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Part XV

**Environmental
Protection Agency**

40 CFR Part 745

**Lead; Requirements for Hazard Education
Before Renovation of Target Housing;
Final Rule**

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 745

[OPPTS-62131; FRL-5751-7]

RIN 2070-AC65

Lead; Requirements for Hazard Education Before Renovation of Target Housing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule requires certain persons who perform renovations of target housing (as defined under 40 CFR 745.103) for compensation to provide a lead hazard information pamphlet to owners and occupants of such housing prior to commencing the renovation, as stipulated by section 406(b) of the Toxic Substances Control Act. In addition, this rule requires notification on the nature of the renovation activities in certain circumstances involving multi-family housing. This rule ensures that owners and occupants of target housing are provided information concerning potential hazards of lead-based paint exposure before certain renovations are begun on that housing. In addition to providing general information on the health hazards associated with exposure to lead, the lead hazard information pamphlet advises owners and occupants to take appropriate precautions to avoid exposure to lead-contaminated dust and lead-based paint debris that are sometimes generated during renovations. The Agency believes that the distribution of the pamphlet will help to reduce the exposures which cause serious lead poisonings, especially in children under age 6, who are particularly susceptible to the hazards of lead. This rule was proposed in the **Federal Register** of March 9, 1994.

DATES: The requirements in this final rule shall take effect on June 1, 1999. In accordance with 40 CFR 23.5, this rule shall be promulgated for purposes of judicial review at 1 p.m. Eastern Daylight Savings Time on June 1, 1998.

FOR FURTHER INFORMATION CONTACT: For general information or to obtain copies of the final rule (or other documents mentioned as available in this rule), contact the National Lead Information Clearinghouse at 1-800-424-LEAD. For technical information contact: Dayton Eckerson, National Program Chemicals Division (7404), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: 202-

260-1591, e-mail: eckerson.dayton@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Regulated Entities

Potentially regulated entities under this rule are any person(s) who perform renovations of target housing for compensation. Target housing is defined (see 40 CFR 745.103) 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) or any 0-bedroom dwelling pursuant to 40 CFR 745.103. Regulated categories and entities include:

| Category | Examples of Regulated Entities |
|----------------------|---|
| Renovators | <ul style="list-style-type: none"> • General Building Contractors/Operative Builders [Renovation firms, Individual Contractors, etc.] • Special Trade Contractors [Carpenters, Painters, Drywall workers and lathers, "Home Improvement" Contractors, etc.] |
| Multi-family Housing | Property Management Firms |
| Owners/Managers | Some Landlords |

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. Other types of entities not listed in this table could also be regulated. To determine whether you or your business is regulated by this action, you should carefully examine the applicability provisions in § 745.82 of the rule. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

II. Authority

This final rule is issued under the authority of section 406(b) of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2686(b). In 1992, TSCA was amended by section 1021 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 to add Title IV, entitled Lead Exposure Reduction. The Residential Lead-Based Paint Hazard Reduction Act is also referred to as Title X of the Housing and Community Development Act of 1992, Pub. L. 102-550.

III. Background

A. Legislative and Statutory Background

Congress passed Title X to address the need to control exposure to lead-based paint hazards. Title X establishes the infrastructure and standards necessary to reduce lead-based paint hazards in housing. Congress recognized that lead poisoning is a particular threat to children under age 6, and emphasized the needs of this vulnerable population within the various sections of Title X. Section 1021 of Title X amends TSCA (15 U.S.C. 2601, *et seq.*) by adding a Title IV, entitled "Lead Exposure Reduction."

This rule is issued under the authority of section 406(b) of Title IV of TSCA, and is intended to provide information to owners and occupants of target housing that will allow these individuals to avoid exposure to lead-contaminated dust and lead-based paint debris which are sometimes generated during renovations of housing with lead-based paint. Since children under the age of 6 are especially susceptible to the hazards of lead, those owners and occupants with children can take action to protect their children from lead poisonings. Section 406(b) requires EPA to promulgate regulations requiring certain persons who perform renovations of target housing for compensation pamphlet (developed under section 406(a) of TSCA) to the owner and occupant of such housing prior to commencing the renovation. Target housing is defined in section 401(17) of TSCA, 15 U.S.C. 2681. Those who fail to provide the pamphlet as required may be subject to both civil and criminal sanctions under section 16 of TSCA.

This regulation represents one piece of a broad range of interrelated lead exposure reduction activities mandated under Title X. Many of these activities supported and affected the development of the section 406(b) regulations. Below is a discussion of several related provisions of Title X which provide the context for many of the decisions made during the development of this rule.

The provision most closely tied to section 406(b) is section 406(a) of TSCA. Section 406(a) directs EPA to develop and publish, after notice and comment, an information pamphlet on lead and the hazards of exposure to lead-based paint in the home. The Consumer Product Safety Commission (CPSC) joined EPA in co-sponsoring the pamphlet's development in consultation with the Department of Housing and Urban Development (HUD) and the Centers for Disease Control and

Prevention (CDC). EPA issued a draft of the pamphlet for public review on March 9, 1994 (59 FR 11119) (FRL-4642-7). After addressing comments received from the public and other Federal Agencies, EPA announced the final pamphlet's availability in the **Federal Register** of August 1, 1995 (60 FR 39167) (FRL-4966-6).

In addition to outlining the health effects and symptoms of lead exposure, section 406(a) requires that this pamphlet: Contain information on the potential hazards of renovating dwellings containing lead-based paint; recommend that an inspection or risk assessment for lead-based paint be performed before beginning renovations in target housing; suggest precautionary measures for protecting occupants during renovations in homes containing lead-based paint; and identify Federal, State, and local sources of information on lead and lead-based paint.

Two sections of Title X also require the dissemination of the lead hazard information pamphlet developed pursuant to section 406(a) of TSCA. First, section 1018 of Title X requires EPA and HUD to promulgate joint regulations for disclosure of certain information concerning lead-based paint and lead-based paint hazards by persons offering to sell or lease target housing. The section 1018 regulations include the requirement that the sellers and lessors provide the lead hazard information pamphlet to prospective purchasers or lessees. EPA and HUD issued the final regulations implementing section 1018 in the **Federal Register** of March 6, 1996 (61 FR 9064) (FRL-5347-9).

Second, section 1012 amends section 302 of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4822) to require that the lead hazard information pamphlet be provided to purchasers and tenants of housing receiving assistance under a program administered by the Secretary of HUD, or otherwise receiving more than \$5,000 in project-based assistance under a Federal housing program. HUD issued the proposed section 1012 rule on June 7, 1996 (61 FR 29170) (FRL-3482-P-01).

Under section 403 of TSCA, EPA is charged with refining the general definitions of "lead-based paint hazards," "lead-contaminated dust," and "lead-contaminated soil" which are listed in section 401 of TSCA. On September 11, 1995 (60 FR 47248) (FRL-4969-6), EPA issued an interim guidance document for risk assessors and managers to aid in the identification and prioritization for control of lead hazards until the final section 403 definitions are issued. EPA is currently

in the process of developing the section 403 definitions.

EPA has developed this rule to function independently of the lead hazard definitions to be developed under section 403. Under this final rule, EPA has eliminated the linkage of the definition of "renovation" to whether or not lead-based paint hazards are expected to occur as a result of the renovation activity. Instead, the definition of "renovation" has been simplified to focus on activities that disturb painted surfaces in target housing. It is discussed further in Unit V.D. of this preamble. Therefore, this rule under section 406(b) would require renovators to perform pre-renovation notification for all renovation activities performed for compensation in target housing, unless specifically exempted by § 745.82 of the regulatory text.

Section 402(a) of TSCA directs EPA (in consultation with HUD, the Department of Labor, and the Department of Health and Human Services (HHS)) to promulgate regulations on accreditation of training programs and the certification of individuals and contractors engaging in lead-based paint activities. Section 402(a) also requires that EPA, in consultation with the aforementioned agencies, develop standards for the performance of lead-based paint activities (including lead inspections and risk assessments). EPA issued the proposed section 402 rule on September 2, 1994 (59 FR 45872) (FRL-4633-9), and the final rule on August 29, 1996 (61 FR 45778) (FRL-5389-9).

Section 402(c)(1) of TSCA directs EPA to issue guidelines for the conduct of renovation and remodeling activities which may create a risk of exposure to dangerous levels of lead when performed in target housing, public buildings constructed before 1978, and commercial buildings. EPA released its final guidelines for renovation and remodeling, entitled *Reducing Lead Hazards When Remodeling Your Home in April 1994* (revised in September 1997), and has made the guidelines available through the National Lead Information Clearinghouse (NLIC).

Section 402(c)(2) of TSCA directs EPA to conduct a study of the lead hazards generated during different types of renovation and remodeling activities. Section 402(c)(3) of TSCA directs EPA to use the results of the renovation study, along with other information, to determine which renovation and remodeling activities should be regulated as lead-based paint activities, based on potential hazards generated during their performance.

Section 404 of TSCA directs EPA to develop an application process for those States (which EPA has interpreted to include Tribes) that seek to administer and enforce the standards, regulations, and requirements established under sections 402 and 406. Section 404 also directs EPA to develop and issue a Model State Program for use by States and Tribes pursuing authorization under these provisions. EPA proposed the authorization process and the Model State Program for States and Tribes, in conjunction with the proposed rule for section 402, in the September 2, 1994 **Federal Register**. The section 404 rule was also published on August 29, 1996, in final form.

Pursuant to section 1015 of Title X, HUD established a Task Force on Lead-Based Paint Hazard Reduction and Financing made up of private and public organizations. The Task Force, representing the spectrum of interests affected by the lead-based paint issue, released final recommendations on evaluating and reducing lead-based paint hazards in private housing on July 11, 1995, in a report entitled *Putting the Pieces Together: Controlling Lead Hazards in the Nation's Housing* (Copies of this report can be acquired by contacting the NLIC at 1-800-424-LEAD). These recommendations have been considered in the development of this final rule.

Pursuant to section 1017 of Title X, HUD, in cooperation with EPA and other Federal agencies, has revised its guidelines for lead-based paint hazard evaluation and reduction activities. The revised document, entitled *Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing*, was released to the public in June 1995. A copy of the guidelines is included in the public record for this rule.

B. Lead Poisoning in the United States

Lead affects virtually every system of the body. While it is harmful to individuals of all ages, lead exposure can be especially damaging to children, fetuses, and women of childbearing age. As recent studies have identified previously unrecognized effects, there has been increasing concern about blood-lead levels once thought to be safe. Since 1978, CDC has lowered the blood-lead level of concern from 60 µg/dL (micrograms/deciliter) to 10 µg/dL (Ref. 2).

Lead poisoning has been called "the silent disease" because its effects may occur gradually and imperceptibly, often showing no obvious symptoms. Chronic blood-lead levels as low as 10 µg/dl have been associated with learning disabilities, growth

impairment, permanent hearing and visual impairment, and other damage to the brain and nervous system. In large doses, lead exposure can cause blindness, brain damage, convulsions, and even death. Lead exposure before or during pregnancy can also alter fetal development and cause miscarriages.

In 1991, the Secretary of HHS characterized lead poisoning as the "number one environmental threat to the health of children in the United States" (Ref. 2). The percentage of children under 6 years of age with elevated blood-lead levels has declined over the last 20 years. Recent results from the Third National Health and Nutrition Examination Survey (NHANES III, Phase 2) indicate that the average child's blood-lead level has declined from 12.8 µg/dL to 2.7 µg/dL (Ref. 9a). However, about 800,000 children under the age of 6 (4.2% of children at that age) still had blood-lead levels above CDC's 10 µg/dL level of concern (Refs. 9 and 9b).

C. Hazards From Past Uses of Lead-Based Paint

Efforts to reduce exposure to lead from sources like gasoline and food cans have played a large role in the past reductions of blood-lead levels in the United States. Despite these successes, a significant human health hazard remains due to improperly managed lead-based paint. From the turn of the century through the 1940's, paint manufacturers used lead as a primary ingredient in many oil-based interior and exterior house paints. Usage gradually decreased through the 1950's and 1960's, as largely lead-free latex paints became more popular. Although CPSC banned lead-based paints from residential use in 1978 (currently, paints may not have greater than 0.06% lead by weight (Ref. 3)), EPA and HUD estimate that 83% of the privately-owned housing units built in the United States before 1980 contain some lead-based paint. By these estimations, approximately 64 million homes contain lead-based paint which may pose a hazard to the occupants (Ref. 4).

Lead from exterior house paint can flake off or leach into the soil around the outside of a home, contaminating children's playing areas. Dust caused during normal lead-based paint wear (especially around windows and doors) can create an imperceptible film over surfaces in a house. In some cases, cleaning and renovation activities can increase the threat of lead-based paint exposure by dispersing fine lead dust particles into the air and over accessible household surfaces. If dust is managed improperly, both adults and children

could receive hazardous exposures to lead by inhaling the fine dust or by ingesting paint-dust during hand-to-mouth activities. Children under age 6 are especially susceptible to lead poisoning (Ref. 2).

IV. Summary of Proposed Rule and Public Comments

On March 9, 1994 (59 FR 11108), EPA issued proposed regulations that would require renovators to provide a lead hazard information pamphlet to owners and occupants of target housing before beginning renovations, and notification on the nature of the renovation activities in certain circumstances involving multi-family housing. The housing that EPA proposed to cover by the regulation included all housing built before 1978 with the exception of 0-bedroom dwellings and housing for the elderly and persons with disabilities wherein no child under 6 years of age resides or is expected to reside. EPA's proposal provided flexibility for renovations conducted in common areas (like stairways, lobbies, and hallways) of buildings. EPA requested comments concerning the proposed rule, specifically on the definition of "renovation" and identifying renovation activities that should be covered under the rule.

By the close of the comment period, May 9, 1994, EPA had received 30 comments. The largest number of responses was received from public health and environmental protection departments (27% of the responses) and organizations involved with building and development (27% of the responses). Other commenters included representatives from advocacy groups (23% of the responses) and the real estate industry (10% of the responses). Approximately 10% of the responses came from a combination of Federal agencies, State agencies, and concerned private citizens. A summary of all comments received, and EPA's responses, may be found in the Response to Comments document which is available for public review in the TSCA Docket for this rulemaking (see Unit VIII. of this preamble). The paragraphs that follow briefly describe some of the key concerns that were raised by the commenters.

The majority of the comments received concerned the term "renovation." Commenters requested clarification so as to differentiate between work that would be considered renovation and that categorized as repair and maintenance. Concerns were expressed regarding flexibility in addressing emergency situations where the need for a rapid response conflicted

with the ability to provide the pamphlet to the owner and occupant of the target housing to be renovated. Over half of the comments concerning renovation specifically addressed the proposed alternative approaches for defining renovations: modeling the definition after the asbestos program, listing specific activities of concern, using the Occupational Safety and Health Administration (OSHA) list of construction activities, identifying specific job classifications, identifying specific cost ranges, or specifying the size of the home improvement activity.

Numerous comments concerned other definitions in the proposed rule such as "person," "lead-based paint hazard," and "target housing." Commenters also addressed the proposed rule's applicability to multi-family housing, the actual mechanisms for pamphlet distribution, and the corresponding acknowledgment requirement. A few comments concerned the burden of the rule on the regulated industry, the overall scope of the rule, and its projected cost.

EPA received no comments on the section of the rule establishing a procedure for the submission of confidential business information.

V. Final Rule Provisions

In light of the public's comments, the Agency has striven to ensure that this rule is clear, understandable, flexible, achieves the statutory objective while imposing the minimum burden, and is consistent with other Federal activities. These goals are important to assure quick and widespread implementation of and compliance with the rule.

A. Scope and Purpose

The scope, purpose, and applicability sections of the rule have been modified to more clearly reflect who is responsible for providing lead hazard information, who is to receive this information, the nature of that information, and the rule's authority.

B. Date of the Rule

EPA received a comment suggesting that the effective date of the rule be immediate. However, EPA believes that the rule's effective implementation requires an informed and prepared general public and regulated community. EPA has concluded that a phase-in period of 1 year is necessary to provide adequate time for parties to become familiar with the rule requirements and to set up procedures for compliance.

C. Applicability

EPA requested comments on six approaches being considered for describing the activities encompassed by the term "renovation." Most of the numerous comments received on this topic requested further clarification and additional guidance in determining which types of home improvement, maintenance, and repair activities would be classified as renovations for purposes of the rule. Commenters requested more specific criteria to facilitate differentiation between a renovation activity and routine maintenance or repair. One commenter suggested that modeling the definition of regulated activities under this rule after EPA's Asbestos Program (which used both the Standard Industrial Classification (SIC) codes and the OSHA list of construction tasks) would result in the inclusion of too broad a range of activities.

Based on the responses received from commenters, EPA determined that both the SIC codes and the OSHA list of construction tasks lacked the specificity necessary to aid EPA in developing its list of regulated renovation activities. The OSHA list was developed to address a far broader range of construction tasks than should be regulated under section 406(b); likewise, using SIC codes as a way of creating worker categories was determined to be inadequate in capturing the appropriate spectrum of activities.

In general, commenters also suggested that neither cost nor the overall size of the work was a valid criterion for determining exposure to lead-based paint hazards and indicating risk. EPA agrees, and has also determined that a *de minimis* cost level would be difficult to interpret, especially when compensation was provided in non-monetary terms or when such activities were part of a larger service or maintenance agreement.

After careful review of the comments on these proposed approaches, EPA has decided to define renovation by focusing on the potential disruption of paint (the key source of exposure that may occur during renovation). One commenter voiced specific concerns that the proposed approach to defining renovation was too broad and suggested that EPA focus on activities that are likely to generate a risk of lead exposure. In response to that and other comments, EPA modified the definition to include all renovation activities except those which do not disturb painted surfaces.

EPA recognizes that it is necessary to distinguish between renovation

activities and those minor activities that are required during the maintenance of a residence. EPA believes that requiring maintenance workers to distribute hazard information during the implementation of regular tasks would pose an undue burden on owners and their staffs. A 2 square foot per component *de minimis* level has been adopted from the June 1995 *Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing* as a means of differentiating between large-scale renovation activity and minor maintenance activities which pose a lower likelihood of creating a lead hazard. This same *de minimis* level has also been used by the National Institute of Building Sciences (NIBS) in its draft *Regulatory Models for Lead Poisoning Prevention* report. This draft report is the result of a consensus process involving both public (e.g., Federal and State governments) and private (e.g., landlord associations, builders) sectors. EPA believes that this revised definition provides a common sense approach which is consistent with standard industry practices (as captured in the aforementioned guidelines and the *de minimis* level's use in the NIBS report), along with clear guidance and direction to the regulated community, as to which renovation activities will trigger the requirements of this rule.

EPA recognizes that emergency situations occur which require renovation activities to be conducted within a time frame precluding advance notification. Such emergencies would typically involve structural or equipment failure that could lead to endangerment to public health or substantial property damage if not repaired immediately. To address these situations, EPA has included a category of *Emergency renovation operations* (see § 745.83 of the regulatory text) that are exempted from the requirements of this rule.

In addition, EPA has exempted renovations performed (in target housing) on components that have been determined, by an inspector (certified pursuant to either Federal regulations at 40 CFR 745.226 or an EPA-authorized State certification program), to be free of paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter or 0.5 percent by weight (see § 745.82(b)(3) of the regulatory text).

D. Definitions

EPA received many comments that suggested the definitions used for this rule retain full consistency with existing State, local, and industry practice. Below is a brief discussion of

definitions that apply to this rule. While these definitions were included in the proposed rule, most have since been promulgated as part of related rulemakings under Title X and Title IV of TSCA. Only the definitions of "emergency renovation operations," "pamphlet," "person," "renovation," and "renovator" are promulgated in this rule. However, all definitions that were proposed for use in this rule are discussed below.

Common area means a portion of a building generally accessible to all residents/users, including, but not limited to, hallways, stairways, laundry and recreational rooms, playgrounds, community centers, and boundary fences.

This definition is unchanged from the proposed rule and can be found in 40 CFR 745.103. Although EPA received a comment suggesting to limit the definition, EPA has decided to retain the definition of common area also being used in other regulations mandated by Title X and Title IV of TSCA. These other regulations require a broader interpretation of the term (e.g., the inclusion of residence exteriors within the term's scope), and for consistency, EPA elected to adopt a single definition for all the rules. EPA has concluded that this discussion of the term's broad interpretation should sufficiently address commenter requests for an explicit inclusion of renovation work being performed upon a residence's exterior surfaces and surfaces in proximity to the residence within the rule's notification requirements.

However, because today's rule affects only residential housing, applicability of the definition for section 406(b) purposes is limited to common areas in residential housing.

Emergency renovation operations means renovation activities, such as operations necessitated by non-routine failures of equipment, that were not planned but result from a sudden, unexpected event that, if not immediately attended to, presents a safety or public health hazard, or threatens equipment and/or property with significant damage.

In the March 9, 1994 proposal, EPA specifically requested comment on whether the rule should include provisions for emergency renovations and other situations where unusual circumstances necessitated immediate action. EPA received a comment indicating that this definition was too broad. The commenter argued that only catastrophic situations such as fire, explosion, or imminent structural collapse required a response so prompt

as to preclude notification and that this exemption would be subject to abuse. EPA does not believe that emergency renovation activities are defined only by life-threatening situations. To ensure that the regulation does not unduly impair a property owner or manager's ability to react quickly to situations that present a sudden hazard to public safety or a sudden threat of significant property damage, EPA has added a specific exemption for emergency renovations and has provided the above definition. EPA has based its definition on the language used within EPA's National Emission Standards for Hazardous Air Pollutants (Asbestos) (40 CFR part 61, subpart M).

Multi-family housing means a housing property consisting of more than four dwelling units.

This definition is unchanged from the proposed rule. EPA received a comment suggesting that either this definition be changed to accommodate housing consisting of two, three, and four dwelling units, or that a definition covering that number of units be created. EPA may propose and seek comment on such a modification in the near future.

Owner means any entity that has legal title to target housing, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations, except where a mortgagee holds legal title to property serving as collateral for a mortgage loan, in which case the owner is considered the mortgagor.

EPA received a comment on the proposed definition's inclusion of third party managers or representatives. The commenter asserted that since management agreements between owners and third parties clearly establish that the responsibility for all property decisions reside with the owners, owners should be clearly differentiated from third party fee property managers. EPA agrees with the commenter. For the sake of consistency with section 1018 of the Residential Lead-Based Paint Hazard Reduction Act, EPA has revised the definition (see 40 CFR 745.103) of owner to clarify its applicability to trusts and to distinguish between owners (mortgagor) and mortgage lenders (mortgagees). The definition was also revised by removing the representative portion.

Pamphlet means the EPA pamphlet developed under section 406(a) of TSCA for use in complying with this and other rulemakings under Title IV of TSCA and the Residential Lead-Based Paint Hazard Reduction Act, or any State or Tribal pamphlet approved by EPA pursuant to

40 CFR 745.326 that is developed for the same purpose. This includes reproductions of the pamphlet when copied in full and without revision or deletion of material from the pamphlet (except for the addition or revision of State or local sources of information).

EPA added this definition to specify and identify either the lead hazard information pamphlet developed under section 406(a) of TSCA or any EPA-approved State pamphlet.

Person means any natural or judicial person including any individual, corporation, partnership, or association; any Indian Tribe, State or political subdivision thereof; any interstate body; and any department, agency, or instrumentality of the Federal Government.

EPA received several comments on this definition regarding whether the sovereign immunity of the United States is waived in relation to this rule.

Congress provided such a waiver in section 408 of TSCA. EPA modified this definition so that it is consistent with the definition promulgated in § 745.223.

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

EPA requested and received many comments on the proposed definition. EPA agrees with the commenters who stated that the proposed definition did not provide adequate guidance in defining a regulated transaction. EPA has, therefore, revised the definition to remove the unclear references to hazard levels involved in the activities, believing that it is not appropriate to expect each potential renovator to determine what is and what is not a "hazardous" activity. Instead, EPA has developed a definition that focuses on disturbance of paint, the key source of exposure that may occur during renovations.

Further, EPA has added an applicability section (§ 745.82) that lists activities that are excluded. This section excludes emergency renovations and renovation activities that pose little likelihood of creating lead hazards. The specifically excluded activities are:

minor repair and maintenance activities (including minor electrical work and plumbing) that disrupt 2 square feet or less of painted surface per component; emergency renovation operations; and renovations in target housing in which a written determination has been made by an inspector (certified pursuant to either Federal regulations at § 745.226 or an EPA-authorized State certification program) that lead-based paint is not present in the area affected by the renovation, where the renovator has obtained a copy of the determination.

EPA believes that the definition, coupled with the list of excluded activities in the applicability section, provides the regulated community with a clearer direction than that provided in the proposed rule. EPA also thinks that the definition and applicability sections enable this rule to cover all potentially hazardous renovation activities and exclude those that pose little likelihood of disturbing significant amounts of painted surface.

Renovator means any person who performs for compensation a renovation.

This definition was changed from the proposed rule by deleting the phrase "of target housing or public buildings" which appeared after the term "renovation." This change makes the term "renovator" consistent with the term "renovation," which is not limited to particular types of structures. Further, because future rules issued pursuant to section 402(c) of TSCA may apply, regulations promulgated under section 402(a) to renovation and remodeling in target housing, public buildings constructed before 1978, and commercial buildings, EPA believes the terms "renovation" and "renovator" should be defined in such a way that they can apply to all such structures. This change does not affect the scope or applicability of the rule, because the applicability provision at § 745.82 of the rule will limit the rule to renovations of target housing performed for compensation. Finally, as discussed in the proposal, although EPA considers that maintenance staff retained by the owners of buildings may be considered renovators for the purpose of this rule, an exclusion for routine maintenance and operations activities is provided in the applicability section of the rule.

Residential dwelling means:

- (1) A single-family dwelling, including attached structures such as porches and stoops; or
- (2) A single-family dwelling unit in a structure that contains more than one separate residential dwelling unit, and in which each such unit is used or occupied, or intended to be used or occupied, in whole or in part, as the

home or residence of one or more persons.

This definition, drawn from the statute, is unchanged from the proposal (see 40 CFR 745.103).

Target housing means 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) or any 0-bedroom dwelling.

This definition was provided by the statute and is unchanged (see 40 CFR 745.103).

0-Bedroom dwelling means any residential dwelling in which the living area is not separated from the sleeping area. The term includes efficiencies, studio apartments, dormitory housing, military barracks, and rentals of individual rooms in residential dwellings.

This definition, which can be found in 40 CFR 745.103, is drawn from the HUD 1994 housing survey, as a standard definition for 0-bedroom housing. It was added to this rule to provide both clarification of the term as it is used in the definition of target housing and consistency with the other regulations under Title X and TSCA.

E. Lead Hazard Information Pamphlet

In the August 1, 1995 **Federal Register**, EPA issued a Notice of Availability for the lead hazard information pamphlet entitled *Protect Your Family From Lead In Your Home*. EPA and HUD will distribute this pamphlet under several Congressional directives that will be implemented in separate rulemaking initiatives, including this rule.

The pamphlet has been made available to the general public as well as the regulated community. Single copies of the pamphlet are available in both English and Spanish from the NLIC, by calling 1-800-424-LEAD (TDD 1-800-526-5456). Multiple copies are available through the Government Printing Office (GPO), and may be ordered by calling the GPO Order Desk at (202) 512-1800, faxing (202) 512-2233, or writing to Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954. Request the publication by title, *Protect Your Family From Lead In Your Home*, and/or GPO stock #055-000-00507-9.

The pamphlet may be reproduced without permission from EPA or CPSC. EPA is encouraging persons to make their own reproductions of the pamphlet. Persons who wish to reprint the pamphlet may obtain negatives or black and white reproducible copy from the NLIC at 1-800-424-LEAD. Any copies reproduced for use in complying

with this rule, however, must be copied in full, and may not be revised in any way unless those actions are meant to add or properly reference State or local sources of information. Also, persons wishing to reprint the pamphlet may attach their company name, logo, and contact information on the back cover in the space provided at the bottom of the page.

In addition, EPA has developed a program under section 404 of TSCA in which States and Tribes may apply to EPA for authorization to develop and distribute their own pamphlets for compliance with this rule. That program now allows States and Tribes that have obtained such authorization to substitute the State-developed pamphlet for the Federal version for compliance with this rule. EPA provided preliminary approvals for pamphlet substitutions to the States of California and Massachusetts in August 1996.

This is a change from the proposed section 406(b) rulemaking. The section 406(b) proposal included language preventing State and Tribal modification of the pamphlet. EPA has since concluded that States and Tribes should be able to craft their own pamphlets so long as they include a number of basic elements.

In anticipation of this change, EPA included specific language in the preamble to the section 404 rule (under Unit I.X.) that was published August 29, 1996 (see FR 45802, 45803). That unit describes the minimum elements that must be present in a State or Tribal program in order for that State or Tribe to receive authorization from EPA (see 40 CFR 745.326). The unit also acknowledges the need for flexibility in the amount of detail and supplemental information to be included in a pamphlet for State or Tribal use. EPA has concluded that this flexibility is required due to the variety of particular, local informational and communication challenges that States and Tribes may face.

This change makes the section 406(b) program consistent with the rest of the lead program under Titles IV and X. This change also gives renovators a greater amount of flexibility; now renovators may choose between disseminating the EPA pamphlet or pamphlets crafted pursuant to section 404 (40 CFR 745.326).

EPA received comments concerning the pamphlet emphasizing that both it and the acknowledgment need to be available in languages other than English. As noted above, EPA concurred and has made the pamphlet available in Spanish. However, it was not considered reasonable to require the

renovator to provide translations into any language requested by the resident, nor does EPA have the resources to unilaterally develop, print, and distribute the pamphlet in every language represented in the United States. EPA is pursuing the feasibility of obtaining additional translations through public and private partnerships. Several private organizations are in the midst of developing the pamphlet in languages other than Spanish and English. If you have any questions concerning those efforts, consult the parties listed in the "FOR FURTHER INFORMATION CONTACT" section.

F. Information Distribution Requirements

1. *Renovations in living units.* EPA's modifications of the proposed information distribution requirements provide the regulated community with flexibility while ensuring appropriate communication with owners and occupants whose living units are undergoing renovations. Commenters expressed concerns about the proposed provision regarding the feasibility of requiring a signed acknowledgment from the "head of a household," noting that it could be extremely difficult to locate or guarantee accurate identification of such an individual. In the final rule, EPA permits any adult occupant of an affected target housing unit to acknowledge receipt of the pamphlet.

A second concern involved using the acknowledgment of the receipt of the pamphlet as an indication of the owner or occupant's awareness of the potential health hazards associated with renovations that disturb lead-based paint. Commenters indicated that a person who has just received a pamphlet would not have had time to read it. He or she could not realistically be expected to attest to any level of comprehension of the potential risks. EPA revised the final rule to focus solely on acknowledging receipt of the pamphlet.

2. *Delivery requirements.* EPA received numerous comments regarding this section. A prevalent comment expressed concern with requiring the renovator to obtain a signed acknowledgment. Commenters suggested scenarios of owners and occupants refusing to sign the acknowledgment or being unavailable during normal business hours, when such deliveries would typically occur. Commenters stated that holding the renovator accountable for such actions beyond his or her control was inappropriate.

After careful consideration, and in keeping with the goal of allowing flexibility where appropriate, the final rule allows the renovator several options for distributing the pamphlet, including personal delivery by the renovator or a designated representative, self-certification for unsuccessful attempted personal deliveries, and the option to mail the pamphlet.

The final rule permits either the renovator or a designated representative (such as a landlord) to deliver the pamphlet and obtain the acknowledgment. However, when using a designated representative, the renovator remains responsible for compliance with this rule. This provides renovators with additional flexibility with regard to delivery, but still ensures that they retain the responsibility for compliance with the rule and maintaining the appropriate records. EPA also recognizes that there may be situations when an adult occupant cannot be reached or simply refuses to sign an acknowledgment. Under these circumstances, the renovators, or their designee, will be allowed to certify in writing that the delivery was attempted, and briefly explain what was done and why a signed and dated acknowledgment could not be obtained. The renovator is nonetheless required to deliver a copy of the pamphlet to the affected housing unit.

Another option allows the renovator to deliver the pamphlet by mail after receiving some receipt or proof of mailing. Of course, the renovator may use more expensive methods of delivery (e.g., certified mail, registered mail), but obtaining a certificate of mailing from the Post Office is the minimum required.

Notwithstanding the renovator's approach, the renovator must either have the proper documentation (i.e., signed and dated acknowledgment, or self-certification) or have purchased and received a certificate of mailing from the Post Office at least 7 days before the commencement of renovation activities.

3. Content of Acknowledgement Statements. Commenters provided suggestions as to the specific language of the acknowledgment statements. Several commenters suggested that the statements include detail regarding lead hazards and a reference to the pamphlet, while others suggested that obtaining acknowledgement would be overly burdensome or cause delays in renovation activities. After reviewing the comments, EPA decided to delete specific acknowledgment language from the rule in order to reduce the burden on the regulated community and permit

a greater degree of flexibility without compromising the safety of owners and occupants. However, to provide guidance to the regulated community, § 745.88 has been added, offering suggested language for acknowledgment.

4. Renovations in common areas. The final rule discusses target housing in terms of dwelling units and common areas (as would be found in multi-family housing). Pre-renovation notification activities for renovations in common areas differ slightly from those in dwelling units. The main difference is that the renovator is not required to distribute the pamphlet and obtain an acknowledgment from the occupants regarding renovations performed in common areas, although the renovator must notify residents of the upcoming renovations and make the pamphlet available upon request, prior to the renovation, at no charge.

Although some commenters suggested that all residents should receive a copy of the pamphlet before any work begins in common areas, EPA does not believe that the creation of a system in which occupants receive a pamphlet every time any kind of work occurs within the common areas of a building is the most efficient method for achieving the informational objectives contemplated by section 406(b). Since renovation activities may occur in various hallways or lobbies of a building on a frequent basis, it could be impractical to require a renovator to provide all occupants with a new pamphlet before the commencement of each renovation, especially in dwellings with large numbers of residential units. Such a requirement would be difficult to implement and enforce, and the impact of the pamphlet would likely decrease with each time it was given. The renovator is required, however, to provide the owner with a copy of the pamphlet and obtain the signed, dated acknowledgment thereof.

Although the renovator is not required to distribute the pamphlet and obtain acknowledgments from each occupant in the building, the renovator must still notify (no more than 60 days prior to the renovation) each unit individually in writing of the renovation work that is to occur, including a description and locations of the activity, a statement that lead-based paint may be disturbed, and the expected starting and ending dates. Further, the renovator must make copies of the pamphlet available upon request and provide information on how to obtain them. The notification process could be accomplished by distributing a letter or flyer containing the required

information to each living unit within the dwelling. Notification activities could be performed by the renovator, by the owner of the dwelling or other representative, on behalf of the renovator. Even if the owner or other representative agreed to perform the notification activities, however, the responsibility to assure compliance would still rest with the renovator. In any case, the notification must be received before the work is commenced.

EPA recognizes that in some cases, large renovations could take an extended period of time or cover several different common areas of multi-family housing. In that case, if the initial notification provides accurate information on the scope of renovations planned in the various areas, with an accurate schedule of their performance, then that initial notification would be sufficient to meet the requirements of this rule. If the scope, location, or time frame of the activities change in a way not reflected in the original notification, then the renovator is obligated to provide updated information in an additional notification. This updated information is necessary to ensure that owners and occupants can, if necessary, adequately protect themselves from exposure to lead-based paint.

EPA believes that owners or renovators in the original notification will allow a generous amount of time for the completion of the renovation and define a comprehensive scope of the work to ensure that renotification (pursuant to § 745.85(b)(4)) will not be necessary. Therefore, EPA has chosen not to include the costs of this provision in the Regulatory Impact Analysis (see Unit VII. of this preamble) for this rulemaking. EPA has concluded that these provisions for notifying occupants of common area renovations strike the appropriate balance between public access to information and burden on the regulated community.

G. Recordkeeping Requirements

EPA requested comment on whether the recordkeeping requirements were reasonable, too stringent, or not stringent enough. The comments were mixed and varied. A significant number of commenters argued that the length of the renovation job was a sufficient retention period, and an equally significant number of commenters argued to retain the 3-year recordkeeping requirement of the proposal. Based on a review of the comments provided, EPA will retain the 3-year recordkeeping requirement as proposed.

Thus, renovators are required to retain and, if requested, make available to EPA

or its authorized delegates (i.e., States and Tribes with EPA-approved programs) all records necessary to demonstrate compliance with the requirements of this rule for 3 years following completion of the renovation activities on target housing. These records include any reports certifying that lead-based paint is not present in the housing; the signed, dated acknowledgments of receipt for delivery of the pamphlet; the signed, dated certifications of the inability to obtain an acknowledgment of receipt; the certificate of mailing for delivery of the pamphlet; and the signed, dated acknowledgments and records of notification activities for renovations in common areas.

H. Enforcement and Inspections

EPA received some comment on the enforcement provisions discussed in the statute and the proposed rule. A few commenters expressed concern about EPA's ability to oversee and enforce the requirements of section 406(b), while other commenters sought assurance that the Agency recognized the importance of education and outreach to the regulated community. Since the enforcement and inspection provisions in this rule derive directly from the authorizing statutory language of TSCA, this rule retains the enforcement language largely as proposed. The section number was changed to reflect modified numbering, and the section heading was renamed so that it could more simply indicate that it addressed EPA's enforcement and inspection authority. Below is a discussion of the general enforcement authority provided by TSCA (including Title IV), along with some discussion of the process EPA envisions for the development of a sensible and effective lead enforcement program.

Section 409 of TSCA makes it unlawful to fail or refuse to comply with any provision of a rule promulgated under Title IV of TSCA. Therefore, failure to comply with any provisions of this final rule by regulated entities would be a violation of TSCA. In addition, section 15 of TSCA makes it unlawful for any regulated entity to fail or refuse to permit entry or inspection (of business records in this instance) by EPA or its authorized delegates as required by section 11 of TSCA. Violators may be subject to both civil and criminal sanctions. Under the penalty provision of section 16 of TSCA, any person who violates sections 15 or 409 may be subject to a civil penalty of up to \$25,000 per day for each such violation. Knowing or willful violations of any provision of this final rule could

lead to the imposition of criminal fines of up to \$25,000 per day and imprisonment for up to 1 year for each such violation.

The above-described provisions reflect the overall enforcement authority available to EPA under TSCA. While EPA intends to use the inspection and enforcement tools available to ensure compliance with this final rule, it is also EPA's intent that outreach and compliance assistance be major components of the section 406(b) program so that renovators are aware of the new requirements and their subsequent obligations. EPA also intends to bring clarity and predictability to the enforcement process for section 406(b). EPA is developing a mechanism that achieves a common sense relationship between a particular "violation" of section 406(b) and a particular enforcement response. This includes issuing notices of warning (without penalties) as appropriate to let individuals know that they are out of compliance and give them an opportunity to come into compliance, and ensuring that willful and repeated violators are appropriately penalized. However, numerous factors (many of which are mandated by TSCA) are involved in the Agency's determination of a proper enforcement response. EPA is currently developing an "Enforcement Response Policy" (ERP) for the requirements of this final rule.

I. Confidential Business Information

EPA received no comments on this section. However, in order for readers to understand what is required for the submission of confidential documents, EPA has included the following two paragraphs to describe those procedures (per 40 CFR part 2, subpart B):

Those who assert a confidentiality claim for submitted information must provide EPA with two copies of their submission. The first copy must be complete and contain all information being claimed as confidential. The second copy must contain only information not claimed as confidential. EPA will place the second copy of the submission in the public file.

EPA will disclose information subject to a claim of confidentiality only to the extent permitted by section 14 of TSCA and 40 CFR part 2, subpart B. If a person does not assert a claim of confidentiality for information at the time it is submitted to EPA, EPA may make the information public without further notice to that person.

VI. Authorization of State Programs

Under section 404(a) of TSCA and its implementing regulations, States and

Tribes may apply to administer and enforce the standards, regulations, and requirements established under this rule. Section 404(b) states that the Administrator may approve such an application only after finding that the State or Tribal program is at least as protective of human health and the environment as the Federal program established according to the mandate of sections 402 and 406 of TSCA, and that it provides adequate enforcement.

The State or Tribal program must have regulations or procedures that contain the following: (1) Requirements for distribution of an approved lead hazard information pamphlet before renovations performed for compensation in target housing commence; and (2) provisions for the adequate enforcement of the above program.

In providing an approved lead hazard information pamphlet meeting the requirements of section 406(a) of TSCA, the State or Tribe may either require distribution of: (1) The lead hazard information pamphlet developed by EPA, under section 406(a) of TSCA, entitled *Protect Your Family From Lead In Your Home*, or (2) an alternative pamphlet or package of lead hazard information that has been approved by EPA. Any pamphlet or package of information submitted for EPA approval must contain the content and design elements as mandated by section 406(a) of TSCA. The procedures for submitting an application (40 CFR 745.324) were made final in a separate **Federal Register** notice.

VII. Summary of Regulatory Impact Analysis

EPA has prepared a Regulatory Impact Analysis (RIA) which examines the potential costs, benefits, and impacts of these regulations for the disclosure of potential lead-based paint hazards prior to residential renovations. The complete RIA is included as a part of the public record for this rule and is available through the TSCA Docket (see Unit VIII. of this preamble for address).

A. Background and Framework for Analysis

Those parties directly affected by the rule are renovators (which may include property managers), occupants of owner-occupied and rental housing, and owners of rental property. EPA found the required activities which give rise to regulatory burden imposed on the affected parties to fall into four categories for cost estimation purposes:

- Start-up costs, which include learning the rule's requirements and establishing compliance procedures.

- Disclosure activities, which refer to the costs resulting from the actual transfer of information and obtaining of needed acknowledgments.

- Recordkeeping, which results principally from the requirement that signed acknowledgment statements must be retained by the provider of the information.

- Materials, which is linked primarily to the disclosure requirement, as the lead hazard information pamphlet must be purchased or photocopied (acknowledgment statements must also be provided). Costs may also be incurred for filing where a high number of acknowledgment statements are generated (e.g., renovators), though such burden was estimated to be quite modest.

The requirements of section 406(b) of TSCA fall on parties providing renovation services for compensation to owners of "target housing," which is defined to be 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) or any 0-bedroom dwelling.

To estimate the impacts of the rule, data were sought pertaining to the number of affected parties; the frequency with which affected renovation transactions are completed; and the incremental costs, in labor and materials, added to each transaction by the regulations.

B. Profile of Sectors Affected

Four major industry sectors were identified as affected: SIC codes 15 (General Contractors and Operative Builders); 17 (Special Trade Contractors); 651 (Real Estate Operators and Lessors); and 653 (Real Estate Agents and Managers). In total, EPA estimates there to be 482,000 establishments potentially affected by the rule. The greatest portion of this sum is expected to fall within SIC 17, where 199,000 establishments could be subject to the rule's requirements. Ninety-nine thousand establishments were estimated to be potentially affected in SIC 15. Also subject to the rule are as many as 92,000 business establishments falling within each of SICs 651 and 653.

Employment data for these industries were obtained for occupations most likely to be involved in transactions subject to the rule. EPA estimates that 2,272,000 contractor personnel (SICs 15 and 17) and 243,000 property managers (SICs 651 and 653) may be affected.

With regard to transaction volume, EPA found that 12.2 million renovation

events in owner-occupied target housing and 6.3 million renovation events in rental target housing that occur each year may be subject to the rule.

C. Estimated Costs to Private Parties and Government

EPA found that due to limitations of the data, the RIA cost estimates could not distinguish the frequency of regulated transactions in target housing from those transactions occurring in housing not subject to the information disclosure rules. While completing the final analysis, EPA also determined that it was not possible to establish how frequently transactions performed in target housing would be excluded from regulatory coverage (e.g., jobs disturbing less than 2 square feet of painted surface). For those reasons, EPA believes that both the proposed and final regulatory impact analyses overstate the impact of this rulemaking.

The first private party cost category, start-up costs, represents about one-third of overall annual compliance costs at \$13.2 million. Factors affecting the magnitude of these costs include the number of employees having to familiarize themselves with the regulations, both initially (employees in the existing workforce) and over time (new entrants to the affected sectors); the time required to learn the activities which must be undertaken in order to comply; and the hourly compensation of affected employees.

Disclosure event costs of \$57.5 million constitute the greatest portion of overall compliance costs. Factors affecting the magnitude of these costs include the frequencies of regulated events; the time involved in performing required activities, such as providing the owner/tenant with the required information and obtaining the required signatures; and the hourly compensation of all involved parties.

Recordkeeping and materials costs comprise a relatively modest share of overall annual costs at \$3.7 million and \$7.8 million, respectively. Factors affecting the magnitude of these cost items include the number of affected parties per transaction; the frequency of transactions; the costs of acquiring/duplicating documents, which include the lead hazard information pamphlet and signed acknowledgment statements; and costs to maintain documents. This leads to a total estimated annual cost to private parties of \$82.2 million.

To administer the final regulation, EPA estimates government resources totaling between \$2.4 million (low estimate) and \$4.3 million (high estimate) will be required to conduct a number of activities, including:

inspections; violation case management; establishment and maintenance of cooperative agreements; compliance assistance, development of performance measurement criteria; and management. Therefore, the total annual costs for this rule, to private parties and the government, is estimated to be between \$84.6 million (low estimate) and \$86.5 million (high estimate).

D. Effect of the Lead-Based Paint Hazard Disclosure Rule for Real Estate Renovations on Small Businesses Regulatory Flexibility Analysis

EPA investigated the potential impacts of the rule on small businesses, and has prepared a regulatory flexibility analysis which is included in the RIA. While a large number of small establishments will be potentially affected by the rule, cost impacts were not found to be of sufficient magnitude to have significant economic impacts on such establishments. That analysis is summarized separately in Unit X.B. of this preamble.

E. Assessment of Benefits

The market imperfection that the rule is intended to correct is the lack of information available to homeowners and tenants regarding the potential health risks accompanying residential renovations that are related to lead-based paint. Under the rule, general information about risks associated with lead-based paint will be provided through the provision of the pamphlet. The failure of the marketplace to currently provide this information means that owners and occupants may not be able to react appropriately to avoid or prevent such risks.

This rule will generate direct benefits by providing homeowners and tenants information which they value and otherwise can acquire only through their own effort at some cost. Two approaches for estimating the benefits associated with having information are discussed in the Regulatory Impact Analysis (RIA): a contingent valuation study, or a study of the transaction costs to buyers and renters of obtaining similar information. However, an information base and the associated accepted analytic methods are not yet available; thus, the direct benefits of this rule are not quantified. Nevertheless, EPA believes that the information provided in the qualitative analysis presented in the RIA adequately serves to inform and support the Agency's decision to promulgate this rule.

EPA also expects indirect or "follow-on" benefits from the rule, as the parties to the renovation transaction comprehend and use the information in

the pamphlet. The regulation does not require that the pamphlet be read or that actions be taken to reduce lead-based paint hazards; thus, the extent to which lead exposure is reduced depends upon how transaction participants respond to the information provided to them by this rule. Such responses will involve both costs and benefits. As discussed in the RIA, these costs and benefits are extremely difficult to quantify because doing so requires the prediction of behavior and the isolation of the many factors that influence behavior. In any event, EPA believes that the benefits of any follow-on activities will outweigh their costs, because any such actions will be undertaken voluntarily by the parties to the renovation transaction.

VIII. Rulemaking Record

A record for this final rule has been established under docket control number "OPPTS-62131." The public version of this record (which does not contain any information claimed as CBI) is available for inspection from noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in EPA's TSCA Docket or Nonconfidential Information Center (NCIC), Rm. NE-B607, 401 M St., SW., Washington, DC 20460.

The rulemaking record contains information considered by EPA in developing this final rule. The record includes: (1) All **Federal Register** notices, (2) relevant support documents, (3) reports, (4) memoranda and letters, and (5) hearing transcripts, responses to comments, and other documents related to this rulemaking.

Unit IX. of this preamble contains the list of documents which the Agency relied upon while developing this final regulation and can be found in the docket. Other documents, not listed there, such as those submitted with written comments from interested parties, are contained in the TSCA Docket Office as well. A draft of today's final rule submitted by the Administrator to the Office of Management and Budget for an interagency review process prior to publication of the rule is also contained in the public docket.

IX. References

1. Alliance to End Childhood Lead Poisoning, Preventing Childhood Lead Poisoning: The First Comprehensive National Conference; Final Report. Washington, DC, 1991.
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3. CPSC, 1977. "Notice Reducing Allowable Levels of Lead in Lead-Based Paint." **Federal Register**. September 1, 1977: 42 FR 44199.

4. EPA, 1995. U.S. Environmental Protection Agency, "Report on the National Survey of Lead-Based Paint in Housing: Base Report." Washington, DC: (EPA #747-R95-003).

5. HUD, 1995. U.S. Department of Housing and Urban Development, Task Force on Lead-Based Paint Hazard Reduction and Financing, "Putting the Pieces Together: Controlling Lead Hazards in the Nation's Housing: Final Report." Washington, DC: HUD-1542-LBP.

6. HUD, 1990. "Lead-Based Paint; Interim Guidelines for Hazard Identification and Abatement in Public and Indian Housing; Notice." **Federal Register**. April 18, 1990: 55 FR 14556.

7. HUD, 1994. Department of Housing and Urban Development, "National Housing Survey." Washington, DC.

8. HUD, 1995. Department of Housing and Urban Development, "Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing." Washington, DC.

9. Pirkle, 1994. Pirkle, J.L., Brody D.J., Gunter E.W., Kramer R.A., Paschal D.C., Flegal K.M., Matte T.D., "The Decline in Blood Lead Levels in the United States." *Journal of the American Medical Association*, 272(4): 284-291.

9a. CDC, 1997. "Update: Blood Lead Levels - United States, 1991-1994." *Morbidity and Mortality Weekly Report*, 46(7): 141-146.

9b. CDC, 1997. Erratum: Vol. 46, No. 7. *Morbidity and Mortality Weekly Report*, 46(26).

10. EPA, 1995. "Lead Hazard Information Pamphlet; Notice of Availability." **Federal Register**. August 1, 1995: 60 FR 39167.

11. National Institute of Building Sciences, 1996. "Regulatory Models for Lead Poisoning Prevention: Lead-Based Paint Regulatory Infrastructure Project." Published draft: Washington, DC. December 2, 1996.

X. Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993), this is a "significant regulatory action" subject to review by the Office of Management and Budget (OMB), because this action may raise novel legal and policy issues arising from the implementation of new statutory mandates under Title IV of the Toxic Substances Control Act (15 U.S.C. 2681-

2692). This action was therefore submitted to OMB for review, and any changes made during that review have been documented in the public record.

EPA has prepared an economic analysis of the impact of this action for renovation activities, which is contained in a document entitled *Regulatory Impact Analysis of Lead-Based Paint Hazard Disclosure Regulation for Residential Renovations* (hereinafter referred to as the RIA). This document is available as a part of the public record for this action and is summarized in Unit VII. of this preamble. EPA finds that the rule will not have an annual effect on the economy of \$100 million or more, will not result in major increases in costs or prices, and is not anticipated to have significant adverse effects on competition, employment, investment, or productivity in the relevant sectors.

EPA estimates the annual costs to private entities to be \$82 million and the annual costs to government to range from \$2.4 to \$4.3 million. These estimates include costs for rule familiarization, information disclosure and obtaining required signatures, recordkeeping, materials costs and, for government, costs of administration. EPA estimates that the provisions of the rule would add about \$2.00 to \$4.00 to the cost of each transaction for each entity impacted. The average unit costs per renovation activity is \$4.52.

B. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agency hereby certifies that this action will not have a significant economic impact on a substantial number of small entities. Although small businesses were found to constitute the great majority of affected entities, the estimated individual cost impacts of \$2.00 to \$4.00 per transaction (e.g., the cost to renovation contractors, speciality trade contractors, or rental property managers on a per unit basis), are quite insignificant. EPA has prepared a final analysis of small entity impacts as part of the RIA, which is summarized in Unit VII.D. of this preamble and briefly discussed here.

As demonstrated in the analysis, all provisions were carefully crafted to minimize impacts on all regulated entities. Similarly, due to the high proportion of affected establishments represented by small business, the Agency's review and response to public comments, particularly comments relating to cost estimates presented in the RIA and which formed the basis of the flexibility analysis, have been incorporated into the analysis by

reference. The Regulatory Flexibility Act also requires a statement of the need for, and objectives of, the rule to be provided. This statement appears in Unit III. of this preamble, and is also incorporated into the analysis by reference.

In assessing small business impacts, EPA first developed an establishment profile for each major sector: SIC 15 (General Contractors and Operative Builders); SIC 17 (Special Trade Contractors); SIC 651 (Real Estate Operators and Lessors); and SIC 653 (Real Estate Agents and Managers). This profile indicated that approximately 80 to 90% of all establishments in each sector fell within the 1-9 employee size class, and roughly 98% had fewer than 50 employees. Thus, a substantial number of small firms are estimated to be potentially affected by the rule.

To measure the cost impacts of the rule on these establishments, representative or model establishments were designed. These model establishments corresponded to typical establishments, with respect to number of employees and annual transaction volume, in each affected sector. Since transaction activity was reported to vary widely, a range of transaction volume was estimated for each establishment type.

For each model establishment, annual regulatory costs were then calculated and compared to annual labor and overhead costs. Ratios were computed for both high and low estimates of the range of transaction activity. In the case of a multi-trade renovation contractor, regulatory costs were found to represent from 0.04 to 0.09 percent of labor and overhead costs. In the case of a specialty trade contractor, impacts were somewhat higher, ranging from 0.21 to 0.49%. An establishment engaged in rental property management was projected to sustain impacts of 0.73 to 1.44%.

In developing these impact ratios, EPA was unable to distinguish in its estimates of transaction activity how frequently transactions might take place in target housing as opposed to housing not subject to the information disclosure rules. Further, it was not possible to determine how frequently transactions performed in target housing would be excluded from regulatory coverage (e.g., jobs disturbing less than 2 square feet of painted surface). For these reasons, the number of transactions incorporated in the flexibility analysis may exaggerate the number of jobs actually subject to the rule, resulting in impacts which most likely overstate true impacts.

While a large number of small establishments will be potentially

affected by the rule, the analysis did not suggest cost impacts to be significant for such establishments. EPA received a number of comments relating to the costs of the rulemaking. Most of those comments centered on a belief that EPA underestimated the burden hours of (and thereby the costs associated with) each transaction. EPA disagrees with those commenters' assertions. Information EPA collected suggested that in the majority of affected transactions, section 406 requirements could be met as part of a pre-existing process. Information regarding the frequency with which more complex, time-consuming scenarios might occur suggested that those circumstances would be in the minority. Further, EPA believes the flexibility afforded the renovator by the rule will be of particular advantage to contractors who may foresee difficulties in carrying out the notification requirements.

Information relating to this determination has been provided to the Chief Counsel for Advocacy of the Small Business Administration, and is included in the docket for this rulemaking.

C. Paperwork Reduction Act

The information collection requirements in this rule have been submitted for approval to OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). An Information Collection Request (ICR) document has been prepared by EPA (EPA ICR No. 1669.01) and a copy may be obtained from Sandy Farmer, OPPE Regulatory Information Division, U.S. Environmental Protection Agency (2136), 401 M St., SW., Washington, DC 20460, or by calling (202) 260-2740. The information collection requirements in this rule are not effective until OMB approves them.

The collection of information required in this rule has an estimated recordkeeping burden averaging 6.2 minutes per response, and requires 5.7 hours per recordkeeper, annually. These estimates include time to review instructions, search existing data sources, gather and maintain the data needed, and complete the collection of information.

Burden 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.

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 are listed in 40 CFR part 9. Upon OMB approval, EPA will issue a notice in the **Federal Register** to announce OMB's approval and to make a technical amendment to include a reference to this approval in 40 CFR part 9.

Send comments on the Agency's accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, OPPE Regulatory Information Division, at the address listed above, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW., Washington, DC 20503, marked "Attention: Desk Officer for EPA." Include the ICR number in any correspondence.

D. Unfunded Mandates Reform Act and Executive Order 12875

Pursuant to Title II of the Unfunded Mandates Reform Act, which the President signed into law on March 22, 1995, EPA has assessed the effects of this regulatory action on State, local, and tribal governments, and the private sector. This action does not result in the annual expenditure (in the aggregate) of \$100 million or more by any State, local, or tribal government, or by anyone in the private sector. The costs associated with this action are described in the Executive Order 12866 section above.

In addition to the consultations prior to proposal, EPA has had several informal consultations regarding the proposed rule with some States through the EPA Regional Offices and at regularly scheduled State meetings. No significant issues or information were identified as a result of EPA's discussion with the States.

In addition, since the issuance of this rule is not discretionary, the intergovernmental consultation provisions of section 204 of the UMRA and Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), do not apply. The EPA is required under Title IV of the Toxic

Substances Control Act (15 U.S.C. 2681-2692) to promulgate these regulations.

E. Executive Order 12898

Pursuant to Executive Order 12898 (59 FR 7629, February 16, 1994), entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, the Agency has considered environmental justice-related issues with regard to the potential impacts of this action on the environmental and health conditions in low-income and minority communities. Recognizing that lead-based paint hazard exposure is more prevalent in those communities, the Agency has developed a Spanish language version of the pamphlet and is seeking partners to investigate its translation into other languages. The Agency also requires that the signed acknowledgment statements be in the same language as the contract it accompanies.

F. Executive Order 13045

This action is not subject to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), because this action is not an economically significant regulatory action as defined by Executive Order 12866 (see Unit X.A. above). This action does, however, address environmental health or safety risks affecting children, in that this rule ensures that owners and occupants of target housing are provided information concerning the potential hazards of lead-based paint exposure before certain renovations are begun, and children are particularly susceptible to the hazards of lead. This information allows these individuals to consider taking appropriate precautions to avoid exposure to the lead-contaminated dust and lead-based paint debris that are sometimes generated during renovations of housing with lead-based paint. In fact, children under the age of 6 are the primary beneficiaries of this rule, as well as the Agency's overall Lead Program.

XI. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) of the Administrative Procedure Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Title II of Pub. L. 104-121, 110 Stat. 847), EPA submitted 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

today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2) of the APA as amended.

List of Subjects in 40 CFR Part 745

Environmental protection, Abatement, Housing renovation, Lead, Lead-based paint, Reporting and recordkeeping requirements.

Dated: May 22, 1998.

Carol M. Browner,
Administrator.

Therefore, 40 CFR chapter I is amended as follows.

PART 745—[AMENDED]

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

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

2. Subpart E is added to read as follows:

Subpart E—Residential Property Renovation

Sec.

| | |
|--------|--|
| 745.80 | Purpose. |
| 745.81 | Effective date. |
| 745.82 | Applicability. |
| 745.83 | Definitions. |
| 745.84 | Confidential business information. |
| 745.85 | Information distribution requirements. |
| 745.86 | Recordkeeping requirements. |
| 745.87 | Enforcement and inspections. |
| 745.88 | Acknowledgment and certification statements. |

Subpart E—Residential Property Renovation

§ 745.80 Purpose.

This subpart contains regulations developed under Title IV (15 U.S.C. 2681-2692) of the Toxic Substances Control Act and applies to all renovations of target housing performed for compensation. The purpose of this subpart is to require each person who performs a renovation of target housing for compensation to provide a lead hazard information pamphlet to the owner and occupant of such housing prior to commencing the renovation.

§ 745.81 Effective date.

The requirements in this subpart shall take effect on June 1, 1999.

§ 745.82 Applicability.

(a) Except as provided in paragraph (b) of this section, this subpart applies to all renovations of target housing performed for compensation.

(b) This subpart does not apply to renovation activities that are limited to the following:

(1) Minor repair and maintenance activities (including minor electrical

work and plumbing) that disrupt 2 square feet or less of painted surface per component.

(2) Emergency renovation operations.

(3) Renovations in target housing in which a written determination has been made by an inspector (certified pursuant to either Federal regulations at § 745.226 or a State or Tribal certification program authorized pursuant to § 745.324) that the components affected by the renovation are free of paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter or 0.5 percent by weight, where the renovator has obtained a copy of the determination.

§ 745.83 Definitions.

For purposes of this part, the definitions in § 745.103 as well as the following definitions apply:

Administrator means the Administrator of the Environmental Protection Agency.

Emergency renovation operations means renovation activities, such as operations necessitated by non-routine failures of equipment, that were not planned but result from a sudden, unexpected event that, if not immediately attended to, presents a safety or public health hazard, or threatens equipment and/or property with significant damage.

Multi-family housing means a housing property consisting of more than four dwelling units.

Pamphlet means the EPA pamphlet developed under section 406(a) of TSCA for use in complying with this and other rulemakings under Title IV of TSCA and the Residential Lead-Based Paint Hazard Reduction Act, or any State or Tribal pamphlet approved by EPA pursuant to 40 CFR 745.326 that is developed for the same purpose. This includes reproductions of the pamphlet when copied in full and without revision or deletion of material from the pamphlet (except for the addition or revision of State or local sources of information).

Person means any natural or judicial person including any individual, corporation, partnership, or association; any Indian Tribe, State, or political subdivision thereof; any interstate body; and any department, agency, or instrumentality of the Federal Government.

Renovation means the modification of any existing structure, or portion thereof, that results in the disturbance of painted surfaces, unless that activity is performed as part of an abatement as defined by this part (40 CFR 745.223). The term renovation includes (but is not limited to): the removal or modification of painted surfaces or painted

components (e.g., modification of painted doors, surface preparation activity (such as sanding, scraping, or other such activities that may generate paint dust)); the removal of large structures (e.g., walls, ceiling, large surface replastering, major re-plumbing); and window replacement.

Renovator means any person who performs for compensation a renovation.

§ 745.84 Confidential business information.

(a) Those who assert a confidentiality claim for submitted information must provide EPA with two copies of their submission. The first copy must be complete and contain all information being claimed as confidential. The second copy must contain only information not claimed as confidential. EPA will place the second copy of the submission in the public file.

(b) EPA will disclose information subject to a claim of confidentiality only to the extent permitted by section 14 of TSCA and 40 CFR part 2, subpart B. If a person does not assert a claim of confidentiality for information at the time it is submitted to EPA, EPA may make the information public without further notice to that person.

§ 745.85 Information distribution requirements.

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

(1) Provide the owner of the unit with the pamphlet, and comply with one of the following:

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

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

(2) In addition to the requirements in paragraph (a)(1) of this section, if the owner does not occupy the dwelling unit, provide an adult occupant of the unit with the pamphlet, and comply with one of the following:

(i) Obtain, from the adult occupant, a written acknowledgment that the occupant has received the pamphlet; or certify in writing that a pamphlet has been delivered to the dwelling and that the renovator has been unsuccessful in obtaining a written acknowledgment from an adult occupant. Such certification must include the address of the unit undergoing renovation, the date and method of delivery of the pamphlet, names of the persons delivering the pamphlet, reason for lack of acknowledgment (e.g., occupant refuses to sign, no adult occupant available), the

signature of the renovator, and the date of signature.

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

(b) *Renovations in common areas.* No more than 60 days before beginning renovation activities in common areas of multi-family housing, the renovator shall:

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

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

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

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

(3) Prepare, sign, and date a statement describing the steps performed to notify all occupants of the intended renovation activities and to provide the pamphlet.

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

(c) *Written acknowledgment.* Sample language for such acknowledgments is provided in § 745.88. The written acknowledgments required in paragraphs (a)(1)(i), (a)(2)(i), and (b)(1)(i) of this section shall:

(1) Include a statement recording the owner or occupant's name and acknowledging receipt of the pamphlet prior to the start of renovation, the address of the unit undergoing renovation, the signature of the owner or occupant as applicable, and the date of signature.

(2) Be either a separate sheet or part of any written contract or service agreement for the renovation.

(3) Be written in the same language as the text of the contract or agreement for the renovation or, in the case of non-owner occupied target housing, in the same language as the lease or rental agreement or the pamphlet.

§ 745.86 Recordkeeping requirements.

(a) Renovators shall retain and, if requested, make available to EPA all records necessary to demonstrate compliance with this subpart for a period of 3 years following completion of the renovation activities in target housing. This 3-year retention requirement does not supersede longer obligations required by other provisions for retaining the same documentation, including any applicable State or Tribal laws or regulations.

(b) Records that must be retained pursuant to paragraph (a) of this section shall include (where applicable):

(1) Reports certifying that a determination had been made by an inspector (certified pursuant to either Federal regulations at § 745.226 or an EPA-authorized State or Tribal certification program) that lead-based paint is not present in the area affected by the renovation, as described in § 745.82(b)(vi).

(2) Signed and dated acknowledgments of receipt as described in § 745.85(a)(1)(i), (a)(2)(i), and (b)(1)(i).

(3) Certifications of attempted delivery as described in § 745.85(a)(2)(i).

(4) Certificates of mailing as described in § 745.85(a)(1)(ii), (a)(2)(ii), and (b)(1)(ii).

(5) Records of notification activities performed regarding common area renovations, as described in § 745.85(b)(3) and (4).

§ 745.87 Enforcement and inspections.

(a) Failure or refusal to comply with any provision of this subpart is a violation of TSCA section 409 (15 U.S.C. 2689).

(b) Failure or refusal to establish and maintain records or to make available or permit access to or copying of records, as required by this subpart, is a violation of TSCA sections 15 and 409 (15 U.S.C. 2614 and 2689).

(c) Failure or refusal to permit entry or inspection as required by 40 CFR 745.87 and TSCA section 11 (15 U.S.C. 2610) is a violation of sections 15 and 409 (15 U.S.C. 2614 and 2689).

(d) Violators may be subject to civil and criminal sanctions pursuant to TSCA section 16 (15 U.S.C. 2615) for each violation.

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

§ 745.88 Acknowledgment and certification statements.

(a)(1) *Acknowledgment statement.* As required under § 745.85(c)(1),

acknowledgments shall include a statement of receipt of the pamphlet prior to the start of renovation, the address of the unit undergoing renovation, the signature of the owner or occupant as applicable, and the date of signature.

(2) *Sample acknowledgment language.* The following is a sample of language that could be used for such acknowledgments: I have received a copy of the pamphlet, *Protect Your Family From Lead In Your Home*, informing me of the potential risk of lead hazard exposure from renovation activity to be performed in my dwelling unit. I received this pamphlet before the work began.

Printed Name and Signature

Date

Unit Address

(b)(1) *Certification of attempted delivery.* When an occupant is

unavailable for signature or refuses to sign the acknowledgment of receipt of the pamphlet, the renovator is permitted (per § 745.85(a)(2)(i)) to certify delivery for each instance. The certification shall include the address of the unit undergoing renovation, the date and method of delivery of the pamphlet, names of the persons delivering the pamphlet, reason for lack of acknowledgment (e.g. occupant refuses to sign, no adult occupant available), the signature of the renovator, and the date of signature.

(2) *Sample certification language.* The following is a sample of language that could be used under those circumstances:

(i) *Unavailable for signature.*

I certify that I have made a good faith effort to deliver the pamphlet, *Protect Your Family From Lead In Your Home*, to the unit listed below at the dates and times indicated, and that the occupant refused to sign the acknowledgment. I further certify that I have left a copy of the pamphlet at the unit with the occupant.

Printed Name and Signature

Date

Unit Address

Attempted delivery dates and times:

(ii) *Refusal to sign.*

I certify that I have made a good faith effort to deliver the pamphlet, *Protect Your Family From Lead In Your Home*, to the unit listed below, and that the occupant was unavailable to sign the acknowledgment. I further certify that I have left a copy of the pamphlet at the unit by sliding it under the door.

Printed Name and Signature

Date

Unit Address

Attempted delivery dates and times:

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