

forests, Public lands—rights-of-way, Reporting and recordkeeping requirements, Water resources.

■ Accordingly, 36 CFR part 251 is corrected to read as follows:

PART 251—LAND USES

Subpart B—Special Uses

■ 1. The authority citation for part 251 continues to read as follow:

Authority: 7 U.S.C. 1011; 16 U.S.C. 518, 551, 678a; Pub. L. 76–867, 54 Stat. 1197.

■ 2. In § 251.60, revise (a)(2)(i) to read as follows:

§ 251.60 Termination, revocation, and suspension.

(a) * * *

(2) *All other special uses—(i)*

Revocation or suspension. An authorized officer may revoke or suspend a special use authorization for all other special uses, except a permit or an easement issued pursuant to § 251.53(e) or an easement issued under § 251.53(l) of this subpart:

(A) For noncompliance with applicable statutes, regulations, or the terms and conditions of the authorization;

(B) For failure of the holder to exercise the rights or privileges granted;

(C) With the consent of the holder; or

(D) At the discretion of the authorized officer for specific and compelling reasons in the public interest.

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Dated: April 28, 2010.

Thomas L. Tidwell,

Chief, Forest Service.

[FR Doc. 2010–10296 Filed 5–5–10; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 745

[EPA–HQ–OPPT–2005–0049; FRL–8823–7]

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: Final rule.

SUMMARY: EPA is finalizing several revisions to the Lead Renovation, Repair, and Painting Program (RRP) rule that published in the **Federal Register** on April 22, 2008. The RRP rule

established 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 eliminating 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 women resides in the home and the home is not a child-occupied facility. EPA is also requiring 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. In addition, the rule makes minor changes to the certification, accreditation and state authorization requirements.

DATES: This final rule is effective July 6, 2010.

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPPT–2005–0049. 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., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket 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 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.

For general information contact: The TSCA Hotline, ABVI–Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@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 an individual who must be certified to conduct renovation activities in accordance with 40 CFR 745.90.

This final 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]. 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**.

II. Background

A. Agency's Authority for Taking This Action

This final 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 regarding the opt-out provision and recordkeeping requirements.

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 when 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 acknowledgment for any reason (even if no children under age 6 or no pregnant women reside there), the renovation is subject to the requirements of the RRP rule.

Even though the Agency included the opt-out provision in the final RRP rule, EPA recognized that the opt-out presented concerns for exposure to children under age 6. Nonetheless, EPA explained that it believed it should focus the rule on scenarios with the greatest exposure to children under age 6, that concerns for new homeowners would be mitigated to some extent by the requirements of the "Disclosure Rule", and that older children and adults did not ingest lead-dust at as high a rate as toddlers and therefore high dust lead levels present a much greater risk to a young child than they do for an older child or adult. After promulgation, the rule, and specifically the opt-out provision, was challenged.

As part of a settlement agreement, EPA agreed to propose removing the opt-out provision.

On October 28, 2009, EPA proposed to remove the opt-out provision. For the reasons discussed in this Unit, the Agency has now concluded that 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. By removing the opt-out provision, the rule will go farther toward protecting children under age 6 and pregnant women, as well as older children and adult occupants of target housing where no child under age 6 or pregnant woman resides. Therefore, the opt-out provision will no longer be available to owner-occupants beginning on the effective date of this final rule.

EPA believes the opt-out provision is not sufficiently protective for children under age 6 and pregnant women, the most vulnerable populations identified in the RRP rule. 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 lead hazards created by renovation, repair, and painting activities. 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 hire contractors 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. There are other benefits to removing the opt-out provision, including protection for family pets, as lead poisonings resulting from renovations have been documented in both cats and dogs (Refs. 17 and 18).

In the preamble to the RRP rule, EPA explained that it believed the Disclosure Rule, 40 CFR part 745, subpart F (required by section 1018 of Title X of the Residential Lead-Based Paint Hazard Reduction Act of 1992 (Pub. L. 102–550), would help to address these concerns. The Disclosure Rule requires sellers of target housing to disclose known lead-based paint or lead-based

paint hazard information to purchasers and provide them with a copy of the lead hazard information pamphlet entitled *Protect Your Family From Lead in Your Home* (Ref. 14). EPA explained the receipt of this information could prompt the family to inquire about potential lead-based paint hazards in the home. In addition, EPA recommended that purchasers take advantage of their statutory opportunity to have a lead-based paint inspection or risk assessment done while in the process of purchasing target housing.

In supporting the proposal to remove the opt-out provision, one commenter disagreed that the Disclosure Rule adequately addresses the risks to subsequent owners of target housing that undergo renovations under the opt-out provision. In particular, this commenter pointed out that there is nothing in the Disclosure Rule to alert homeowners to the fact that RRP work practice requirements were not followed before they purchased the home. Indeed, the Disclosure Rule only requires disclosure of known hazards. It would not require disclosure of renovation activities or that the owner opted out of the RRP rule requirements. The commenter further states that it is unreasonable to assume that a typical homeowner or someone renting a previously owner-occupied dwelling would know the detailed exemptions on the RRP rule.

The Agency continues to believe that the Disclosure Rule provides valuable information to homeowners and that this information may help homeowners become aware of lead hazards. However, EPA's study on the *Characterization of Dust Lead Levels after Renovation, Repair, and Painting Activities* (the "Dust Study", Ref. 11), demonstrated that renovation, repair, and painting activities produce large quantities of lead dust that create dust-lead hazards. The study also showed that the RRP work practices are effective at minimizing exposure to dust hazards that could result from renovation activities. As the commenter pointed out, the Disclosure Rule will not, in many cases, provide the type of renovation specific lead hazard information or provide recipients information that can be said to reliably or effectively result in minimizing exposure to lead-based paint hazards created by renovation activities. Thus, there is little evidence to suggest that the provisions of the Disclosure Rule are effective or reliable at minimizing exposure to lead-based paint hazards created by renovation activities in target housing. In addition, even if the Disclosure Rule reliably disclosed

relevant information relating to earlier renovation activities, EPA does not believe this would be an adequate substitute for the work practice standards, which EPA has a record basis to conclude actually result in elimination—rather than simply disclosure—of the hazards created by renovations.

Perhaps in recognition of this shortcoming, one commenter suggested that EPA should revise the Disclosure Rule, as opposed to making changes to the RRP rule. That would not, however, satisfy EPA's obligation under section 402 to put into place standards that take into account reliability, effectiveness, and safety to address lead-based paint hazards created by renovation activities in target housing. Moreover, the Disclosure Rule was jointly promulgated by EPA and the Department of Housing and Urban Development. Thus, changes would involve a joint rulemaking effort and are not wholly within EPA's control. Furthermore, changes to the Disclosure Rule would need to be analyzed in the context of the underlying statute—not just because it might be helpful in the context of actions taken by EPA under a different statutory provision. In short, while this is a suggestion that may be worth pursuing, it does not address the present issue; that of reliably and effectively minimizing exposure to lead-based paint hazards created by renovation activities.

Furthermore, EPA is concerned about the effectiveness of disclosure with respect to populations with the highest risk of exposure to harmful lead levels. Children in minority populations and children whose families are poor have an increased risk of exposure to harmful lead levels (Ref. 3, at e376). Analysis of the National Health and Nutrition Examination Surveys (NHANES) data from 1988 through 2004 shows that the prevalence of blood lead levels equal to or exceeding 10 µg/dL in children aged 1 to 5 years has decreased from 8.6% in 1988–1991 to 1.4% in 1999–2004, which is an 84% decline (Ref. 3, at e377). However, the NHANES data from 1999–2004 indicates that non-Hispanic black children aged 1 to 5 years had higher percentages of blood lead levels equal to or exceeding 10 µg/dL (3.4%) than white children in the same age group (1.2%) (Ref. 3). In addition, among children aged 1 to 5 years over the same period, the geometric mean blood lead level was significantly higher for non-Hispanic blacks (2.8 µg/dL), compared with Mexican Americans (1.9 µg/dL) and non-Hispanic whites (1.7 µg/dL) (Ref. 3, at e377). For children aged 1 to 5 years from families with low

income, the geometric mean blood lead level was 2.4 µg/dL (Ref. 3, at e377). Further, the incidences of blood-lead levels greater than 10 µg/dL and greater than or equal to 5 µg/dL were higher for non-Hispanic blacks (14% and 3.4% respectively) than for Mexican Americans (4.7% and 1.2%, respectively) and non-Hispanic whites (4.4% and 1.2%, respectively) (Ref. 3, at e377). The “analysis indicates that residence in older housing, poverty, age, and being non-Hispanic black are still major risk factors for higher lead levels” (Ref. 3, at e376). EPA is concerned that disclosure may be ineffective with respect to these populations already at higher risk of having elevated blood lead levels because the effectiveness of disclosure depends on the recipient’s understanding the significance of the disclosure and having the means and ability to act upon the information.

This also relates to practical issues that have implications for the RRP rule in general, and for high risk, low-income, minority populations in particular. The opt-out is a relatively complicated overlay to the applicability provisions of the rule. EPA believes there are practical benefits to removing the opt-out and simplifying the applicability of the rule—both for renovators and homeowners. The opt-out provision complicates the outreach and education about lead hazards and makes the rule more complicated for renovators to apply and consumers to understand. Furthermore, it not only assumes literacy but also a working knowledge of what the rule would otherwise require and an ability to provide informed consent. Accordingly, EPA believes that populations that already have the highest risk factors for lead exposure may be disproportionately adversely affected by the complexity of a rule that contains the opt-out provision. More generally, EPA believes that the more uniform the application of the rule work practices in target housing is, the more effective and reliable they will be at minimizing exposure to lead-based paint hazards. Contractors who have a single set of work practices that are to be applied in most pre-1978 housing and child-occupied facilities will be more likely to apply them consistently and correctly.

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. For example, “A Case Report of Lead Paint Poisoning during Renovation of a Victorian Farmhouse” describes four cases of childhood lead poisoning and two cases of adult lead toxicity resulting from a renovation. One of the adults was a woman who did not realize she was pregnant until after the exposure occurred. (Ref. 16)

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 leaded 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. One commenter cited a study that shows housing in urban areas, such as Chicago, tend to be only three to five meters apart, highlighting the likelihood of lead contamination of adjacent prosperities in urban neighborhoods. Similarly, another commenter stated that in urban communities, many if not most of the homes are side by side. There are approximately 2 million owner-occupied, single-family attached homes (e.g., townhomes, semi-detached or duplex 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. Another factor that EPA did not fully consider in promulgating the original RRP rule, but that weighs heavily against the opt-out provision, is that the risks posed by the opt-out with respect to exterior work will disproportionately affect children that are already at the highest risk for higher blood lead levels—low income,

non-Hispanic black children living in older housing in urban areas, which is likely to be comprised of attached, or closely constructed detached, homes.

While the RRP rule focused principally on protecting children under age 6, it is well known that older children and adults can also suffer adverse effects from lead exposure. Adults are susceptible to lead effects at lower blood lead levels than previously understood (e.g., Ref. 13, p. 8–25). Epidemiologic 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 mm Hg increase in systolic blood pressure and ~0.6 mm Hg increase in diastolic pressure. The evidence for an association of lead with cardiovascular morbidity and mortality is limited but supportive. (Ref. 13, p. E–10). As evident from the discussions in chapters 5, 6 and 8 of EPA’s Air Quality Criteria Document for Lead (Ref. 13), “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). 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). Epidemiological studies have consistently demonstrated associations between lead exposure and enhanced risk of deleterious cardiovascular outcomes, including increased blood pressure and incidence of hypertension. As one commenter pointed out, the half-life of lead in bone is approximately 20 years. Thus, women of child-bearing age exposed to lead will retain higher levels of lead in their bodies throughout their child-bearing years. When pregnancy occurs, lead can be transferred to the fetus causing an array of adverse effects. EPA now believes the opt-out provision does not sufficiently account for the importance of the health effects of lead exposure to adults and children age 6 and older by

allowing renovations to be performed without following the RRP rule requirements in housing that qualified for the opt-out. In supporting the final RRP rule, EPA stated that older children and adults do not ingest dust at the same high rate that a toddler does. This is corroborated by a 2007 meta-analysis of studies of children's hand-to-mouth behavior. (Ref. 4). However, as this analysis indicates, this does not mean that hand-to-mouth behavior is not a potential concern for older children. According to the meta-analysis, the average indoor hand-to-mouth behavior ranged from 6.7 to 28.0 contacts/hour, with the lowest value corresponding to the 6 to < 11 year olds and the highest value corresponding to the 3 to < 6 month olds. Average outdoor hand-to-mouth frequency ranged from 2.9 to 14.5 contacts/hour, with the lowest value corresponding to the 6 to < 11 year olds and the highest value corresponding to the 6 to < 12 month olds. Although toddlers have a higher incidence of hand-to-mouth behavior than 6 to < 11 year olds, the latter group still averages more than 6 contacts/hour. Further elevated blood lead levels do occur in children older than 6 and adults (Ref. 15). The Dust Study shows that when the RRP requirements are not followed, renovation activities result in dust lead levels that can be orders of magnitude above the hazard standard and that can be orders of magnitude higher than if the RRP requirements are followed. EPA believes the information from this meta-analysis provides corroborating support for EPA's concern for children 6 and older and its decision to eliminate the opt-out provision.

The Agency believes that it should only allow provisions such as the opt-out for situations where the information available to EPA indicates that the RRP rule work practices are not necessary to minimize exposure of occupants to lead paint hazards. Because lead paint dust exposure can cause adverse health effects for populations other than just children under age 6 and renovations can result in lead dust levels many times higher than the hazard standard, EPA believes the work practices should be followed in target housing without regard to the age of the occupants.

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. Among other things, TSCA section 402(c)(3), directs EPA to promulgate regulations that apply to renovation activities that create lead-based paint hazards 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." Pursuant to section 403 of TSCA, EPA has identified dust-lead hazards in target housing and child-occupied facilities as surface dust that contains a mass-per-area concentration of lead equal to or exceeding 40 µg/ft² on floors or 250 µg/ft² on windowsills. In the RRP rule, EPA found that renovation, repair, and painting activities that disturb lead-based paint create lead-based paint hazards. Thus, renovations in target housing that create lead-based paint hazards should be covered unless there is a record basis to conclude that coverage is unnecessary.

Shortly after promulgating the RRP rule, the RRP rule, and specifically the opt-out provision, was challenged. EPA decided to settle the lawsuit. As part of the settlement, EPA agreed to issue a proposed rule removing the opt-out. In turn, as part of this rulemaking, EPA requested information or data that would shed any light on the reliability, effectiveness, or safety of the opt-out or any variation thereof in relation to EPA's lead hazard standards. EPA did not receive any information in response to its request.

EPA's Dust Study demonstrated and EPA found that renovation, repair, and painting activities produce lead dust above the regulatory hazard standards. In fact many renovation activities create large quantities of lead dust. The Dust Study shows that renovation activities result in lead levels many times greater than the hazard standard when the RRP rule containment and cleanup procedures are not followed. It also demonstrated that work practices other than those restricted or prohibited by the RRP rule can leave behind lead dust well above the hazard standards when the RRP rule requirements are not followed. The Dust Study also showed that alternative practices (broom cleaning, not using containment) were not effective or safe in relation to EPA's lead hazard standards. Under the opt-out, contractors performing renovations would have no obligation to minimize or clean up any dust-lead hazards created by the renovation. Indeed, contractors would not be prevented from using practices that EPA has determined create hazards that cannot be adequately contained or cleaned up even when following the RRP rule requirements. The Agency also took these factors into consideration in its

decision to remove the opt-out provision in this final rule.

In development of the proposed rule, EPA considered and requested comment on certain 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 also requested comment on possible alternate approaches that would meet EPA's statutory obligation to apply work practice standards in target housing that take into account reliability, effectiveness, and safety.

One alternative for which EPA requested comment would have required 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 have addressed exposures to lead dust from exterior renovations for people living in neighboring homes, particularly attached homes or homes in close physical proximity. 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. However, this option did not address lead hazards created during renovations of the interiors of home which could lead to lead exposure to occupants, and EPA received no comments mitigating this concern or supporting the protectiveness of this option.

EPA requested 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 under age 6 or pregnant women reside. This option would have prohibited or restricted the highest dust generating practices but would not have required the other practices under 40 CFR 745.85. While the prohibited work practices create high amounts of lead dust, the other work practices also create lead dust above the hazard standard. The Dust Study shows that common work practices result in lead levels many times greater than the hazard standard when the RRP rule containment and cleanup procedures are not followed.

EPA requested comment on a third option under which a subset of target housing would not be subject to the RRP work practices but instead would have been 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 the Disclosure Rule (40 CFR part 745, subpart F) required by section 1018 of Title X of the Residential Lead-Based Paint Hazard Reduction Act of 1992 (Pub. L. 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. While this alternative may provide helpful information to home owners and occupants, as discussed above it would not address lead-based paint hazards created by renovations because it does not require any of the work practices required by the RRP rule.

After considering these alternatives as well as keeping the opt-out provision,

the Agency has decided to eliminate the Opt-out provision and not to adopt any of the alternatives. One concern with the opt-out provision or the alternatives is that they do not adequately address the risks of lead-based paint hazards to children older than five years old or adults. The opt-out and each of these alternatives can also result in exposures to children under the age of 6 and pregnant women to lead-based paint hazards. In the same way as for the opt-out provision itself, EPA also has concerns that populations that are already at a higher risk for elevated blood lead levels may be disproportionately and adversely affected by the alternatives.

Another concern with the opt-out as well as the alternatives is that they can create confusion among both contractors and consumers. Several commenters stated that the opt-out provision or the alternatives could cause confusion that could potentially result in non-compliance by renovation firms. EPA agrees and believes that simplifying the applicability of the work practices will enhance the effectiveness and reliability of the rule.

Based on the data available to EPA (e.g., the Dust Study), the Agency cannot now conclude that the opt-out nor that the alternative approaches are safe, reliable or effective because none of these would sufficiently minimize exposure to lead-based paint hazards. In sum, when the RRP work practices are not used, residents and visitors are exposed to the lead hazards created by the renovation, and therefore these approaches would not protect older children, women of childbearing age, or other adults currently residing in the home and can result in exposure to children under the age of 6 and pregnant women to lead-based paint hazards. Again, although EPA specifically requested information or data that would shed any light on the reliability, effectiveness, or safety of these options in relation to EPA's lead hazard standards, the Agency did not receive any. The Agency took these factors into consideration in deciding not to adopt these alternatives.

D. Recordkeeping and Reporting

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 on the RRP rule 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. Several commenters stated that educating homeowners would help them monitor compliance by the

renovation firm. One commenter stated that the checklist would help the public understand the RRP rule and that a better informed public would choose to have renovation performed by professional remodelers who would provide safe and quality work. Other commenters believe that the distribution of the checklist is needed to address a lack of accountability of renovation firms to owners and occupants. EPA agrees that 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 and contribute to the effectiveness and reliability of the rule.

After considering public comments, EPA decided to finalize the rule as proposed. This final rule requires 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 must 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 must 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 finalizing similar requirements for renovations in child-occupied facilities. Under this final rule, the renovation firm is required to provide interested parents or guardians of children using the child-occupied facility 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).

Under this new requirement, renovation firms must provide training and work practice information to owners and occupants. The information should be provided 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. The specific information that is 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 requiring 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.

One commenter believes that the text of the form should be included in the regulations. EPA disagrees with this comment. The Agency wants to give renovation firms flexibility with regard to the format of the information given to owners and occupants. Renovation firms must list the information specified in the regulations and they can use EPA's sample checklist if they choose. However, the final rule allows firms to use their own version of the checklist as long as it includes the required information.

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, this final rule requires 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 requiring 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.

E. Effective Date

During the development of the proposed rule, EPA considered a delay in the effective date of this final rule. EPA estimated that eliminating the opt-out provision could increase the number of renovators that need to be certified by 50%. A delayed effective date would have allowed more time for additional renovators to get their certification. The Agency asked for comment on whether a 6-month or 1-year delay in the effective date is appropriate. In addition, EPA asked for comment on whether a delay in the effective date of this rule would be confusing for the regulated community or the certified personnel.

Comments regarding the delay were mixed. Several commenters opposing the delay believe that EPA has enough training capacity to train additional renovators that may need certification because of this rule. Several commenters pointed out that delaying the effective date would result in more people being exposed to lead hazards that could be avoided if the RRP rule work practices were in place for renovations previously eligible for the opt-out. Another commenter believes that phasing in the work practice requirements by delaying the effective date of this rule would lead to confusion for the public and renovation firms.

Some commenters were in favor of delaying the effective date. Several commenters said that many contractors were not aware of the requirements and there is not sufficient time for them to understand and comply with the regulations without a delayed effective date. Other commenters stated that EPA should delay the effective date to allow enough time for additional renovators to take the training. One commenter asserts that EPA should delay the effective date rather than create a shortfall of renovators.

Another factor EPA considered with regard to extending the effective date is whether firms specialize in housing that is eligible for the opt-out. The cost estimates for the rule assume that renovation firms are somewhat specialized in terms of whether they work in housing 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 requested comment in the proposal 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.

Several commenters stated that they do not believe firms specialize in housing based on occupancy. One commenter reviewed advertisements and the market place, and did not find renovators that work only in owner-occupied housing without children or pregnant women. According to the commenter, because firms do not appear to specialize in this manner, the additional costs of eliminating the opt-out are only the costs associated with the materials and time for a particular job as contractors would be required to get certification regardless of whether the opt-out provision is removed. EPA agrees with these comments. While the Agency has not done analysis to determine how many firms may specialize based on occupancy, EPA believes it is likely that most firms will not specialize in owner-occupied housing without children or pregnant women. Commenters did not provide information indicating that firms

specialize in this way. If that is the case then many of the approximately 110,000 firms and renovators estimated to seek certification because of this rule would need certification regardless of whether the opt-out provision is removed. If the majority of the 110,000 firms and renovators have already been required to get certification then there is less of an argument to extend the effective date of this rule because many fewer firms and renovators will need certification between publication of the rule and the effective date.

Accordingly, the Agency decided not to delay the effective date of this final rule. As such, the rule will become effective 60 days after publication in the **Federal Register**. EPA believes that it is important to eliminate the opt-out exemption without delay in order to avoid further lead exposures in housing previously eligible for the opt-out. Further, based on the number of training courses accredited to date, the Agency believes that there is sufficient training capacity available to train any additional renovators that would need to get certification because of this rule.

F. 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. 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). The Agency proposed 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 final rule. EPA received two comments regarding this requirement. One comment, from the Iowa Department of Public Health, explained that Iowa's legislature only meets once a year for 4 months. Depending on when the EPA publishes amendments to the RRP, it could be very difficult for states in similar situations to meet this requirement. The commenter requested that EPA give States and Indian Tribes two years instead of one to demonstrate compliance. EPA believes that the concern raised by the commenter has merit, and not just for Iowa. Therefore, the Agency decided to allow States and Indian Tribes up to two years to demonstrate to EPA that they meet the requirements of the RRP rule in its application for approval or the first report it submits under 40 CFR 745.324(h).

G. Renovator Certification Requirements

EPA was made aware by stakeholders that some renovators want to take the training course closer to April 2010 in order 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 considered 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 requested comment on whether it should extend the certification for renovators that get their certification by April 22, 2010.

EPA received several comments in favor of extending the renovator certification to July 1, 2015. Several commenters believe this would give renovators incentive to take the training early. One commenter supported the extension so those who took the training in advance of the April 22, 2010 implementation date would not be penalized. Another commenter stated that an extension of the certification would prevent logistical problems like waiting lists for trainings during the final days before the effective date.

The Agency decided to finalize an extension of the 5-year certification for renovators who take the training before April 22, 2010. EPA agrees that renovators who take the training early should not be penalized and therefore will extend those certifications until July 1, 2015.

H. Principle Instructor Requirements

As discussed in the preamble to the proposed rule, EPA considered modifying the requirements for training providers. Under the original requirements for the accreditation of training providers, Principle Instructors were required to take a 16-hour lead-paint course taught by EPA or an authorized State, Tribe, or Territory. EPA became 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 considered reducing the hourly requirement to 8 hours. EPA received several comments on the Principal Instructor requirement, mostly

in support of reducing the hourly requirement to 8 hours. One commenter stated that there is no significant benefit to requiring 16 hours instead of 8 hours and that the 8-hour requirement will fit more closely to available training courses. Similarly, another commenter stated that the 16-hour training shares little content with what the Principal Instructors are going to teach in the renovator course. The commenter also explained that there is no 16-hour lead training course in Mississippi which led to difficulties with a local organization's ability to offer the renovator course. One commenter opposed to reducing the hourly requirement stated that 8 hours of lead training is not sufficient for an instructor to know enough about lead paint, lead hazards and federal regulations. Another commenter stated that there is enough training capacity negating the need to reduce the hourly requirement.

EPA agrees that the 8-hour renovator course, instead of a longer abatement course, is more closely related to what Principal Instructors must know in order to teach the renovator training. In addition to the training requirement, Principal Instructors must meet education and work experience requirements in order to teach lead-based paint training courses. The Agency believes that taking this course would be sufficient training for future instructors of the renovator course and therefore has reduced the requirement from 16 to 8 hours. By reducing the required hours, future instructors can take the 8-hour renovator or dust sampling technician trainings instead of a 16-hour or longer abatement course.

III. References

As indicated under **ADDRESSES**, a docket has been established for this rulemaking under docket ID number EPA-HQ-OPPT-2005-0049. The following is a listing of the documents that are specifically referenced in this document. The docket includes these documents and other information

considered by EPA, including documents that are referenced within the documents that are included in the docket, even if the referenced document is not physically located in the docket. For assistance in locating these other documents, please consult the technical contact listed under **FOR FURTHER INFORMATION CONTACT**.

1. EPA. Lead; Renovation, Repair, and Painting Program; Final Rule. **Federal Register** (73 FR 21692, April 22, 2008) (FRL-8355-7). Available on-line at: <http://www.gpoaccess.gov/fr>.
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. Jones, Robert L., David M. Homa, Pamela A. Meyer, Debra J. Brody, Kathleen L. Caldwell, James L. Pirkle, and Mary Jean Brown. "Trends in Blood Lead Levels and Blood Lead Testing Among U.S. Children Aged 1 to 5 Years, 1988-2004." *Pediatrics: Official Journal of the American Academy of Pediatrics*. Vol. 123, No. 3, pp. e376-385, March 2009.
4. Xue J, Zartarian V, Moya J, Freeman N, Beamer P, Black K, Tulve N, Shalat S: A meta-analysis of children's hand-to-mouth frequency data for estimating nondietary ingestion exposure. *Risk Anal.* 2007 Apr.; 27(2): 411-20.
5. EPA. Office of Pollution Prevention and Toxics (OPPT). Economic Analysis for the TSCA Lead Renovation, Repair, and Painting Program Opt-out and Recordkeeping Final Rule for Target Housing and Child-Occupied Facilities. April 2010.
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 Final 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. April 2010.
8. EPA. Final Regulatory Flexibility Analysis for the Elimination of the Opt-Out Provision and Other Amendments to the Lead Renovation, Repair, and Painting Program; Final Rule. April 2010.

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; Final Rule. April 2010.
13. EPA. Air Quality Criteria for Lead. October 2006.
14. EPA, Consumer Product Safety Commission (CPSC), U.S. Department of Housing and Urban Development (HUD). Protect Your Family From Lead in Your Home (EPA 747-K-99-001, June 2003).
15. CDC. Morbidity and Mortality Weekly Report. vol 54, no. 20, pp 513-516, May 27, 2005.
16. Marino, Phyllis E. *et al.* "A Case Report of Lead Paint Poisoning during Renovation of a Victorian Farmhouse." *American Journal of Public Health*, 80 (10) pp. 1183-1185. October 1990.
17. Kowalczyk DF. "Lead poisoning in dogs at the University of Pennsylvania Veterinary Hospital." *Journal of American Veterinary Medical Association*. 1976 Mar 1;168(5):428-32.
18. Knight TE, Kumar MS. "Lead toxicosis in cats—a review." *Journal of Feline Medicine and Surgery*. 2003 Oct;5 (5): 249-55.

IV. Statutory and Executive Order Reviews

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 Final 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, and in more detail later in this Unit.

| Category | Description |
|----------------|---|
| Benefits | \$866 million—\$3,061 million annualized (3% discount rate). \$920 million—\$3,258 million annualized (7% discount rate). Due to avoided IQ loss in children under age 6 and cardiovascular effects in adults. EPA does not have sufficient information to fully quantify benefits due to avoided health effects to individuals not present in target housing and child-occupied facilities subject to this rule or benefits due to avoided health effects other than IQ loss and cardiovascular effects. |
| Costs | \$295 million annualized (3% discount rate). \$320 million annualized (7% discount rate). |

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 rule is a "significant regulatory action" under section 3(f)(1) of the Executive Order

because EPA estimates that it is likely to 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.

The following is a summary of the Economic Analysis (Ref. 5), which is available in the docket for this action.

1. *Number of facilities and renovations.* This 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 would 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 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 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 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 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 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.

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 final rule beginning in the third year. Options with different work practice requirements for the housing previously eligible for the opt-out provision would cost 1% to 17% less than the final 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 rule.

B. Paperwork Reduction Act

The information collection requirements contained in this 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 Final Rule ICR Addendum and identified under EPA ICR No. 1715.12 and OMB Control Number 2070-0155, has been placed in the docket for this rule (Ref. 7). The information collection requirements are not enforceable until OMB approves them.

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

The information collection activities contained in this 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 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 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 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 110,000 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 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 110,000 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. Under an assumption that firms work in either buildings that are eligible for the opt-out provision or buildings that are ineligible (but not in both types of buildings), EPA estimated that 211,000 firms work in buildings that are not eligible for the opt-out provision. EPA estimated that these 211,000 firms will incur an average annual burden of approximately 2.7 hours per firm due to the new recordkeeping requirements, resulting in a total burden of 568,000 hours per year for these firms. To the extent that firms work in both types of buildings, the number of firms and the total burden in this category would be higher than estimated. But this would be offset by a corresponding decrease in the 110,000 firms and 362,000 burden hours estimated for the firms that were assumed to work only in buildings previously eligible for the opt-out provision.

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 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 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 17th 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 May 6, 2010, a comment to OMB is best assured of having its full effect if OMB receives it by June 7, 2010.

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 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 604 of RFA, EPA has prepared a final regulatory flexibility analysis (FRFA) for this rule. The FRFA is available for review in the docket and is summarized in this unit (Ref. 8).

1. *Reasons why action by the Agency is being taken.* 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 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 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 rule as provided in TSCA section 2(c). A central objective of this 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 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 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 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 rule and would defeat the purpose of estimating impacts on small business. It would also underestimate the 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 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 rule.

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

Of the approximately 289,000 small entities estimated to incur costs due to the 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 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 could be affected by the removal of the opt-out provision, with average impacts of 1.10% of revenues.

This 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 could 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 could be affected by the 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 an estimated 75,000 non-employer renovation contractors that could be affected by the removal of the opt-out provision. The average cost to such contractors is estimated to be \$1,193 apiece. This represents 1.3% to 4.7% of reported revenues, depending on the industry sector. The rule's new recordkeeping requirement is estimated to affect approximately 96,000 additional non-employer renovation contractors not affected by removal of the opt-out provision. The costs to such 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 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 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 containment, cleaning, cleaning verification, and dust sampling 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, which 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. Pursuant to the RFA, EPA used the report of the Panel convened for the closely related RRP rule promulgated in April 2008. 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). This rule is closely related to the RRP rule and the conclusions made in 2008 regarding the Panel's recommendations are applicable to this final rule. Although this final rule expands the number of renovation firms that must comply with the RRP requirements, it does not change the elements identified by the Panel. For example, this rule does not change the work practice or certification requirements of the RRP rule. EPA believes that reconvening the Panel would be procedurally duplicative and is unnecessary given that the issues here were within the scope of those considered by the Panel.

8. *Alternatives considered.* EPA considered several significant alternatives to this rule that could affect the economic impacts of the 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 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).

iv. *Conclusion.* EPA is concerned that these alternatives to the rule can create confusion among both contractors and consumers and could potentially result in non-compliance by renovation firms. EPA believes that simplifying the applicability of the work practices will enhance the effectiveness and reliability of the rule.

EPA is concerned that the alternatives with a delayed or staged effective date would lead to increased exposures during the delay period, including exposures to children under the age of 6 and pregnant women.

Based on the data available to EPA (e.g., the Dust Study), the Agency cannot now conclude that the alternatives to the rule with alternate work practices are safe, reliable or effective because none of these would sufficiently minimize exposure to lead-based paint hazards. In sum, when the RRP work practices are not used, residents and visitors are exposed to the lead hazards created by the renovation, and therefore these approaches would not protect older children, women of childbearing age, or other adults currently residing in the home and can result in exposure to children under the age of 6 and pregnant women to lead-based paint hazards.

9. *Summary of significant issues raised by public comments.* There were no public comments specifically on the Initial Regulatory Flexibility Analysis. However, there were public comments that addressed the Agency's compliance with the Regulatory Flexibility Act, or which addressed issues that indirectly affect the Initial Regulatory Flexibility Analysis. The Agency's assessment of these issues is summarized in the FRFA. EPA did not make any changes to the proposed rule as a result of these comments.

10. *Small entity compliance guide.* 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]. 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 proposed 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 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 rule (Ref. 12) and is summarized here.

1. *Authorizing legislation.* This 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 rule, a copy of which is available in the docket for this rule (Ref. 5). The Economic Analysis presents the costs of this rule as well as various regulatory options and is summarized in Unit IV.A. EPA has estimated the total costs of this rule at approximately \$500 million in the first year and \$300 million per year thereafter.

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.

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 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 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 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. EPA believes that the selected approach is the least burdensome option available that achieves a central objective of this 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 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 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 rule is expected to result in small government impacts well under 1% of revenues. So EPA has determined that the rule does not significantly affect small governments. Nor does the rule uniquely affect small governments, as the rule is not targeted at small governments, does not primarily affect small governments, and does not impose a different burden on small governments than on other entities that operate child-occupied facilities.

E. Executive Order 13132

Pursuant to Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), EPA has determined that this 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 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 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 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 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 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 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 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 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.

V. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et seq., generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. This rule is a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 745

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

Dated: April 22, 2010.

Lisa P. Jackson, Administrator.

Therefore, 40 CFR chapter I is amended as follows:

PART 745—[AMENDED]

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

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

2. In § 745.81, revise paragraph (a)(4) to read as follows:

§ 745.81 Effective dates.

(a) * * *

(4) Work practices. (i) On or after April 22, 2010 and before July 6, 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)(6) in target housing or child-occupied facilities, unless the renovation qualifies for one of the exceptions identified in § 745.82(a). This does not apply to renovations in target housing for which the firm performing the renovation has obtained a statement signed by the owner that the renovation will occur in the owner's residence, no child under age 6 resides there, the housing is not a child-occupied facility, and the owner acknowledges that the work practices to be used during the renovation will not necessarily include all of the lead-safe work practices contained in EPA's renovation, repair, and painting rule. For the purposes of this section, a child resides in the primary residence of his or her custodial parents, legal guardians, and foster parents. A child also resides in the primary residence of an informal caretaker if the child lives and sleeps most of the time at the caretaker's residence.

(ii) On or after July 6, 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 the exception identified in § 745.82(a).

* * * * *

§ 745.82 [Amended]

3. In § 745.82, remove paragraph (c).
4. In § 745.84, revise paragraph (b)(2), the introductory text of paragraph (c)(2), and paragraph (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. In § 745.86, remove paragraph (b)(6) and redesignate paragraph (b)(7) as paragraph (b)(6) and revise 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. In § 745.90, revise paragraphs (a)(4) and (b)(8) to read as follows:

§ 745.90 Renovator certification and dust sampling technician certification.

(a) * * *

(4) To maintain renovator certification or dust sampling technician certification, an individual must complete a renovator or dust sampling technician refresher course accredited by EPA under § 745.225 or by a State or Tribal program that is authorized under subpart Q of this part within 5 years of the date the individual completed the initial course described in paragraph (a)(1) of this section. If the individual does not complete a refresher course within this time, the individual must re-take the initial course to become certified again. Individuals who complete a renovator course accredited by EPA before April 22, 2010, must complete an EPA-accredited renovator refresher course before July 1, 2015, to maintain renovator certification.

(b) * * *

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

* * * * *

■ 7. In § 745.225, revise paragraph (c)(2)(ii) to read as follows:

§ 745.225 Accreditation of training programs: Target housing and child-occupied facilities.

* * * * *

(c) * * *

(2) * * *

(ii) Successfully completed at least 16 hours of any EPA-accredited or EPA-authorized State or Tribal-accredited lead-specific training for instructors of lead-based paint activities courses or 8 hours of any EPA-accredited or EPA-authorized State or Tribal-accredited lead-specific training for instructors of renovator or dust sampling technician courses; and

* * * * *

■ 8. In § 745.326, add 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 2 years 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 2 years 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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