because one goal of adopting an alternative approach would be to reduce the cost and burden of compliance, EPA also requests comment on whether segregating owner-occupied target housing that is not a child-occupied facility and where no children under 6 or pregnant women reside in-and-of-itself creates a burdensome complexity for renovators and whether it would thus be preferable to require the full suite of RRP work practice requirements for all target housing. We also request any qualitative or quantitative estimates of what the cost savings (if any) would be from any of the options discussed in this unit, or any other options that commenters wish to suggest.

As indicated in the RRP rule, EPA has found that renovation projects that disturb lead-based paint create lead-based paint hazards. EPA's Dust Study (Ref. 11), demonstrated that renovation, repair, and painting activities produce large quantities of dust significantly greater than the dust-lead hazard standards. The Dust Study shows that renovations on exteriors of homes resulted in lead levels many times greater than the hazard standard. It also demonstrated that work practices other than those restricted or prohibited by the RRP rule left behind lead dust well above the hazard level when the RRP rule requirements are not followed. EPA requests comment on whether the alternate approaches to this proposed rule in this unit would adequately address lead-based paint hazards created by renovation activities,

including any data that would shed light on the reliability, effectiveness, and safety in relation to EPA's lead hazard standards of these approaches or any other options that commenters may suggest.

#### *E. Effective Date*

EPA is considering a delay in effective date of this rule, either 6 months or 1 year. Assuming renovators are specialized, such that they would only work in homes subject to the opt-out provision, this proposed rule could increase the number of renovators that need to be certified by 50%. EPA asks for comment on this assumption in Unit IV.A. A delay in the effective date would allow time for certification of additional renovators and may allow for a smoother transition to the expanded coverage proposed in this document. However, EPA is not proposing to delay the effective date because of concerns that a delay would be confusing for the regulated entities and fail to prevent lead exposures due to RRP activities during the transition period.

Furthermore, EPA is confident that its efforts to establish the necessary infrastructure of accredited training providers is sufficient to allow adequate personnel to be trained and available. As of October 9, 2009:

- 169 trainers have applied for accreditation.
- 74 have been accredited, most will offer training in multiple locations.
- The vast majority of the applicants should be approved by the end of the year.

Assuming an average of 85 trainers teaching in 2009 and 165 in 2010, if each gives 3 classes per week beginning in October with 25 participants, over 370,000 renovators would be trained by July 1, 2010. That does not include mass trainings expected to be given at major conferences and other industry gatherings. EPA believes that there is already training capacity. In fact, training providers have reported to EPA that they have recently cancelled training offerings due to a lack of demand.

To further increase the availability of training, EPA has developed a model electronic learning (E-learning) component for the lecture portion of the renovator training (<http://www.epa.gov/lead/pubs/training.htm>). This allows training providers to offer students the opportunity to take the lecture portion of the training at times convenient to them and then go to a physical location to complete the hands-on portion of the training and take the test. Training providers expect to begin offering training through this mechanism by the

end of the year. EPA worked with the National Association of Home Builders (NAHB), the National Center for Healthy Housing (NCHH), and a number of other organizations on this E-learning component.

Over the past year, EPA's activities to encourage accreditation and training have included:

- Mass e-mail/mailings to over 1,200 trainers encouraging them to become accredited.
- Mass e-mail/mailings to over 1,000 trade organizations, trade magazines, unions, and property management associations encouraging them to get trained and certified.
- Presented and/or exhibited information at numerous major trade conferences, reaching tens of thousands of attendees.
- Conducted a trainer webinar with the Department of Housing and Urban Development on September 15, 2009, as a step-by-step guide to becoming accredited.
- Plan to speak at over a dozen more conferences by the end of the calendar year.

In addition, EPA is working with a large marketing firm to produce a multi-media advertising campaign to ensure that the regulated community knows about the RRP rule and the training opportunities and the general public knows about the benefits of hiring certified firms, thus building demand for certified firms. Starting in the fall of 2009 and continuing through the spring, EPA will be working with the marketing firm to expand its outreach efforts to the public and the regulated community.

EPA has cooperated with the regulated community in many ways to communicate these requirements. Many in the regulated community have been doing a great deal to inform their members and clients about the RRP rule. A few examples include:

- National Association of Home Builders:
  - Developed a comprehensive web page about the RRP rule at <http://www.nahb.org/leadpaint>.
  - Sent several memos to their State and Local Executive Officers informing them of the RRP rule and letting them know they need to get trained and certified.
  - Provides regular updates to local Home Builders Associations through website updates and e-mails.
  - Featured panel on the RRP rule at periodic national and regional conventions/trade shows.
- National Association of the Remodeling Industry (NARI):

- Produced a webinar for members on the RRP rule.

- Provide information about the RRP rule to membership and leadership through regular e-mails and snail mail.

- Provide information about lead-based paint and the RRP rule in all renewal and new member information packages.

- National Association of Realtors (NAR):

- EPA collaborated with NAR on a comprehensive video series explaining the requirements to the real estate community.

- Individual Accredited Training Providers:

- Distributed glossy advertising materials and other outreach with messages such as “Be lead safe. It’s the law.”, “Certify with the best”, etc.

EPA has been meeting regularly with many stakeholders to share information on training and outreach. This group includes: NAHB, NCHH, NARI, Alliance for Healthy Homes, Andersen Windows, Custom Electronic Design and Installation Association, Window and Door Manufacturers Association, Rebuilding Together, Air Conditioning Contractors of America, Pella Corporation, and the Oregon Home Builder's Association. All of these groups are actively working to make sure their members and clients are aware of the requirements of the RRP rule.

EPA therefore requests comment on the need for a delay in the effective date of this rule of either 6 months or 1 year. Given EPA's outreach efforts, is there reason to believe that sufficient certified or trained personnel would not be available to work on housing previously eligible for the opt-out provision as of 60 days after publication of this rule as final? Would a delay in effective date for work on housing previously eligible for the opt-out provision be confusing for the regulated community or the certified personnel?

#### F. Quantifying Benefits

In quantifying the benefits for the RRP rulemaking EPA considered only the benefits associated with the avoided incidence of IQ loss in children under the age of 6 from reduced lead exposure. These estimates only partially account for the benefits of the RRP rule. These estimates did not include an assessment of at-risk subpopulations or of population level effects other than lost income. The benefits associated with avoiding the other adverse effects associated with lead exposure to both children and adults were excluded from this analysis.

EPA requests information on how it can more fully quantify the benefits associated with these effects for purposes of this proposed rule. To facilitate your preparation of comments on this point, the following is an excerpt from the preamble of the 2008 final Lead National Ambient Air Quality Standard (NAAQS) (Ref. 3). This discussion is based on EPA's “Air Quality Criteria Document” (the “Criteria Document,” Ref. 13). See also the letters dated March 27, 2007 (Ref. 14) and September 27, 2007 (Ref. 15) from the Clean Air Scientific Advisory Committee's (CASAC) Lead Review Panel. The major adverse effects associated with exposure to lead are also discussed in Chapter 5 of the Economic Analysis (Ref. 5).

1. *Array of health effects and at-risk subpopulations.* Lead has been demonstrated to exert “a broad array of deleterious effects on multiple organ systems via widely diverse mechanisms of action” (Ref. 13, p. 8–24 and section 8.4.1). This array of health effects includes effects on heme biosynthesis and related functions, neurological development and function, reproduction and physical development, kidney function, cardiovascular function, and immune function. The weight of evidence varies across this array of effects and is comprehensively described in the Criteria Document. There is also some evidence of lead carcinogenicity, primarily from animal studies, together with limited human evidence of suggestive associations (Ref. 13, sections 5.6.2, 6.7, and 8.4.10). [Footnote (FN) 1. Lead has been classified as a probable human carcinogen by the International Agency for Research on Cancer (inorganic lead compounds), based mainly on sufficient animal evidence, and as reasonably anticipated to be a human carcinogen by the U.S. National Toxicology Program (lead and lead compounds) (Ref. 13, section 6.7.2). EPA considers lead a probable carcinogen (<http://www.epa.gov/iris/subst/0277.htm> (Ref. 13, p. 6–195)).]

This review is focused on those effects most pertinent to ambient exposures, which, given the reductions in ambient lead levels over the past 30 years, are generally those associated with individual blood lead levels in children and adults in the range of 10 micrograms per deciliter (µg/dL) and lower. These key effects include neurological, hematological, and immune [FN 2. At mean blood lead levels, in children, on the order of 10 µg/dL, and somewhat lower, associations have been found with effects to the immune system, including

altered macrophage activation, increased immunoglobulin E (IgE) levels and associated increased risk for autoimmunity and asthma (Ref. 13, sections 5.9, 6.8, and 8.4.6).] effects for children, and hematological, cardiovascular, and renal effects for adults (Ref. 13, Tables 8–5 and 8–6, pp. 8–60 to 8–62). As evident from the discussions in chapters 5, 6, and 8 of the Criteria Document, “neurotoxic effects in children and cardiovascular effects in adults are among those best substantiated as occurring at blood lead concentrations as low as 5 to 10 µg/dL (or possibly lower); and these categories are currently clearly of greatest public health concern” (Ref. 13, p. 8–60). [FN 3. With regard to blood lead levels in individual children associated with particular neurological effects, the Criteria Document states “Collectively, the prospective cohort and cross-sectional studies offer evidence that exposure to lead affects the intellectual attainment of preschool and school age children at blood lead levels <10 µg/dL (most clearly in the 5 to 10 µg/dL range, but, less definitively, possibly lower).” (Ref. 13, p. 6–269). FN 4. Epidemiological studies have consistently demonstrated associations between lead exposure and enhanced risk of deleterious cardiovascular outcomes, including increased blood pressure and incidence of hypertension. A meta-analysis of numerous studies estimates that a doubling of blood-lead level (e.g., from 5 to 10 µg/dL) is associated with ~1.0 millimeter of mercury (mm Hg) increase in systolic blood pressure and ~0.6 mm Hg increase in diastolic pressure (Ref. 13, p. E–10).]

The toxicological and epidemiological information available since the time of the last review “includes assessment of new evidence substantiating risks of deleterious effects on certain health endpoints being induced by distinctly lower than previously demonstrated lead exposures indexed by blood lead levels extending well below 10 µg/dL in children and/or adults” (Ref. 13, p. 8–25). Some health effects associated with individual blood lead levels extend below 5 µg/dL, and some studies have observed these effects at the lowest blood levels considered. With regard to population mean levels, the Criteria Document points to studies reporting “lead effects on the intellectual attainment of preschool and school age children at population mean concurrent blood-lead levels [BLLs] ranging down to as low as 2 to 8 µg/dL” (Ref. 13, p. E–9).

We note that many studies over the past decade, in investigating effects at

lower blood lead levels, have utilized the Centers for Disease Control (CDC) advisory level or level of concern for individual children (10 µg/dL) [FN 5. This level has variously been called an advisory level or level of concern ([http://www.atsdr.cdc.gov/csem/lead/pb\\_standards2.html](http://www.atsdr.cdc.gov/csem/lead/pb_standards2.html)). In addressing children's blood lead levels, CDC has stated, “Specific strategies that target screening to high-risk children are essential to identify children with BLLs ≥ 10 µg/dL.” (Ref. 4, p.1)] as a benchmark for assessment, and this is reflected in the numerous references in the Criteria Document to 10 µg/dL. Individual study conclusions stated with regard to effects observed below 10 µg/dL are usually referring to individual blood lead levels. In fact, many such study groups have been restricted to individual blood lead levels below 10 µg/dL or below levels lower than 10 µg/dL. We note that the mean blood lead level for these groups will necessarily be lower than the blood lead level they are restricted below.

Threshold levels, in terms of blood lead levels in individual children, for neurological effects cannot be discerned from the currently available studies (Ref. 13, pp. 8–60 to 8–63). The Criteria Document states, “There is no level of lead exposure that can yet be identified, with confidence, as clearly not being associated with some risk of deleterious health effects” (Ref. 13, p. 8–63). As discussed in the Criteria Document, “a threshold for lead neurotoxic effects may exist at levels distinctly lower than the lowest exposures examined in these epidemiologic studies” (Ref. 13, p. 8–67). [FN 6. In consideration of the evidence from experimental animal studies with regard to the issue of threshold for neurotoxic effects, the Criteria Document notes that there is little evidence that allows for clear delineation of a threshold, and that “blood-lead levels associated with neurobehavioral effects appear to be reasonably parallel between humans and animals at reasonably comparable blood-lead concentrations; and such effects appear likely to occur in humans ranging down at least to 5–10 µg/dL, or possibly lower (although the possibility of a threshold for such neurotoxic effects cannot be ruled out at lower blood-lead concentrations)” (Ref. 13, p. 8–38).]

[P]hysiological, behavioral and demographic factors contribute to increased risk of lead-related health effects. Potentially at-risk subpopulations, also referred to as sensitive subpopulations, include those with increased susceptibility (i.e., physiological factors contributing to a

greater response for the same exposure), as well as those with greater vulnerability (i.e., those with increased exposure such as through exposure to higher media concentrations or resulting from behavior leading to increased contact with contaminated media), or those affected by socioeconomic factors, such as reduced access to health care or low socioeconomic status.

While adults are susceptible to lead effects at lower blood lead levels than previously understood (e.g., Ref. 13, p. 8–25), the greater influence of past exposures on their current blood lead levels leads us to give greater prominence to children as the sensitive subpopulation in this review. Children are at increased risk of lead-related health effects due to various factors that enhance their exposures (e.g., via the hand-to-mouth activity that is prevalent in very young children, Ref. 13, section 4.4.3) and susceptibility. While children are considered to be at a period of maximum exposure around 18–27 months, the current evidence has found even stronger associations between blood lead at school age and IQ at school age. The evidence “supports the idea that lead exposure continues to be toxic to children as they reach school age, and [does] not lend support to the interpretation that all the damage is done by the time the child reaches 2 to 3 years of age” (Ref. 13, section 6.2.12). The following physiological and demographic factors can further affect risk of lead-related effects in some children.

- Children with particular genetic polymorphisms (e.g., presence of the d-aminolevulinic acid dehydratase-2 [ALAD-2] allele) have increased sensitivity to lead toxicity, which may be due to increased susceptibility to the same internal dose and/or to increased internal dose associated with same exposure (Ref. 13, p. 8–71, sections 6.3.5, 6.4.7.3, and 6.3.6).

- Some children may have blood lead levels higher than those otherwise associated with a given lead exposure (Ref. 13, section 8.5.3) as a result of nutritional status (e.g., iron deficiency, calcium intake), as well as genetic and other factors (Ref. 13, chapter 4 and sections 3.4, 5.3.7, and 8.5.3).

- Situations of elevated exposure, such as residing near sources of ambient lead, as well as socioeconomic factors, such as reduced access to health care or low socioeconomic status (SES) can also contribute to increased blood lead levels and increased risk of associated health effects from air-related lead.

- [C]hildren in poverty and black, non-Hispanic children have notably higher blood lead levels than do



economically well-off children and white children, in general.

2. *Neurological effects in children.* Among the wide variety of health endpoints associated with lead exposures, there is general consensus that the developing nervous system in children is among the, if not the, most sensitive. While blood lead levels in U.S. children have decreased notably since the late 1970s, newer studies have investigated and reported associations of effects on the neurodevelopment of children with these more recent blood lead levels (Ref. 13, chapter 6). Functional manifestations of lead neurotoxicity during childhood include sensory, motor, cognitive, and behavioral impacts. Numerous epidemiological studies have reported neurocognitive, neurobehavioral, sensory, and motor function effects in children with blood lead levels below 10 µg/dL (Ref. 13, sections 6.2 and 8.4). [FN 7. Further, neurological effects in general include behavioral effects, such as delinquent behavior (Ref. 13, sections 6.2.6 and 8.4.2.2), sensory effects, such as those related to hearing and vision (Ref. 13, sections 6.2.7 and 8.4.2.3), and deficits in neuromotor function (Ref. 13, p. 8–36).] As discussed in the Criteria Document, “extensive experimental laboratory animal evidence has been generated that (a) substantiates well the plausibility of the epidemiologic findings observed in human children and adults and (b) expands our understanding of likely mechanisms underlying the neurotoxic effects” (Ref. 13, p. 8–25; section 5.3).

Cognitive effects associated with lead exposures that have been observed in epidemiological studies have included decrements in intelligence test results, such as the widely used IQ score, and in academic achievement as assessed by various standardized tests as well as by class ranking and graduation rates (Ref. 13, section 6.2.16 and pp. 8–29 to 8–30). As noted in the Criteria Document with regard to the latter, “Associations between lead exposure and academic achievement observed in the above-noted studies were significant even after adjusting for IQ, suggesting that lead-sensitive neuropsychological processing and learning factors not reflected by global intelligence indices might contribute to reduced performance on academic tasks” (Ref. 13, pp. 8–29 to 8–30).

With regard to potential implications of lead effects on IQ, the Criteria Document recognizes the “critical” distinction between population and individual risk, identifying issues regarding declines in IQ for an individual and for the population. The

Criteria Document further states that a “point estimate indicating a modest mean change on a health index at the individual level can have substantial implications at the population level” (Ref. 13, p. 8–77). [FN 8. As an example, the Criteria Document states, “although an increase of a few mm Hg in blood pressure might not be of concern for an individual’s well-being, the same increase in the population mean might be associated with substantial increases in the percentages of individuals with values that are sufficiently extreme that they exceed the criteria used to diagnose hypertension” (Ref. 13, p. 8–77).] A downward shift in the mean IQ value is associated with both substantial decreases in percentages achieving very high scores and substantial increases in the percentage of individuals achieving very low scores (Ref. 13, p. 8–81). [FN 9. For example, for a population mean IQ of 100 (and standard deviation of 15), 2.3% of the population would score above 130, but a shift of the population to a mean of 95 results in only 0.99% of the population scoring above 130 (Ref. 13, pp. 8–81 to 8–82).] For an individual functioning in the low IQ range due to the influence of developmental risk factors other than lead, a lead-associated IQ decline of several points might be sufficient to drop that individual into the range associated with increased risk of educational, vocational, and social failure (Ref. 13, p. 8–77).

Other cognitive effects observed in studies of children have included effects on attention, executive functions, language, memory, learning, and visuospatial processing (Ref. 13, sections 5.3.5, 6.2.5, and 8.4.2.1), with attention and executive function effects associated with lead exposures indexed by blood lead levels below 10 µg/dL (Ref. 13, section 6.2.5 and pp. 8–30 to 8–31). The evidence for the role of lead in this suite of effects includes experimental animal findings (Ref. 13, section 8.4.2.1; p. 8–31), which provide strong biological plausibility of lead effects on learning ability, memory and attention (Ref. 13, section 5.3.5), as well as associated mechanistic findings.

The persistence of such lead-induced effects is described in the proposal and the Criteria Document (e.g., Ref. 13, sections 5.3.5, 6.2.11, and 8.5.2). The persistence or irreversibility of such effects can be the result of damage occurring without adequate repair offsets or of the persistence of lead in the body (Ref. 13, section 8.5.2). It is additionally important to note that there may be long-term consequences of such deficits over a lifetime. Poor academic skills and achievement can have

“enduring and important effects on objective parameters of success in real life,” as well as increased risk of antisocial and delinquent behavior (Ref. 13, section 6.2.16).

Multiple epidemiologic studies of lead and child development have demonstrated inverse associations between blood lead concentrations and children’s IQ and other cognitive-related outcomes at successively lower lead exposure levels over the past 30 years (Ref. 13, section 6.2.13). For example, the overall weight of the available evidence, described in the Criteria Document, provides clear substantiation of neurocognitive decrements being associated in children with mean blood lead levels in the range of 5 to 10 µg/dL, and some analyses indicate lead effects on intellectual attainment of children for which population mean blood lead levels in the analysis ranged from 2 to 8 µg/dL (Ref. 13, sections 6.2, 8.4.2, and 8.4.2.6). Thus, while blood lead levels in U.S. children have decreased notably since the late 1970s, newer studies have investigated and reported associations of effects on the neurodevelopment of children with blood lead levels similar to the more recent, lower blood lead levels (Ref. 13, chapter 6).

#### G. Recordkeeping and Reporting

EPA has also determined that public policy would be better served by using the renovation firm recordkeeping requirements to increase awareness of the RRP rule requirements among owners and occupants of renovated target housing or child-occupied facilities. EPA’s stated purposes in promulgating the recordkeeping requirements were two-fold. “The first is to allow EPA or an authorized State to review a renovation firm’s compliance with the substantive requirements of the regulation through reviewing the records maintained for all of the renovation jobs the firm has done. The second is to remind a renovation firm what it must do to comply. EPA envisioned that renovation firms would use the recordkeeping requirements and checklist as an aid to make sure that they have done everything that they are required to do for a particular renovation” (Ref. 1, p. 21745). Several commenters suggested that the recordkeeping requirements could also be used to provide valuable information about the renovation to the owners and occupants of buildings being renovated. EPA responded to these comments by stating that some of the information identified by these commenters was included in the “Renovate Right” pamphlet and that the pamphlet was the



best way to get that information to the owners and occupants. With respect to the other items identified by these commenters, EPA stated its belief that the renovation firms were already providing much of this information (Ref. 1, p. 21718).

As part of EPA's preparations to administer the RRP program, EPA has been developing an education and outreach campaign aimed at consumers. In promulgating the RRP rule, EPA recognized the importance of education and outreach to consumers, to teach them about lead-safe work practices and to encourage them to hire certified renovation firms (Ref. 1, p. 21702). EPA's work on the education and outreach campaign has continued to highlight the importance of an informed public to the success of the RRP program at minimizing exposures to lead-based paint hazards that may be created by renovations. As a result, EPA has determined that copies of the records required to be maintained by renovation firms to document compliance with the work practice requirements, if provided to the owners and occupants of the renovated buildings, would serve to reinforce the information provided by the "Renovate Right" pamphlet on the potential hazards of renovations and on the RRP rule requirements. While the "Renovate Right" pamphlet provides valuable information about the requirements of the RRP rule, the records that a firm would give to owners and occupants would provide useful information regarding rule compliance that is not found in the pamphlet. In covering the significant training and work practice provisions of the RRP rule, these records would enable building owners and occupants to better understand what the renovation firm did to comply with the RRP rule and how the RRP rule's provisions affected their specific renovation. Educating the owners and occupants in this way is likely to improve their ability to assist the EPA in monitoring compliance with the RRP rule.

Therefore, EPA is proposing to require that, when the final invoice for the renovation is delivered, or within 30 days of the completion of the renovation, whichever is earlier, the renovation firm provide information demonstrating compliance with the training and work practice requirements of the RRP rule to the owner of the building being renovated and, if different, to the occupants of the renovated housing or the operator of the child-occupied facility. For renovations in common areas of target housing, the renovation firm would have to provide

the occupants of the affected housing units instructions on how to review or obtain this information from the renovation firm at no charge to the occupant. These instructions would have to be included in the notice provided to each affected unit under 40 CFR 745.84(b)(2)(i) or on the signs posted in the common areas under 40 CFR 745.84(b)(2)(ii). EPA is proposing similar requirements for renovations in child-occupied facilities. Under this proposed rule, the renovation firm would be required to provide interested parents or guardians instructions on how to review or obtain a copy of these records at no cost to the parents or guardians. This could be accomplished by mailing or hand delivering these instructions, or by including them on the signs posted under 40 CFR 745.84(c)(2)(ii).

Renovation firms would have to provide training and work practice information to owners and occupants in a short, easily read checklist or other form. EPA's "Sample Renovation Recordkeeping Checklist" may be used for this purpose, but firms may develop their own forms or checklists so long as they include all of the required information in a similar format. The specific information that would be required to be provided are the training and work practice compliance information required to be maintained by 40 CFR 745.86(b)(7), as well as identifying information on the manufacturer and model of the test kits used, if any, a description of the components that were tested including their locations, and the test kit results. The checklist or form must include documentation that a certified renovator was assigned to the project, that the certified renovator provided on-the-job training for workers used on the project, that the certified renovator performed or directed workers who performed the tasks required by the RRP rule, and that the certified renovator performed the post-renovation cleaning verification. This documentation must include a certification by the certified renovator that the work practices were followed, with narration as applicable. However, EPA is not proposing to require that the renovation firm automatically provide a copy of the certified renovator's training certificate, which must be maintained in the firm's records pursuant to 40 CFR 745.86(b)(7), as an attachment to the checklist or other form.

With respect to the option for dust clearance in lieu of cleaning verification under 40 CFR 745.85(c), the RRP rule requires the renovation firm to provide the associated results from dust wipe sampling to the person who contracted

for the renovation. This requirement was promulgated in response to public comments on the applicability of the Lead Disclosure Rule, 40 CFR part 745, subpart F, to dust lead testing reports. These commenters stated that a requirement for the information to be provided to the owner of the property was necessary in order to make sure that the information would be available to be disclosed in the future (Ref. 1, p. 21718). However, in agreeing with these commenters and acknowledging the importance of having the dust sampling reports available to disclose to future purchasers and tenants, EPA neglected to consider the importance of making dust sampling information available to the current occupants of renovated rental target housing or child-occupied facilities. While 40 CFR 745.107 would require renovation-related dust sampling reports to be disclosed to target housing tenants at the next lease renewal, this may be months or years after the renovation was completed. In addition, the Lead Disclosure Rule does not apply to child-occupied facilities in public or commercial buildings, so those tenants may never receive this information.

Therefore, EPA is proposing to require that, if dust clearance is performed in lieu of cleaning verification, the renovation firm provide a copy of the dust wipe sampling report(s) to the owner of the building that was renovated as well as to the occupants, if different. With respect to renovations in common areas of target housing or in child-occupied facilities, EPA is also proposing to require that these records be made available to the tenants of the affected housing units or the parents and guardians of children under age 6 using the child-occupied facilities. Dust sampling reports may be made available to these groups in the same way as training and work practice records, by providing information on how to review or obtain copies in individual notifications or on posted signs.

#### *H. Accreditation and Certification Requirements*

EPA was made aware by stakeholders that some renovators want to take the training course closer to April 2010 because they want to maximize their 5-year certification which is not required until the RRP rule becomes effective on April 22, 2010. Under the RRP rule, the 5-year certification begins when the renovator completes the training. The Agency is concerned that if enough renovators wait until April 2010 to take the training it may cause training courses to fill up resulting in a lack of available courses near the effective date.

In order to give renovators incentive to take the course well in advance of the April 2010 effective date, the Agency is considering a change to the requirements that would allow renovator certifications issued on or before the effective date of the RRP rule to last until July 1, 2015. The Agency requests comment on whether it should extend the certification for renovators that get their certification by April 22, 2010.

Another modification EPA is considering involves the requirements for training providers. Under the current requirements for the accreditation of training providers, Principle Instructors must take a 16-hour lead-paint course taught by EPA or an authorized State, Tribe, or Territory. EPA is aware that 16-hour courses are not available in every State, making it difficult for some instructors to get the required training. To address this problem, EPA is considering reducing the hourly requirement to 8 hours. This would allow future instructors to take the 8-hour renovator or dust sampling technician trainings instead of a 16-hour or longer abatement course. The Agency believes that the renovator or dust sampling technician courses would be appropriate training for instructors that want to teach these courses. The Agency requests comment on whether the 16-hour training requirement for Principle Instructors should be reduced to 8 hours.

#### *I. State Authorization*

As part of the authorization process, States and Indian Tribes must demonstrate to EPA that they meet the requirements of the RRP rule. The Agency is proposing to give States and Indian Tribes 1 year to demonstrate that their programs include any new requirements the EPA may promulgate, such as the requirements in this proposed rule. A State or Indian Tribe would have to indicate that it meets the requirements of the renovation program in its application for approval or the first report it submits under 40 CFR 745.324(h).

#### **III. References**

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2. EPA. Lead; Requirements for Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities; Final Rule. **Federal Register** (61 FR 45778, August 29, 1996) (FRL-5389-9). Available on-line at: <http://www.gpoaccess.gov/fr>.

3. EPA. National Ambient Air Quality Standards for Lead; Final Rule. **Federal Register** (73 FR 66964, November 12, 2008) (FRL-8732-9). Available on-line at: <http://www.gpoaccess.gov/fr>.

4. CDC. Preventing Lead Poisoning in Young Children: A Statement by the Centers for Disease Control and Prevention. Atlanta, GA: U.S. Department of Health and Human Services, Public Health Service. August 2005.

5. EPA. Office of Pollution Prevention and Toxics (OPPT). Economic Analysis for the TSCA Lead Renovation, Repair, and Painting Program Opt-out and Recordkeeping Proposed Rule for Target Housing and Child-Occupied Facilities. October 2009.

6. U.S. Department of Commerce, Bureau of Economic Analysis. Table 1.1.9. Implicit Price Deflators for Gross Domestic Product. August 17, 2009.

7. EPA. Opt-out and Recordkeeping Proposed Rule ICR Addendum for the rulemaking entitled Lead: Elimination of the Opt-Out Provision and Other Amendments to the Renovation, Repair, and Painting Program; Proposed Rule. August 2009.

8. EPA. Initial Regulatory Flexibility Analysis for the Elimination of the Opt-Out Provision and Other Amendments to the Lead Renovation, Repair, and Painting Program; Proposed Rule. August 2009.

9. EPA. Report of the Small Business Advocacy Review Panel on the Lead-based Paint Certification and Training; Renovation and Remodeling Requirements. March 3, 2000.

10. EPA. Lead; Renovation, Repair, and Painting Program; Proposed Rule. **Federal Register** (71 FR 1588, January 10, 2006) (FRL-7755-5). Available on-line at: <http://www.gpoaccess.gov/fr>.

11. EPA. Characterization of Dust Lead Levels after Renovation, Repair, and Painting Activities. November 13, 2007.

12. EPA. Unfunded Mandates Reform Act Statement; Lead: Elimination of the Opt-Out Provision and Other Amendments to the Renovation, Repair, and Painting Program; Proposed Rule. August 2009.

13. EPA. Air Quality Criteria for Lead. October 2006.

14. CASAC. "Clean Air Scientific Advisory Committee's (CASAC) Review of the 1st Draft Lead Staff Paper and Draft Lead Exposure and Risk Assessments. March 27, 2007. Available on-line at: [http://yosemite.epa.gov/sab/sabproduct.nsf/989B57DCD436111B852572AC0079DA8A/\\$File/casac-07-003.pdf](http://yosemite.epa.gov/sab/sabproduct.nsf/989B57DCD436111B852572AC0079DA8A/$File/casac-07-003.pdf).

15. CASAC. Clean Air Scientific Advisory Committee's (CASAC) Review

of the 2<sup>nd</sup> Draft Lead Human Exposure and Health Risk Assessments Document. September 27, 2007. Available on-line at: [http://yosemite.epa.gov/sab/sabproduct.nsf/2DCD6EF49CDD37B285257364005F93E4/\\$File/casac-07-007.pdf](http://yosemite.epa.gov/sab/sabproduct.nsf/2DCD6EF49CDD37B285257364005F93E4/$File/casac-07-007.pdf).

#### **IV. 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 proposed rule is a "significant regulatory action" under section 3(f)(1) of the Executive Order because EPA estimates that 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 rulemaking. This analysis is contained in the Economic Analysis for the TSCA Lead Renovation, Repair, and Painting Program Opt-out and Recordkeeping Proposed Rule for Target Housing and Child-Occupied Facilities (Economic Analysis, Ref. 5), which is available in the docket for this action and is briefly summarized here.

1. *Number of facilities and renovations.* This proposed rule applies to 78 million target housing units and child-occupied facilities in pre-1978 facilities. There are approximately 40 million target housing units potentially affected by the removal of the opt-out provision (i.e., owner occupied housing units where no child under age 6 or pregnant woman resides and that do not meet the definition of a child-occupied facility). There are an additional 38 million facilities potentially affected by the requirement that renovators provide owners and occupants with copies of the records required to be maintained by the renovator to document compliance with the training and work practice requirements. Approximately 100,000 of these facilities are child-occupied facilities located in public or commercial buildings, and the remainder are located in target housing (either in rental housing, owner-occupied housing where a child under age 6 or pregnant woman resides, or

owner-occupied housing that meets the definition of a child-occupied facility).

The removal of the opt-out provision will affect approximately 7.2 million renovation events per year in the 40 million housing units previously eligible to use the opt-out provision. In the first year, there will be an estimated 5.4 million renovation, repair, and painting events in these housing units where the rule will cause lead-safe work practices to be used. (In the remaining 1.8 million renovation events, test kits for determining whether a surface contains lead-based paint will indicate that lead-based paint is not present.) EPA expects test kits that more accurately determine whether a painted surface qualifies as lead-based paint will become available in late 2010. Once the improved test kits are available, the number of renovation, repair, and painting events using lead-safe work practices due to the rule in housing previously eligible for the opt-out provision is expected to drop to 3.0 million events per year.

The requirement for renovators to provide owners and occupants with records demonstrating compliance with the training and work practice requirements will affect all of the 7.2 million renovation events per year in housing units previously eligible for the opt-out provision. This new recordkeeping requirement will also affect an additional 11.4 million renovation events per year in the 38 million facilities ineligible for the opt-out provision.

EPA's estimates are based on the assumption that owners of housing eligible for the opt-out provision would always choose to exercise that provision. To the extent that some eligible homeowners would decline to opt out, the number of renovation events affected by the removal of the opt-out would be lower than EPA has estimated, as would the costs of this action and the estimated number of people protected by this action, since they will choose to be protected by the requirements of the RRP rule.

**2. Options evaluated.** EPA considered a variety of options for addressing the risks created by renovation, repair, and painting activities disturbing lead-based paint in housing previously eligible for the opt-out provision. The Economic Analysis analyzed several options, including different options for the effective date of the final rule when published; an option phasing out the opt-out provision depending on when the facility was built (pre-1960 or pre-1978); and different options for the work practices (such as containment, cleaning, and cleaning verification)

required in housing previously eligible for the opt-out provision.

All options evaluated in the Economic Analysis would also require renovation firms to provide owners and occupants of the buildings with a copy of the records demonstrating compliance with the training and work practice requirements of the RRP rule. This additional recordkeeping requirement would apply to renovation, repair, and painting activities in all 78 million target housing units and child-occupied facilities.

**3. Benefits.** The benefits of the rule result from the prevention of adverse health effects attributable to lead exposure from renovations in pre-1978 buildings. These health effects include impaired cognitive function in children and several illnesses in children and adults, such as increased adverse cardiovascular outcomes (including increased blood pressure, increased incidence of hypertension, cardiovascular morbidity, and mortality) and decreased kidney function.

Removing the opt-out provision will protect children under the age of 6 who visit a friend, relative, or caregiver's house where a renovation would have been performed under the opt-out provision; children who move into such housing when their family purchases it after such a renovation would have been performed; and children who live in a property adjacent to housing where renovation would have been performed under the opt-out provision. Removing the opt-out provision will also protect individuals age 6 and older who live in houses that would have been renovated under the opt-out provision; who move into such housing; and who live in adjacent properties.

EPA has estimated some of the benefits of the rule by performing calculations based on estimates of the number of individuals in each of these situations and the average benefit per individual in similar situations from previous RRP rule analyses with some simple adjustments. The resulting calculations provide a sense of the magnitude of benefits from this action but should not be interpreted as strict upper or lower bound estimates of total benefits. Based on two scenarios for each of the situations described in the previous paragraph, annualized benefits for the proposed rule may range from approximately \$870 million to \$3.2 billion assuming a discount rate of 3%, and \$920 million to \$3.3 billion assuming a discount rate of 7%. Within these scenarios, 10% of these benefits are attributable to avoided losses in expected earnings due to IQ drop in children under 6, and 90% to avoided

medical costs (or other proxies for willingness to pay) for hypertension, coronary heart disease, stroke, and the resulting incidence of deaths in older individuals. For children under 6, the largest proportion of these benefits derive from moving into recently renovated housing; for older individuals, the largest proportion derives from on-going residence in houses that would have been renovated under the opt-out provision.

EPA did not estimate benefits for those who live near a house renovated under the opt-out provision unless in a contiguous attached home; those who spend time in a friend's or relative's house renovated under the opt-out provision; and for health effects other than IQ loss in children under 6 and blood pressure effects in older individuals.

To the extent that some eligible homeowners would have declined to opt out, the benefits of this action will be lower than estimated, since exposed persons will already be protected by the requirements of the RRP program.

**4. Costs.** Removing the opt-out provision will require firms performing renovation, repair, and painting work for compensation in housing previously eligible for the opt-out provision to follow the training, certification, and work practice requirements of the RRP rule. This may result in additional costs for these firms. Furthermore, the additional recordkeeping requirements in this proposed rule will increase costs of renovations in all target housing and child-occupied facilities. Costs may be incurred by contractors that work in these buildings, landlords that use their own staff to work in buildings they lease out; and child-occupied facilities that use their own staff to work in buildings they occupy.

The proposed rule is estimated to cost approximately \$500 million in the first year. The cost is estimated to drop to approximately \$300 million per year starting with the second year, when improved test kits for detecting the presence of lead-based paint are assumed to become available. Over \$200 million per year of the cost in subsequent years is due to the work practice requirements in housing previously covered by the opt-out provision. Training for renovators and workers and certification for firms working in housing previously covered by the opt-out provision is estimated to add approximately \$50 million per year to the cost. Requiring renovators to provide owners and occupants with copies of the recordkeeping required to document compliance with the RRP rule training and work practice requirements

costs approximately \$30 million per year, with about two thirds of this incurred in housing that was previously eligible for the opt-out provision.

Note that the costs of this proposed rule as estimated in the Economic Analysis are expressed in 2005 dollars. To express values in terms of current dollars, the Implicit Price Deflator for Gross Domestic Product as determined by the Bureau of Economic Analysis can be consulted for an indication of how nominal prices for goods and services produced in the economy have changed over time. From 2005 to the second quarter of 2009, the implicit price deflator increased from 100 to 109.753, a difference of approximately 10% (Ref. 6).

The cost estimates for training and certification assume that renovation firms are somewhat specialized in terms of whether they work in facilities where the RRP rule is applicable. However, there may be many instances where firms working in opt-out housing will already have become certified, and their staff been trained, because they also work in regulated facilities ineligible for the opt-out provision. If firms are less specialized than the analysis assumed, there may be little to no incremental training and certification costs due to the proposed rule. Furthermore, to the extent that some eligible homeowners would have declined to opt out, the work practice costs for removing the opt-out provision will be less than estimated. EPA requests comment on the degree to which the same firms and renovators are likely to work both in opt-out housing and in child-occupied facilities and target housing that are ineligible for the opt-out provision.

The options EPA analyzed with a phase in or a delayed effective date for removing the opt-out provision have a lower cost in the first 2 years but have identical costs to the proposed rule beginning in the third year. Costs of the options with different work practice requirements for the housing previously eligible for the opt-out provision would be 1% to 17% lower than the proposed rule. This difference would all be due to lower work practice costs, as the training, certification, and recordkeeping costs would be the same for these options as for this proposed rule.

#### *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 (PRA), 44 U.S.C. 3501 *et seq.* EPA has prepared an Information Collection

Request (ICR) document to amend an existing approved ICR. The ICR document, referred to as the Opt-out and Recordkeeping Proposed Rule ICR Addendum and identified under EPA ICR No. 1715.11 and OMB Control Number 2070-0155, has been placed in the docket for this proposed rule (Ref. 7). The information collection requirements are not enforceable until OMB approves them.

Burden under 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.

The information collection activities contained in this proposed rule are designed to assist the Agency in meeting the core objectives of TSCA section 402. EPA has carefully tailored the 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.

The information collection requirements under this proposed rule may affect training providers as well as firms that perform renovation, repair, or painting for compensation. Removing the opt-out provision may cause additional renovators to become trained and firms to become certified, and there are paperwork requirements for both of these activities. Removing the opt-out provision will also create paperwork due to the requirement to maintain records documenting compliance with the training and work practice requirements. This proposed rule also requires renovation firms to provide owners and occupants with these records. Although firms have the option of choosing to engage in the covered activities, once a firm chooses to do so, the information collection activities become mandatory for that firm.

The ICR document provides a detailed presentation of the estimated paperwork burden and costs resulting from this proposed rule. The burden to training providers and firms engaged in

renovation, repair, and painting activities is summarized in this unit.

Because this analysis assumes that renovation firms are somewhat specialized in terms of whether they work in facilities where the RRP rule requirements are applicable, removing the opt-out provision is estimated to result in additional renovators becoming trained and additional renovation firms becoming certified. Training additional renovators will increase the paperwork burden for training providers, since they must submit records to EPA (or an authorizing State, Tribe, or Territory) pertaining to each student attending a training course. Approximately 170 training providers are estimated to incur an average burden of about 40 hours each for additional notifications, resulting in an increase in training provider burden averaging 7,000 hours per year as a result of the removal of the opt-out provision.

Removing the opt-out provision is estimated to result in up to 111,000 additional firms becoming certified to engage in renovation, repair, or painting activities. 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 5 years). Firms must keep records of the work they perform; this recordkeeping is estimated to average approximately 5 hours per year per firm. And under this proposed rule, firms must also provide a copy of the records demonstrating compliance with the training and work practice requirements of the RRP rule to the owners and occupants of buildings being renovated. This additional recordkeeping requirement is estimated to average approximately 3.3 hours per year per firm. The total annual burden for these 111,000 firms is estimated to average 1,072,000 hours, of which 362,000 hours is due to the recordkeeping requirement to provide owners and occupants with documentation of the training and work practices used.

To the extent that firms working in housing eligible for the opt-out provision will already have incurred the training and certification burdens because they also work in regulated facilities ineligible for the opt-out provision, the training and certification burden for this action will be lower than estimated.

The requirement that firms provide owners and occupants with a copy of the records demonstrating compliance with the training and work practice requirements of the RRP rule also applies to firms working in buildings that were not eligible for the opt-out

provision. There are an estimated 211,000 such firms with an average annual burden of approximately 2.7 hours per firm, resulting in a total burden of 568,000 hours per year for these firms.

Total respondent burden for training providers and certified firms from removing the opt-out provision and requiring additional recordkeeping is estimated to average approximately 1,647,000 hours per year during the 3 year period covered by the ICR.

The proposed rule may also result in additional government costs to administer the program (to process the additional training provider notifications and to administer and enforce the program for firms working in housing previously eligible for the opt-out provision). States, Tribes, and Territories are allowed, but are under no obligation, to apply for and receive authorization to administer these 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.

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 I of title 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. When the ICR is approved by OMB, the Agency will publish a technical amendment to 40 CFR part 9 in the **Federal Register** to display the OMB control number for the approved information collection requirements contained in the final rule.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, EPA has established a docket for this proposed rule, which includes this ICR, under docket ID number EPA-HQ-OPPT-2005-0049. Submit any comments related to the ICR to EPA and OMB. See **ADDRESSES** for where to submit comments to EPA. Send comments to OMB at the Office of Information and Regulatory Affairs,

Office of Management and Budget, 725 17<sup>th</sup> St., NW., Washington, DC 20503, Attention: Desk Office for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after October 28, 2009, a comment to OMB is best assured of having its full effect if OMB receives it by November 27, 2009. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposed rule.

### C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of 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 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.
3. A small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

As required by section 603 of RFA, EPA has prepared an initial regulatory flexibility analysis (IRFA) for this proposed rule. The IRFA is available for review in the docket and is summarized in this unit (Ref. 8).

1. *Reasons why action by the Agency is being considered.* After further consideration of the opt-out provision, the Agency believes it is in the best interest of the public to remove the provision. EPA believes that the opt-out provision is not sufficiently protective for children under age 6 and pregnant women, because it does not provide protection from improperly performed renovations for visiting children and pregnant women; for children and pregnant women who move into a newly purchased house that was recently renovated under the opt-out provision; and for children and pregnant women who live adjacent to a home where the exterior is being renovated under the opt-out provision. In addition, while the RRP rule focused mainly on protecting young children

and pregnant women from lead hazards, exposure can result in adverse health effects for older children and adults as well. Removing the opt-out provision will protect older children and adult occupants of target housing where no child under age 6 or pregnant woman resides, as well as residents of adjacent properties. Finally, EPA believes that implementing the regulations without the opt-out provision promotes, to a greater extent, the statutory directive to promulgate regulations covering renovation activities in target housing.

EPA has determined that providing owners and occupants of renovated buildings with copies of the records documenting the renovation firm's compliance with the RRP rule's training and work practice requirements will serve to reinforce information on both the potential hazards of renovations and on the RRP rule's requirements. It will also enable building owners and occupants to better understand what the renovation firm did to comply with the RRP rule and how the rule's provisions affected their specific renovation. Educating the owners and occupants in this way is likely to improve their ability to assist the EPA in monitoring compliance with the RRP rule. These improvements in education and monitoring will improve compliance with the RRP rule, which will ultimately protect children and adults from exposure to lead hazards due to renovation activities.

2. *Legal basis and objectives for this proposed rule.* 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 issued the RRP rule in 2008 (Ref. 1). In issuing the RRP rule, EPA revised the TSCA section 402(a) regulatory scheme to apply to individuals and firms engaged in renovation, repair, and painting activities. In this proposed rule, EPA is revising the TSCA section 402(c)(3) rule to cover renovations in all target housing and child-occupied facilities. In so doing, EPA has also taken into consideration the environmental, economic, and social impact of this proposed rule as provided in TSCA section 2(c). A central objective

of this proposed rule is to minimize exposure to lead-based paint hazards created during renovation, repair, and painting activities in all target housing and other buildings frequented by children under age 6.

3. *Potentially affected small entities.* Small entities include small businesses, small organizations, and small governmental jurisdictions. The small entities that are potentially directly regulated by this proposed rule include: Small businesses (including contractors and property owners and managers); small nonprofits (certain childcare centers and private schools); and small governments (school districts which operate pre-schools, kindergartens and certain child care centers).

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 \$14 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 property owners and managers that are small businesses. EPA has concluded that a substantial number of small businesses will be affected by the rule. Consequently, EPA has chosen to be more conservative in estimating the cost impacts of the rule by using the closest, albeit lower, revenue bracket for which U.S. Economic Census data is available. For other sectors (nonprofits operating childcare centers or private schools), EPA assumed that all affected firms are small, which may overestimate the number of small entities affected by the proposed rule.

The vast majority of entities in the industries affected by this proposed rule

are small. Using EPA's estimates, the revisions to the renovation, repair, and painting program will affect approximately 289,000 small entities.

4. *Potential economic impacts on small entities.* EPA evaluated two factors in its analysis of the proposed rule's requirements on small entities, the number of firms that would experience the impact, and the size of the impact. Average annual compliance costs as a percentage of average annual revenues were used to assess the potential average 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, 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 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 proposed rule.

Of the approximately 289,000 small entities estimated to incur costs due to the proposed rule, an estimated 101,000 small residential contractors are assumed to seek certification as a result of the removal of the opt-out provision; therefore, they would incur training, certification, work practice, and recordkeeping costs. The remaining estimated 189,000 small entities (working in buildings that were not eligible for the opt-out) are only expected to incur costs due to the additional recordkeeping provisions in the proposed rule.

The average cost to a typical small renovation contractor of removing the opt-out provision ranges from about \$1,100 to about \$6,400, depending on the industry sector. This represents 0.8% to 1.7% of revenues depending on the industry sector. Overall, an estimated 101,000 small businesses would be affected by the removal of the opt-out provision, with average impacts of 1.10% of revenues.

This proposed rule's new recordkeeping requirement has an average cost of \$1 to \$280 for entities not affected by removal of the opt-out

provision. This results in incremental cost impacts ranging from 0.0001% to 0.08% of revenues. An estimated 189,000 small entities would be affected solely by the additional recordkeeping requirement, including 165,000 small businesses with average impacts of 0.03% of revenues, 17,000 small non-profits with average impacts of 0.0005%, and 6,000 small governments with average impacts of 0.0001%.

Combining the removal of the opt-out provision with the new recordkeeping requirement, a total of 289,000 small entities would be affected by the proposed rule, including 266,000 small businesses with average impacts of 0.4%, 17,000 small non-profits with average impacts of 0.0005%, and 6,000 small governments with average impacts of 0.0001%.

To the extent that renovators and firms working in housing eligible for the opt-out provision will already have become trained and certified because they also work in regulated facilities ineligible for the opt-out provision, or to the extent that eligible homeowners would decline to opt out, the average impacts of this action will be lower than estimated.

Some of the small entities subject to the rule have employees while others are non-employers. The non-employers typically perform fewer jobs than firms with employees, and thus have lower work practice compliance costs. However, they also have lower average revenues than entities with employees, so their impacts (measured as costs divided by revenues) can be higher. Impact estimates for non-employers should be interpreted with caution, as some non-employers may have significant issues related to understatement of income, which would tend to exaggerate the average impact ratio for this class of small entities.

There are 75,000 non-employer renovation contractors estimated to be affected by the removal of the opt-out provision. The average cost to these contractors is estimated to be \$1,193 apiece. This represents 1.3% to 4.7% of reported revenues, depending on the industry sector. This proposed rule's new recordkeeping requirement is estimated to affect an additional 96,000 non-employer renovation contractors not affected by removal of the opt-out provision. The costs to these contractors are estimated to be \$42 apiece. This represents 0.05% to 0.17% of revenues, depending on the industry sector.

5. *Relevant Federal rules.* The requirements in this proposed rule will fit within an existing framework of other Federal regulations that address lead-based paint. Notably, the Pre-

Renovation Education Rule, 40 CFR 745.85, requires renovators to distribute a lead hazard information pamphlet to owners and occupants before conducting a renovation in target housing and child-occupied facilities. This proposed rule's requirement that renovators provide owners and occupants with records documenting compliance with the program's training and work practice requirements complements the existing pre-renovation education requirements.

#### 6. *Skills needed for compliance.*

Under the lead renovation, repair, and painting program requirements, renovators and dust sampling technicians working in target housing and child-occupied facilities 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. Renovators then provide on-the-job training in work practices to any other renovation workers used on a particular renovation. Entities are 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 also need to document their training and the work practices used during renovations. This does not require any special skills.

7. *Small Business Advocacy Review Panel.* EPA has been concerned with potential small entity impacts since the earliest stages of planning for the RRP program under section 402(c)(3) of TSCA. EPA conducted outreach to small entities and, pursuant to section 609 of RFA, convened a Small Business Advocacy Review Panel (the Panel) in 1999 to obtain advice and recommendations of representatives of the regulated small entities. 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, and interior clearance.

Details on the Panel and its recommendations are provided in the Panel Report (Ref. 9). Information on how EPA implemented the Panel's recommendations in the development of the RRP program is available in Unit VIII.C. of the preamble to the proposed RRP rule (Ref. 10) and in Unit V.C. of the preamble to the RRP rule (Ref. 1). EPA believes that the conclusions it made in 2008 regarding these

recommendations are applicable to this proposal, particularly with respect to the removal of the opt-out provision.

8. *Alternatives considered.* EPA considered several significant alternatives to this proposed rule that could affect the economic impacts of the proposed rule on small entities. These alternatives would have applied to both small and large entities, but given the number of small entities in the affected industries, these alternatives would primarily affect small entities. For the reasons described in this unit, EPA believes these alternatives are not consistent with the objectives of the rule.

i. *Delayed effective date.* EPA considered an option that would delay the removal of the opt-out provision by 6 months, and another option that would delay the date by 12 months. These options would make the RRP program more complex to implement and might lead to confusion by renovators and homeowners. These options would also lead to increased exposures during the delay period, including exposures to children under the age of 6 and pregnant women. Therefore, EPA believes that these options are not consistent with the stated objectives of the proposed rule.

ii. *Staged approach.* EPA considered a staged approach that would initially remove the opt-out provision in pre-1960 housing, and then remove it in housing built between 1960 and 1978 a year later. This would make the RRP program more complex to implement and might lead to confusion by renovators and homeowners. It would also increase exposures during the first year of the rule from renovations in houses built between 1960 and 1978, including exposures to children under the age of 6 and pregnant women. EPA does not believe that the reduced burden of a staged approach outweighs the implementation complexity and additional exposures that it would create. Therefore, EPA believes that this option is not consistent with the stated objectives of the rule.

iii. *Alternate work practices.* EPA also considered different options for the work practice requirements in housing that was previously eligible for the opt-out provision. Specifically, EPA considered options: With the containment requirements specified in 40 CFR 745.85, but without any cleaning or cleaning verification work practices; with the cleaning and cleaning verification requirements specified in 40 CFR 745.85, but without any containment work practices; with the cleaning requirements specified in 40 CFR 745.85, but without any

containment or cleaning verification work practices; and with the containment, cleaning, and cleaning verification requirements specified in 40 CFR 745.85, but without the prohibitions or restrictions on paint removal practices specified in 40 CFR 745.85(a)(3) (i.e., open-flame burning or torching, the use of machines that remove paint through high-speed operation without HEPA exhaust control, and heat guns operating in excess of 1,100 degrees Fahrenheit).

EPA's Dust Study (Ref. 11) indicated that renovation, repair, and paint preparation activities produce large quantities of lead dust that create dust-lead hazards. The Dust Study showed that the largest decreases in dust levels were observed in the experiments where the rule's practices of containment, specialized cleaning, and cleaning verification were all used. The Dust Study indicated that if the prohibited and restricted practices are avoided, the suite of work practices as a whole are effective at addressing the lead-paint dust that is generated during renovation activities. This is discussed in more detail in the RRP rule (Ref. 1, pp. 21696–21697).

As required by section 212 of Small Business Regulatory Enforcement Fairness Act (SBREFA), EPA issued a Small Entity Compliance Guide (the Guide) in December 2008 to help small entities comply with the RRP rule. The Guide is available at: <http://www.epa.gov/lead/pubs/sbcomplianceguide.pdf> or from the National Lead Information Center by calling 1–800–424–LEAD [5323]. Hearing- or speech-challenged individuals may access this number through TTY by calling the toll-free Federal Relay Service at 1–800–877–8339. EPA will revise the Guide, as necessary, to reflect this rulemaking activity.

#### D. *Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with “Federal mandates” that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of UMRA generally requires



EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA proposal rules with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Under UMRA Title II, EPA has determined that this proposed rule contains a Federal mandate that may result in expenditures that exceed the inflation-adjusted UMRA threshold of \$100 million by the private sector in any 1 year, but it will not result in such expenditures by State, local, and Tribal governments in the aggregate. Accordingly, EPA has prepared a written statement under section 202 of UMRA which has been placed in the docket for this proposed rule (Ref. 12) and is summarized here.

1. *Authorizing legislation.* This proposed rule is issued under the authority of TSCA sections 402(c)(3), 404, 406, and 407 (15 U.S.C. 2682(c)(3), 2684, 2686, and 2687).

2. *Cost-benefit analysis.* EPA has prepared an analysis of the costs and benefits associated with this proposed rule, a copy of which is available in the docket for this proposed rule (Ref. 5). The Economic Analysis presents the costs of this proposed rule as well as various regulatory options and is summarized in Unit IV.A. EPA has estimated the total costs of this proposed rule at \$500 million in the first year and \$300 million per year thereafter.

The benefits of the proposed rule result from the prevention of adverse health effects attributable to lead exposure from renovations in pre-1978 buildings. These health effects include impaired cognitive function in children

and several illnesses in children and adults, such as increased adverse cardiovascular outcomes (including increased blood pressure, increased incidence of hypertension, cardiovascular morbidity, and mortality) and decreased kidney function.

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 proposed RRP rule (Ref. 10), the Agency has met with State, local, and Tribal government officials on numerous occasions to discuss renovation issues.

4. *Least burdensome option.* EPA has considered a wide variety of options for addressing the risks presented by renovation activities where lead-based paint is present. As part of the development of the renovation, repair, and painting program, EPA considered different options for the scope of the proposed 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. The Economic Analysis for this proposed rule analyzed several additional options for the phasing, effective date, and work practices required for the additional owner-occupied housing affected by the removal of the opt-out provision. As described in Unit IV.C., EPA has preliminarily concluded that the options for delaying or phasing the effective date would make the RRP program more complex to implement, might lead to confusion by renovators and homeowners, and would lead to increased exposures. Currently EPA believes that the preferred option is the least burdensome option available that achieves a central objective of this proposed rule, which is to minimize exposure to lead-based paint hazards created during renovation, repair, and painting activities in all target housing and other buildings frequented by children under age 6.

This proposed 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 may 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 proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments. Small governments operate public housing, and schools that are child-occupied facilities. If these governments perform renovations in these facilities, they may incur very small additional costs to provide residents, parents or guardians with copies of the records documenting compliance with the training and work practice requirements. EPA generally measures a significant impact under UMRA as being expenditures, in the aggregate, of more than 1% of small government revenues in any 1 year. As explained in Unit IV.C.4., the proposed 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 proposed 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. Executive Order 13132*

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 are able to apply for, and receive authorization to administer the lead renovation, repair, and painting program requirements, but are under no obligation to do so. In the absence of a State authorization, EPA will administer the 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 consulted with representatives of State and local

governments in developing the renovation, repair, and painting program. These consultations were described in the preamble to the proposed RRP rule (Ref. 10).

#### *F. Executive Order 13175*

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 are able to apply for and receive authorization to administer the lead renovation, repair, and painting program on Tribal lands, but Tribes are under no obligation to do so. In the absence of a Tribal authorization, EPA will administer these requirements. While Tribes may operate public housing or child-occupied facilities covered by the rule such as kindergartens, pre-kindergartens, and daycare facilities, EPA has determined that this rule would not have substantial direct effects on the Tribal governments that operate these facilities.

Thus, Executive Order 13175 does not apply to this proposed rule. Although Executive Order 13175 does not apply, 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.

#### *G. Executive Order 13045*

Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to this proposed rule because it is an "economically significant regulatory action" as defined by Executive Order 12866, and because the environmental health or safety risk addressed by this action may have a disproportionate effect on children.

A central purpose of this proposed rule is to minimize exposure to lead-based paint hazards created during renovation, repair, and painting activities in all housing and other buildings frequented by children under age 6. In the absence of this regulation, adequate work practices are not likely to be employed during renovation, repair,

and painting activities in housing eligible for the opt-out provision.

Removing the opt-out provision will protect children under the age of 6 who visit a friend, relative, or caregiver's house where a renovation would have been performed under the opt-out provision; children who move into such housing when their family purchases it after such a renovation would have been performed; and children who live in a property adjacent to owner-occupied housing where renovation would have been performed under the opt-out provision. Removing the opt-out provision will also protect children age 6 and older who live in houses that would have been renovated under the opt-out provision; who move into such housing; and who live in adjacent properties.

#### *H. Executive Order 13211*

This proposed 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. National Technology Transfer and Advancement Act of 1995*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 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.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

#### *J. Executive Order 12898*

Pursuant to Executive Order 12898, entitled "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" (59 FR 7629, February 16, 1994), EPA has assessed the potential impact of this rule on minority and low-income populations. The results of this assessment are presented in the

Economic Analysis, which is available in the public docket for this rulemaking (Ref. 5). As a result of this assessment, the Agency has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population.

#### **List of Subjects in 40 CFR Part 745**

Environmental protection, Lead, Lead-based paint, Renovation, Reporting and recordkeeping requirements.

Dated: October 20, 2009.

**Lisa P. Jackson,**  
*Administrator.*

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

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 745.81 is amended by revising paragraph (a)(4) to read as follows:

#### **§ 745.81 Effective dates.**

(a) \* \* \* \* \*

(4) *Work practices.* On or after April 22, 2010, all renovations must be performed in accordance with the work practice standards in § 745.85 and the associated recordkeeping requirements in § 745.86(b)(1) and (b)(6) in target housing or child-occupied facilities, unless the renovation qualifies for one of the exceptions identified in § 745.82(a).

\* \* \* \* \*

#### **§ 745.82 [Amended]**

3. Section 745.82 is amended by removing paragraph (c).

4. Section 745.84 is amended by revising paragraphs (b)(2), (c)(2) introductory text, and (c)(2)(ii) to read as follows:

#### **§ 745.84 Information distribution requirements.**

\* \* \* \* \*

(b) \* \* \* \*

(2) *Comply with one of the following.*

(i) 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 and a copy of the records required by § 745.86(c) and (d), at no cost to the occupants, or

(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 are likely to be seen by the occupants of all of the affected units. The signs must be accompanied by a posted copy of the pamphlet or information on how interested occupants can review a copy of the pamphlet or obtain a copy from the renovation firm at no cost to occupants. The signs must also include information on how interested occupants can review a copy of the records required by § 745.86(c) and (d) or obtain a copy from the renovation firm at no cost to the occupants.

\* \* \* \* \*

(c) \* \* \*

(2) Provide the parents and guardians of children using the child-occupied facility with the pamphlet, information describing the general nature and locations of the renovation and the anticipated completion date, and information on how interested parents or guardians of children frequenting the child-occupied facility can review a copy of the records required by § 745.86(c) and (d) or obtain a copy from the renovation firm at no cost to the occupants by complying with one of the following:

\* \* \* \* \*

(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 of children frequenting the child-occupied facility can review a copy of the pamphlet or obtain a copy from the renovation firm at no cost to the parents or guardians. The signs must also include information on how interested parents or guardians of children frequenting the child-occupied facility can review a copy of the records required by § 745.86(c) and (d) or obtain a copy from the renovation firm at no cost to the parents or guardians.

\* \* \* \* \*

5. Section 745.86 is amended by removing paragraph (b)(6) and redesignating paragraph (b)(7) as paragraph (b)(6) and by revising paragraphs (b)(1), (c), and (d) to read as follows:

**§ 745.86 Recordkeeping and reporting requirements.**

\* \* \* \* \*

(b) \* \* \*

(1) Records or reports certifying that a determination had been made that lead-based paint was not present on the components affected by the renovation, as described in § 745.82(a). These records or reports include:

(i) Reports prepared by a certified inspector or certified risk assessor (certified pursuant to either Federal regulations at § 745.226 or an EPA-authorized State or Tribal certification program).

(ii) Records prepared by a certified renovator after using EPA-recognized test kits, including an identification of the manufacturer and model of any test kits used, a description of the components that were tested including their locations, and the result of each test kit used.

\* \* \* \* \*

(c)(1) When the final invoice for the renovation is delivered or within 30 days of the completion of the renovation, whichever is earlier, the renovation firm must provide information pertaining to compliance with this subpart to the following persons:

(i) The owner of the building; and, if different,

(ii) An adult occupant of the residential dwelling, if the renovation took place within a residential dwelling, or an adult representative of the child-occupied facility, if the renovation took place within a child-occupied facility.

(2) When performing renovations in common areas of multi-unit target housing, renovation firms must post the information required by this subpart or instructions on how interested occupants can obtain a copy of this information. This information must be posted in areas where it is likely to be seen by the occupants of all of the affected units.

(3) The information required to be provided by paragraph (c) of this section may be provided by completing the sample form titled "Sample Renovation Recordkeeping Checklist" or a similar form containing the test kit information required by § 745.86(b)(1)(ii) and the training and work practice compliance information required by § 745.86(b)(6).

(d) If dust clearance sampling is performed in lieu of cleaning

verification as permitted by § 745.85(c), the renovation firm must provide, when the final invoice for the renovation is delivered or within 30 days of the completion of the renovation, whichever is earlier, a copy of the dust sampling report to:

(1) The owner of the building; and, if different,

(2) An adult occupant of the residential dwelling, if the renovation took place within a residential dwelling, or an adult representative of the child-occupied facility, if the renovation took place within a child-occupied facility.

(3) When performing renovations in common areas of multi-unit target housing, renovation firms must post these dust sampling reports or information on how interested occupants of the housing being renovated can obtain a copy of the report. This information must be posted in areas where they are likely to be seen by the occupants of all of the affected units.

6. Section 745.90 is amended by revising paragraph (b)(8) to read as follows:

**§ 745.90 Renovator certification and dust sampling technician certification.**

\* \* \* \* \*

(b) \* \* \*

(8) Must prepare the records required by § 745.86(b)(1) and (6).

\* \* \* \* \*

7. Section 745.326 is amended by adding paragraph (f) to read as follows:

**§ 745.326 Renovation: State and Tribal program requirements.**

\* \* \* \* \*

(f) *Revisions to renovation program requirements.* When EPA publishes in the **Federal Register** revisions to the renovation program requirements contained in subparts E and L of this part:

(1) A State or Tribe with a renovation program approved before the effective date of the revisions to the renovation program requirements in subparts E and L of this part must demonstrate that it meets the requirements of this section no later than the first report that it submits pursuant to § 745.324(h) but no later than 1 year after the effective date of the revisions.

(2) A State or Tribe with an application for approval of a renovation program submitted but not approved before the effective date of the revisions to the renovation program requirements in subparts E and L of this part 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 but no later than 1 year after the effective date of the revisions.

(3) A State or Tribe submitting its application for approval of a renovation program on or after the effective date of the revisions must demonstrate in its application that it meets the requirements of the new renovation program requirements in subparts E and L of this part.

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

[FWS-R6-ES-2009-0065]

[MO 9221050083-B2]

#### Endangered and Threatened Wildlife and Plants; Status Review of Arctic Grayling (*Thymallus arcticus*) in the Upper Missouri River System

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of intent to conduct status review.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), under the authority of the Endangered Species Act of 1973, as amended (Act), give notice of our intent to conduct a status review of Arctic grayling (*Thymallus arcticus*) in the upper Missouri River system. We conduct status reviews to determine whether the entity should be listed as endangered or threatened under the Act. Through this notice, we encourage all interested parties to provide us information regarding Arctic grayling in the upper Missouri River basin.

**DATES:** We must receive information no later than November 27, 2009.

**ADDRESSES:** You may submit information by one of the following methods:

- Via e-mail to: [fw6\\_arcticgrayling@fws.gov](mailto:fw6_arcticgrayling@fws.gov)
- U.S. mail or hand-delivery: Arctic Grayling Status Review, U.S. Fish and Wildlife Service, Montana Field Office, 585 Shepard Way, Helena, Montana 59601.

We will not accept faxes.

**FOR FURTHER INFORMATION CONTACT:** Mark Wilson, Montana Field Office; telephone (406) 449-5225. Individuals who are hearing-impaired or speech-impaired may call the Federal Relay Service at 1-800-877-8339.

**SUPPLEMENTARY INFORMATION:**

#### Request for Information

To ensure that the status review is based on the best available scientific and commercial information and to provide an opportunity to any interested parties to provide information for consideration during the status assessment, we are requesting information concerning Arctic grayling in the upper Missouri River system. We request information be provided within 30 days. We request information from the public, other concerned governmental agencies, Native American tribes, the scientific community, industry, and any other interested party. We are seeking:

(1) General information concerning the taxonomy, biology, ecology, genetics, and status of the Arctic grayling of the upper Missouri River system;

(2) Specific information relevant to the consideration of the potential distinct population segment (DPS) status of Arctic grayling in the upper Missouri River system in accordance with our Policy Regarding the Recognition of Distinct Vertebrate Population Segments (61 FR 4722, February 7, 1996) (known as the DPS Policy), which specifically considers two elements: (i) discreteness of the population segment in relation to the remainder of the species to which it belongs; and (ii) the significance of the population segment to the species to which it belongs. Per our recent settlement, we will consider various DPS designations that include different life histories of Arctic grayling in the upper Missouri River system. Specifically, we may consider DPS configurations that include the fluvial (relating to, or inhabiting, a river or stream) and/or adfluvial (fish that live in lakes and migrate into streams to spawn) Arctic grayling in the upper Missouri River system;

(3) Specific information on the conservation status of Arctic grayling in the upper Missouri River system, including information on distribution, abundance, and population trends;

(4) Specific information on threats to Arctic grayling in the upper Missouri River, including: (i) the present or threatened destruction, modification, or curtailment of its habitat or range; (ii) overutilization for commercial, recreational, scientific, or educational purposes; (iii) disease or predation; (iv) the inadequacy of existing regulatory mechanisms; and (v) other natural or manmade factors affecting its continued existence; and

(5) Specific information on conservation actions designed to

improve Arctic grayling habitat or reduce threats to grayling in the upper Missouri River system.

If you submit information, we request you support it with documentation such as data, maps, bibliographic references, methods used to gather and analyze the data, or copies of any pertinent publications, reports, or letters by knowledgeable sources.

Section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or threatened species must be made "solely on the basis of the best scientific and commercial data available."

You may submit your information concerning this status review by one of the methods listed in the **ADDRESSES** section. If you submit information that includes personal identifying information, you may request at the top of your document that we withhold this personal identifying information from public review. However, we cannot guarantee that we will be able to do so.

Information and supporting documentation that we receive and use in preparing this finding will be available for you to review by appointment during normal business hours at the U.S. Fish and Wildlife Service, Montana Field Office (see **FOR FURTHER INFORMATION CONTACT**).

#### Background

The Arctic grayling is a fish belonging to the family Salmonidae (salmon, trout, charr, whitefishes), subfamily *Thymallinae* (graylings), and is represented by a single genus, *Thymallus* (Scott and Crossman 1973, pp. 301–302; Behnke 2002, pp. 327–331). Arctic grayling have long, thin bodies with deeply forked tails, and adults typically average 254 to 330 millimeters (10 to 13 inches) in length. Coloration varies from silvery or iridescent blue and lavender, to dark blue (Behnke 2002, pp. 327–328). Arctic grayling have a prominent sail-like dorsal fin, which is large and vividly colored with rows of orange to bright green spots, and often has an orange border. Dark spots often appear on the body toward the head (Behnke 2002, pp. 327–328).

Arctic grayling are native to Arctic Ocean drainages of northwestern Canada and Alaska; the Peace, Saskatchewan, and Athabasca River drainages in Alberta, eastward to Hudson Bay and westward to the Bering Straits; and eastern Siberia and northern Eurasia (Scott and Crossman 1973, pp. 301–302). Arctic grayling also are native to Pacific coast drainages of Alaska and Canada as far south as the Stikine River in British Columbia (Scott and