

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 51**

[EPA-HQ-OAR-2008-0348; FRL-8784-5]

RIN 2060-AO58

Methods for Measurement of Filterable PM₁₀ and PM_{2.5} and Measurement of Condensable Particulate Matter Emissions From Stationary Sources*Correction*

In proposed rule document E9-6178 beginning on page in the issue of Wednesday, March 25, 2009 make the following corrections:

Appendix M to Part 51 [Corrected]

1. On page 12989, Equation 24 is reprinted to read as set forth below:

$$\Delta p_s = \Delta p_m \left[\frac{C_p}{C_p'} \right]^2 \quad \text{Eq. 24}$$

2. On page 12991, Equation 40 is reprinted to read as set forth below:

$$I = \left(\frac{100 T_s V_{ms} 29.92}{60 v_s \theta A_n P_s (1 - B_{ws}) 528} \right) \quad \text{Eq. 40}$$

[FR Doc. Z9-6178 Filed 4-21-09; 8:45 am]

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[EPA-R06-OAR-2007-0528; FRL-8895-2]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Reasonable Further Progress Plan, Motor Vehicle Emissions Budgets and 2002 Emissions Inventory; Houston-Galveston-Brazoria 1997 8-Hour Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the Texas State Implementation Plan (SIP) to meet the Reasonable Further Progress (RFP) requirements of the Clean Air Act (CAA) for the Houston-Galveston-Brazoria (HGB) moderate 1997 8-hour ozone nonattainment area. EPA is also proposing to approve the RFP motor vehicle emissions budgets (MVEBs) and the 2002 Base Year Emission Inventory associated with the revision. EPA is proposing to approve the SIP revision

because it satisfies the RFP and Emissions Inventory requirements for 1997 8-hour ozone nonattainment areas classified as moderate, and demonstrates further progress in reducing ozone precursors. EPA is proposing to approve the revision pursuant to section 110 and part D of the CAA and EPA's regulations.

DATES: Written comments must be received on or before *May 22, 2009*.

ADDRESSES: Comments may be mailed to Mr. Guy Donaldson, Chief, Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the Addresses section of the direct final rule located in the rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Emad Shahin, Air Planning Section (6PD-L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733, telephone (214) 665-6717; fax number 214-665-7263; e-mail address shahin.emad@epa.gov.

SUPPLEMENTARY INFORMATION: In the final rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the direct final rule, which is located in the rules section of this **Federal Register**.

Dated: April 10, 2009.

Lawrence E. Starfield,
Acting Regional Administrator, Region 6.
[FR Doc. E9-9213 Filed 4-21-09; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 745**

[EPA-HQ-OPPT-2005-0049; FRL-8405-3]

RIN 2070-AJ48

Lead; Minor Amendments to the Renovation, Repair, and Painting Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing two minor revisions to the final Lead Renovation, Repair, and Painting Program (RRP) rule that published in the **Federal Register** on April 22, 2008. First, EPA is proposing to require accredited providers of renovator or dust sampling technician training to submit post-course notifications, including digital photographs of each successful trainee, to EPA. The 2008 rule establishes accreditation, training, certification, and recordkeeping requirements as well as work practice standards on persons performing renovations for compensation in most pre-1978 housing and child-occupied facilities. The post-course notification requirement, designed to supply important information for EPA's compliance monitoring efforts, was inadvertently omitted from the final RRP rule's regulatory text, although it was discussed in the preamble of the final rule. In addition, EPA is proposing to remove the requirement for accredited lead-based paint activities training providers—those who provide inspector, risk assessor, project designer, and abatement supervisor and worker training—to submit to EPA a digital photograph of each successful trainee along with their post-course notifications. That requirement, inadvertently imposed as part of the final RRP rule, is unnecessary because EPA already receives photographs of these individuals through other means.

DATES: Comments must be received on or before *May 22, 2009*.

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

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

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

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

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

Docket: All documents in the docket are listed in the docket index available at <http://www.regulations.gov>. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at <http://www.regulations.gov>, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in

the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566-1744, and the telephone number for the OPPT Docket is (202) 566-0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

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

For technical information contact: Cindy Wheeler, National Program Chemicals Division (7404T), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 566-0484; e-mail address: wheeler.cindy@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you provide or plan to provide training in lead-safe building renovation work practices or training for dust sampling technicians. Potentially affected entities may include, but are not limited to:

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

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

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

1. *Submitting CBI.* Do not submit this information to EPA through [regulations.gov](http://www.regulations.gov) or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

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

- Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

II. What Action is the Agency Taking?

A. Introduction

In the **Federal Register** issue of April 22, 2008, under the authority of sections 402(c)(3), 404, 406, and 407 of the Toxic Substances Control Act (TSCA), EPA issued its final RRP rule (Ref. 1). The final RRP rule, codified in 40 CFR part 745, subparts E, L, and Q, addresses lead-based paint hazards created by renovation, repair, and painting activities that disturb lead-based paint

in target housing and child-occupied facilities.

“Target housing” is defined in TSCA section 401 as any housing constructed before 1978, except housing for the elderly or persons with disabilities (unless any child under age 6 resides or is expected to reside in such housing) or any 0-bedroom dwelling. The final RRP rule defines a child-occupied facility as a building, or a portion of a building, constructed prior to 1978, visited regularly by the same child, under 6 years of age, on at least two different days within any week (Sunday through Saturday period), provided that each day’s visit lasts at least 3 hours and the combined weekly visits last at least 6 hours, and the combined annual visits last at least 60 hours. Child-occupied facilities may be located in public or commercial buildings or in target housing.

The final RRP rule establishes requirements for training renovators, other renovation workers, and dust sampling technicians; for certifying renovators, dust sampling technicians, and renovation firms; for accrediting providers of renovation and dust sampling technician training; for renovation work practices; and for recordkeeping. Interested States, Territories, and Indian Tribes may apply for and receive authorization to administer and enforce all of the elements of the new renovation requirements. More information on the final RRP rule may be found in the **Federal Register** document announcing the final RRP rule (Ref. 1) or on EPA’s website at <http://www.epa.gov/lead/pubs/renovation.htm>.

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

recordkeeping requirements for lead-based paint activities in target housing and child-occupied facilities.

A 2004 amendment to the lead-based paint activities regulations established notification procedures for certified professionals conducting lead-based paint abatement activities, and accredited training programs providing lead-based paint activities courses (Ref. 3). Since the effective date of the 2004 amendment, accredited training programs have been required to notify EPA before providing initial or refresher lead-based paint activities training courses and again following completion of these training courses. Both notifications must include information about the course, while the post-course notification also must include identifying information on the successful trainees. These notification requirements were designed to facilitate compliance monitoring by EPA.

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

While the training disciplines, the work practice standards, and the recordkeeping requirements of the final RRP rule differ from those established in the lead-based paint activities regulations, EPA determined that the accreditation requirements imposed on persons providing lead-based paint activities training would also be effective for persons providing renovation training. Therefore, the final RRP rule amended 40 CFR 745.225 to cover persons who provide or wish to provide renovation training for the purposes of the final RRP rule.

As amended, 40 CFR 745.225 requires training providers who wish to provide lead-based paint activities or renovation training for the purposes of the EPA’s lead-based paint programs to be accredited by EPA. The requirements for each course of study are described in detail at 40 CFR 745.225 as are the operational requirements for training programs and the process for obtaining accreditation.

B. Post-Course Notifications

While the final RRP rule amended 40 CFR 745.225(c)(13) to require pre-course notifications from accredited renovation training providers, a similar amendment to 40 CFR 745.225(c)(14), the post-course notification requirement, was inadvertently omitted. EPA, therefore, is proposing to amend 40 CFR 745.225(c)(14) to require post-course notifications from accredited providers of renovator or dust sampling technician training. These include conforming changes to 40 CFR 745.225(c)(14)(iii) to make it clear that all methods of post-course notification are available to both renovation training providers and lead-based paint activities training providers.

The post-course notification requirement is particularly critical for implementation of the final RRP rule, because EPA determined that it was not necessary for renovators or dust sampling technicians to apply to EPA to obtain their certifications. A successful trainee’s course completion certificate serves as his or her certification. In contrast, lead-based paint inspectors, risk assessors, project designers, and abatement supervisors and workers must all apply to EPA for certification before they can perform lead-based paint activities such as inspections or abatements in target housing and child-occupied facilities. The individual application process and requirements are described in 40 CFR 745.226(a). In promulgating the final RRP rule, EPA decided not to require renovators and dust sampling technicians to apply to EPA for certification for several reasons. The final RRP rule did not require any additional education or work experience for renovators or dust sampling technicians, so there would be no additional information necessitating EPA review in connection with an application. In addition, the final RRP rule did not impose a third-party examination similar to that required for inspector, risk assessor, or supervisor certification candidates, so there would be no need for EPA to provide letters admitting candidates to testing. Finally, EPA stated specifically in the preamble to both the RRP proposed rule and final rule that EPA would receive course completion information from accredited renovation training course providers (Ref. 1 at 21723 and Ref. 4 at 1608). Both preambles note that with this information, EPA will have a complete list of certified renovators and will be able to check to see if a particular course completion certificate holder appeared on a course completion list submitted by the training course provider identified on the certificate. When EPA

inspects a renovation job for compliance with these regulations, EPA will have the ability to verify, to the same extent, the validity of a course completion certificate held by a renovator at that job, because the final RRP rule requires certified renovators and dust sampling technicians to have copies of their course completion certificates at any job sites where they are working. In fact, two commenters supported EPA's approach and specifically mentioned post-course notifications from training providers as a way to monitor compliance with the training and certification requirements (Refs. 5 and 6). One thought that it would also reduce paperwork for both renovators and the Agency (Ref. 5). EPA requests comment on the feasibility and appropriateness of these post-course notification requirements for accredited providers of renovator or dust sampling technician training.

C. Digital Photographs of Successful Trainees

EPA's proposed amendment to 40 CFR 745.225(c)(14) to require post-course notifications from accredited renovator or dust sampling technician training providers would also include the requirement to submit digital photographs of each successful trainee as part of each post-course notification. Some commenters on the proposed RRP rule expressed reservations about EPA's ability to monitor compliance with the renovation training and certification requirements absent a formal certification application process. A number of commenters suggested a photographic identification card be issued to successful renovator and dust sampling technician trainees as a way to improve the Agency's ability to monitor compliance. EPA intended to adopt the alternative suggested by one commenter, that of requiring training providers to include a photograph of the trainee on each course completion certificate and to submit those photographs to EPA (Ref. 7). EPA noted that this would assist compliance inspectors in determining whether a particular individual at a work site had in fact successfully completed accredited training (Ref. 1 at 21723, 21726). The final RRP rule did amend 40 CFR 745.225(c)(8) to require renovator and dust sampling technician course completion certificates to bear a photograph of the trainee.

The final RRP rule also amended 40 CFR 745.225(c)(14) to require training providers to submit digital photographs of each successful trainee as part of their post-course notifications. However, language limiting the requirement to

accredited providers of renovator or dust sampling technician training courses was inadvertently omitted from the final RRP rule. EPA did not intend for the requirement to apply to accredited providers of lead-based paint activities (inspector, risk assessor, project designer, and abatement supervisor and worker) training because, as part of the individual certification application process, EPA already receives photographs from individual certification candidates at or about the time that the individuals complete their training. These photographs are then incorporated into the certification documents that EPA issues to successful candidates and maintained in EPA's Federal Lead-based Paint Program database. This provides an independent verification of certification documents encountered by compliance inspectors in the field. Therefore, because an additional photograph submission is unnecessary, EPA is proposing to eliminate the requirement that accredited providers of lead-based paint activities training submit a digital photograph of each successful trainee along with their post-course notifications. EPA requests comment on the feasibility and appropriateness of requiring accredited training providers, whether they provide renovation or lead-based paint activities training, to submit digital photographs of successful trainees along with post-course notifications.

D. Effective Date

EPA is proposing to find under the Administrative Procedure Act (APA), 5 U.S.C. 553(d)(3), that good cause exists to dispense with the 30-day delay in the effective date of the final rule that EPA intends to promulgate based upon this proposed rule. It is critically important to establish a post-course notification requirement for renovation training providers before the first accredited training courses are offered. Renovation training course providers may begin submitting their applications for accreditation on April 22, 2009. While it is likely to take some time for EPA to process these applications and issue accreditations, training providers may begin providing training as soon as they receive their accreditation. As discussed, this information is essential to EPA's ability to monitor compliance with the training and certification requirements of the final RRP rule. If accredited training courses are offered before the notification requirement is made effective, EPA will not receive a record of the persons who have become certified renovators or dust sampling technicians through those courses and

EPA will be unable to independently verify the validity of course completion certificates held by these individuals when one is encountered during a compliance inspection. In addition, delaying the effective date could mean that these individuals would not be part of EPA's database of certified renovators and dust sampling technicians unless and until they take a refresher course. Indeed, given the way the program is structured, it would be contrary to the public interest to not impose this requirement before training providers are accredited and begin training renovators and dust sampling technicians. The public has been on notice of EPA's intentions regarding the post-course notification requirement since EPA published the RRP proposed rule. In addition, the final RRP rule already requires that renovation and dust sampling technician training providers produce training certificates with the student's photograph. Thus, training providers must already have the capability to take and reproduce pictures of students. Accordingly, this is not a circumstance where fairness requires that the regulated community be given time beyond promulgation to prepare before a regulatory requirement becomes effective. EPA therefore proposes to find that there is good cause for a final rule making this change to be effective immediately upon publication in the **Federal Register**.

Finally, EPA also believes that it is not in the public interest to impose unnecessary burdens such as the inadvertently created requirement for accredited lead-based paint activities training providers to submit digital photographs of successful trainees along with their post-course notifications to EPA. As discussed, EPA already receives photographs of these individuals at or about the time that these individuals complete their training. Requiring accredited training providers to also provide photographs of these individuals is redundant and unnecessary. EPA, therefore, proposes to find that there is good cause for a final rule making this change to be effective immediately upon publication in the **Federal Register**. EPA requests comment on whether an immediately effective final rule should be issued.

III. References

1. EPA. Lead; Renovation, Repair, and Painting Program; Final Rule. **Federal Register** (73 FR 21692, April 22, 2008) (FRL-8355-7).

2. EPA. Lead; Requirements for Lead-based Paint Activities; Final Rule. **Federal Register** (61 FR 45778, August 29, 1996) (FRL-5389-9).

3. EPA. Lead; Notification Requirements for Lead-Based Paint Abatement Activities and Training; Final Rule. **Federal Register** (69 FR 18489, April 8, 2004) (FRL-7341-5).

4. EPA. Lead; Renovation, Repair, and Painting Program; Proposed Rule. **Federal Register** (71 FR 1588, January 10, 2006) (FRL-7755-5).

5. National Association of Homebuilders. May 25, 2006.

6. State of Maine, Department of Environmental Protection. May 17, 2006.

7. State of Wisconsin, Department of Health and Family Services. May 23, 2006.

8. EPA. Information Collection Request (ICR); final rule addendum to an existing EPA ICR, entitled *TSCA Sections 402/404 Training and Certification, Accreditation, and Standards for Lead-Based Paint Activities*. Docket ID Number EPA-HQ-OPPT-2005-0049-0925. March 2008.

9. EPA, Office of Pollution Prevention and Toxics (OPPT). Economic Analysis for the TSCA Lead Renovation, Repair, and Painting Program Final Rule for Target Housing and Child-Occupied Facilities. March 2008.

10. EPA, OPPT. Economic Analysis for the TSCA Section 402 Lead-Based Paint Program Accreditation and Certification Fee Rule. March 2009.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866

Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993) it has been determined that this is not a "significant regulatory action" subject to review by the Office of Management and Budget (OMB). However, the costs of the requirement that accredited renovator and dust sampling technician training providers submit post-course notifications were accounted for in the ICR addendum prepared for the final RRP rule (Ref. 8). Those costs were estimated to be \$347,720 in the first year that the post-course notification requirement is in effect, \$67,896 in the second year, and \$67,489 in the third year. The costs for these providers to take a digital photograph of each trainee, include it in the trainee's course completion certificate, and forward it to EPA were estimated to be \$2 per trainee in the economic analysis for the final RRP rule (Ref. 9). The economic analysis also estimated that there would be 235,916 trainees in the first year that the accreditation and training requirements are in effect, 78,316 in the second year, and 77,995 in the third year. This

results in an estimated cost for the digital photograph requirement of \$471,832 in the first year, \$156,632 in the second year, and \$155,990 in the third year. The costs for accredited lead-based paint activities training providers to take digital photographs of successful trainees and submit them to EPA were not directly estimated, because EPA did not intend to impose this requirement. However, these costs can be calculated using the \$2 per trainee figure along with the annual number of lead-based paint activities certification and re-certification applications received by EPA that was estimated for an economic analysis prepared for a separate rulemaking (Ref. 10). That economic analysis estimated that EPA would receive, on an annual basis, 1,534 certification applications and 626 re-certification applications. This results in an estimated annual cost for the digital photograph requirement for accredited lead-based paint activities training providers of \$4,320. Because this proposed rule eliminates the digital photograph requirement for accredited lead-based paint activities training providers, this amount represents a cost savings.

B. Paperwork Reduction Act

This regulatory action does not contain any information collection requirements that require additional approval by OMB under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.* The information collection referenced in this proposed rule (i.e., the post-course notification requirement in 40 CFR 745.225) has already been approved by OMB under control number 2070-0155 (EPA ICR # 1715.10) (Ref. 8). EPA does not believe that this proposed rule has any impact on the existing burden estimate or collection description, such that additional approval by OMB is necessary.

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

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

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the APA or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this proposed rule on small entities, small entity is defined in accordance with section 601 of RFA as:

1. A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201.

2. A small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000.

3. A small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

The impacts of the post-course notification requirement on small entities who become accredited to provide renovator or dust sampling technician training courses were specifically addressed and accounted for during the development of the final RRP rule. As provided for in section 605 of RFA, the post-course notification requirements being proposed are so closely related to the final RRP rule that EPA considers them and the analysis prepared and the other actions taken by EPA in connection with the final RRP rule to be one rule for the purposes of sections 603 and 604 of RFA.

Accordingly, in order to avoid duplicative action, EPA is relying on the analysis EPA prepared for the final RRP rule as well as the other actions that EPA took in developing the final RRP rule to satisfy its obligations under RFA for this proposed rule. A description of the Agency's activities pursuant to RFA is found in the preamble to the final RRP rule (Ref. 1 at 21752). Specifically, pursuant to section 603 of RFA, EPA

prepared an initial regulatory flexibility analysis (IRFA) for the proposed RRP rule and convened a Small Business Advocacy Review Panel to obtain advice and recommendations of representatives of the regulated small entities on a range of issues, including training provider accreditation. As required by section 604 of RFA, the Agency also prepared a final regulatory flexibility analysis (FRFA) for the final RRP rule. The post-course notification requirements being proposed were included in costs analyzed in the IRFA and the FRFA for the final RRP rule. The FRFA also addressed the issues raised by public comments on the IRFA. As part of that analysis, EPA determined that including a digital photograph in the notification would not be an added cost to training providers because the cost would be recouped as part of the fee charged for the course. Thus, this requirement would not have a significant impact on any training providers. Accordingly, the impacts of the post-course notification requirements on small entities that become accredited to provide renovator or dust sampling technician training courses have been adequately addressed for purposes of RFA.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with “Federal mandates” that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 of UMRA do not apply when they are inconsistent with applicable law. Moreover, section 205 of UMRA allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal

governments, it must have developed under section 203 of UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Under Title II of UMRA, EPA has determined that this proposed rule does not contain a Federal mandate that may result in expenditures that exceed the inflation-adjusted UMRA threshold of \$100 million by State, local, or Tribal governments or the private sector in any 1 year. In addition, this proposed rule does not contain a significant Federal intergovernmental mandate as described by section 203 of UMRA nor does it contain any regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 13132

Pursuant to Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999), EPA has determined that this proposed rule does not have “federalism implications,” because it will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, Executive Order 13132 does not apply to this proposed rule. Nevertheless, in the spirit of the objectives of this Executive Order, and consistent with EPA policy to promote communications between the Agency and State and local governments, EPA consulted with representatives of State and local governments during the rulemaking process for the RRP rule. These consultations are as described in the preamble to the 2006 RRP proposed rule (Ref. 4).

F. Executive Order 13175

As required by Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (59 FR 22951, November 9, 2000), EPA has determined that this proposed rule does not have tribal implications because it will not have substantial direct effects on Tribal governments, on the relationship between the Federal Government and the Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian

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

G. Executive Order 13045

Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997) does not apply to this proposed rule because it is not an “economically significant regulatory action” as defined by Executive Order 12866. While the environmental health or safety risk addressed by the RRP rule does have a disproportionate effect on children, this proposed rule merely covers administrative requirements for accredited training providers and does not directly address environmental health or safety risks.

EPA has evaluated the environmental health or safety effects of renovation, repair, and painting projects on children. Various aspects of this evaluation are discussed in the preamble to the proposed RRP rule (Ref. 4). The primary purpose of the final RRP rule is to minimize exposure to lead-based paint hazards created during renovation, repair, and painting activities in housing where children under age 6 reside and in housing or other buildings frequented by children under age 6. In the absence of the final RRP rule, adequate work practices are not likely to be employed during renovation, repair, and painting activities. EPA’s analysis indicates that there will be approximately 1.4 million children under age 6 affected by the final RRP rule. These children are projected to receive considerable benefits due to the final RRP rule.

H. Executive Order 13211

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

I. National Technology Transfer and Advancement Act

This regulatory action does not involve any technical standards that would require Agency consideration of

voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, 12(d) (15 U.S.C. 272 note). Section 12(d) of NTTAA directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA requires EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

J. Executive Order 12898

Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

While EPA has not assessed the potential impact of this proposed rule on minority and low-income populations, EPA did assess the potential impact of the final RRP rule as a whole. As a result of the final RRP rule assessment, contained in the economic analysis for the final RRP rule, EPA has determined that the final RRP rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population (Ref. 9).

List of Subjects in 40 CFR Part 745

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

Dated: April 15, 2009.

Lisa P. Jackson,
Administrator.

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

PART 745—[AMENDED]

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

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

2. Section 745.225 is amended by revising paragraphs (c)(14) introductory text, (c)(14)(i), (c)(14)(ii)(D)(6), and (c)(14)(iii) to read as follows:

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

* * * * *

(c) * * *

(14) The training manager must provide notification following completion of renovator, dust sampling technician, or lead-based paint activities courses.

(i) The training manager must provide EPA notification after the completion of any renovator, dust sampling technician, or lead-based paint activities course. This notice must be received by EPA no later than 10 business days following course completion.

(ii) * * *

(D) * * *

(6) For renovator or dust sampling technician courses only, a digital photograph of the student.

* * * * *

(iii) Notification must be accomplished using any of the following methods: Written notification, or electronically using the Agency's Central Data Exchange (CDX). Written notification following training courses can be accomplished by using either the sample form, entitled *Training Course Follow-up* or a similar form containing the information required in paragraph (c)(14)(ii) of this section. All written notifications must be delivered by U.S. Postal Service, fax, commercial delivery service, or hand delivery (persons submitting notification by U.S. Postal Service are reminded that they should allow 3 additional business days for delivery in order to ensure that EPA receives the notification by the required date). Instructions and sample forms can be obtained from the NLIC at 1-800-424-LEAD (5323), or on the Internet at <http://www.epa.gov/lead>.

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[FR Doc. E9-9227 Filed 4-21-09; 8:45 am]

BILLING CODE 6560-50-S

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS-R8-ES-2008-0087; MO 92210 50083-B2]

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To List the Tehachapi Slender Salamander (*Batrachoseps stebbinsi*) as Threatened or Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding and initiation of status review.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to list the Tehachapi slender salamander (*Batrachoseps stebbinsi*) as a threatened or endangered species under the Endangered Species Act of 1973, as amended (Act). We find that the petition presents substantial scientific or commercial information indicating that listing the Tehachapi slender salamander may be warranted. Therefore, with the publication of this notice, we are initiating a status review to determine if listing this species is warranted. To ensure that the status review is comprehensive, we are soliciting information and data regarding this species. We will initiate a determination on critical habitat for this species, if and when we initiate a listing action.

DATES: To allow us adequate time to conduct this review, we request that information be received on or before June 22, 2009.

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

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: FWS-R8-ES-2008-0087; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222, Arlington, VA 22203.

We will not accept e-mail or faxes. We will post all information received at <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the Information Solicited section below for more information).

FOR FURTHER INFORMATION CONTACT: Michael McCrary, Listing and Recovery Coordinator, Ventura Fish and Wildlife Office, 2943 Portola Road, Suite B,