cleanup goal, was achieved in all the excavation areas. The excavated areas on the former GATX property were then backfilled with clean soil, graded back to pre-existing contours and seeded. EPA inspected the former GATX property on October 10, 1996 and approved the demobilization of the remedial action contractor from the Site. EPA reinspected the former GATX property on June 4, 1997 and confirmed that vegetation had been fully re-established in the disturbed areas.

The ROD did not call for remedial action on the ground water beneath the former GATX property. Analytical results of ground water samples taken before the remedial action indicated that contaminants of concern were either not detected or were detected at concentrations below their Safe Drinking Water Act Maximum Contaminant Level (MCL) concentrations. Analysis of ground water samples from monitoring wells on the former GATX property has been performed quarterly through the remedial action and following completion of the remedial action. The concentrations of selected VOCs peaked during February of 1996 with some detections slightly in excess of allowable MCLs. In samples taken during quarterly monitoring in November 1996, February 1997 and May 1997 no VOCs have exceeded their respective allowable MCL concentrations. Monitoring is continuing and VOCs concentrations appear to be declining. Most VOCs concentrations are now below the detection limits of the analytical equipment.

GATX has implemented all appropriate response actions required under CERCLA on its former property at the Site. With the exception of continuing monitoring of the ground water, no further action is required at the former GATX property. In July 1997, EPA approved the remedial action certification report documenting the completion of the cleanup of the former GATX property in accordance with the ROD. The remedy selected and implemented at the former GATX property, OU–2 of the Site, remains protective of human health and the environment. The former GATX property is available for unrestricted use and unlimited access. Due to the continued ground water monitoring on the former GATX property, EPA will include this portion of the Site in the next Five-Year Review of the Site.

In public meetings in Saegertown the community has requested that EPA cleanup and delete portions of the Site as soon as possible to allow development of the industrial park. EPA is proposing to delete all appropriate areas of the Site in order to foster the re-use of Deleted Properties at the Site.

EPA believes that releases from the former GATX property, as well as the former SCI property and the SMC property (where no action was selected by the ROD), may be deleted from the Site as defined on the National Priority List and that no further remedial measures are necessary for the Deleted Properties of the Site.

Dated: August 8, 1997.

Thomas Voltaggio,

Acting Regional Administrator, USEPA Region 3.

[FR Doc. 97–22065 Filed 8–21–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 745

[OPPTS–62128B; FRL–5740–7]

RIN 2070–AC64

Lead; Requirements for Lead-Based Paint Activities in Public Buildings, Commercial Buildings, and Steel Structures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Announcement of meeting and request for comments.

SUMMARY: EPA is announcing a public meeting on September 3, 1997, in Washington, DC to take public comments and suggestions from a cross-section of stakeholders on the development of training and certification requirements and work practice standards for individuals and firms conducting lead-based paint activities in public buildings (except child-occupied facilities), commercial buildings, and steel structures under section 402 of the Toxic Substances Control Act (TSCA).

DATES: The meeting will take place on Wednesday, September, 3, 1997, beginning promptly at 9:30 and continuing until 5:00 p.m.

Written comments should be submitted no later than October 3, 1997.

ADDRESSES: The meeting will take place at the Marriott, 1221 22nd St. and M St., NW., Washington, DC.

Written comments may be submitted in triplicate to: Environmental Protection Agency, Office of Pollution Prevention and Toxics, OPPT Docket Clerk (7407), 401 M St., SW., Washington, DC 20460, and reference the docket control number [OPPTS–62128B]. Comments and data may also be submitted electronically by following the instructions under Unit V. of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

FOR FURTHER INFORMATION CONTACT: For more specific or technical information contact: Ellie Clark, National Program Chemicals Division (7404), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, telephone: (202) 260–3402, fax: (202) 260–0770, e-mail: clark.ellie@epamail.epa.gov.

For general information or to obtain copies of this document contact: National Lead Information Clearinghouse (NLIC), 1025 Connecticut Ave., NW., Suite 1200, Washington, DC 20036–5405 or toll free at 11–800–LEAD–FYI (1–800–532–3394), fax: (202) 659–1192, e-mail: leadctr@nsc.org, Internet site: http://www.nsc.org/ehc/lead.html.

SUPPLEMENTARY INFORMATION:

I. Background

On October 28, 1992, the Residential Lead-Based Paint Hazard Reduction Act of 1992, Title X of the Housing and Community Development Act of 1992, became law. Title X amended TSCA by adding a new Title IV, the purpose of which is to reduce the hazards from lead in paint and coatings used in housing, public and commercial buildings, and steel structures. TSCA section 402, Lead-Based Paint Training and Certification, directs EPA to promulgate a final regulation to govern the training and certification of individuals engaged in lead-based paint activities, accreditation of training programs, and standards for conducting such activities. TSCA section 404, Authorized State Programs, provides that any State may seek to administer and enforce the requirements established under TSCA sections 402 and 406. On September 2, 1994, EPA published a proposed rule to address TSCA sections 402(a) and 404(d) (59 FR 45672)(''1994 proposal'')(FRL–4633–9). The 1994 proposal dealt with lead-based paint activities in target housing, public buildings constructed before 1978, commercial buildings, and bridges, and other structures and superstructures (''steel structures''). Following publication of the 1994 proposal, EPA met at different times with representatives from various State environmental and public health agencies and held a public hearing to receive comment on the proposal. EPA

received 323 written public comments on the 1994 proposal.

EPA published a final rule on requirements for lead-based paint activities in target housing and child-occupied facilities on August 29, 1996 (61 FR 45778)(''1996 rule'')(FRL–5389–9). Based on public comments, EPA had made several changes to the rule. One principal change in the 1996 rule was EPA's decision to delay promulgation of training and certification requirements and work practice standards for individuals and firms conducting lead-based paint activities in public buildings (except child-occupied facilities), commercial buildings, and steel structures. This decision was based primarily on the need to clarify the ''deleading'' definition contained in the 1994 proposal, and EPA's desire to avoid any potential conflict and overlap with the training requirements contained in OSHA's interim final lead standard (29 CFR 1926.62). EPA wishes to gain additional information from interested parties before proceeding with the rulemaking.

II. Information for Participants

Any and all stakeholders (e.g., individuals, or representatives of organizations, governments, or academia) are invited to attend as members of the audience, and/or to submit written comments to the OPPT Docket Clerk under ''ADDRESSES'' at the beginning of this document. There also will be an opportunity for individuals to make brief oral presentations; however, the number of presenters, as well as time allotted, may be limited.

EPA is interested in focusing the public meeting on the issues presented in Unit IV. of this document. Speakers may be asked clarifying questions regarding their presentations by EPA representatives. EPA encourages speakers to supplement their oral presentations with written comment, as time constraints may not allow speakers to address all issues of interest. Persons wishing to sign-up for a presentation at the public meeting must pre-register by calling Alana Knaster at 818–591–9526. Speakers will be notified of their time slots once the final format is determined. The meeting is open to the public as space permits, and a summary of the proceedings will be prepared and entered into the docket. EPA also encourages those unable to attend the public meeting to submit written comments to the docket.

III. Impact of Public Meeting on Future Rulemaking

As a result of the comments obtained from the public meeting and other efforts to obtain a better understanding of the conduct of lead-based paint activities in buildings and structures, EPA believes that the resulting requirements could be significantly different from those originally proposed in 1994. Therefore, EPA has decided that prior to promulgating final regulations, it will re-propose for public comment regulations for training and certification requirements and work practice standards for individuals and firms conducting lead-based paint activities in public buildings (except child-occupied facilities), commercial buildings, and steel structures. The development of the proposed regulations will be based in part on comments and information obtained as a result of this announcement. The public will also have an opportunity to comment on the proposed regulations which will be developed after the public meeting.

IV. Issues for Public Meeting

TSCA section 402(a) requires EPA to promulgate regulations governing lead-based paint activities. TSCA section 402(b)(2) states that ''lead-based paint activities'' means, ''in the case of any public building constructed before 1978, commercial building, bridge or other structure or superstructure, identification of lead-based paint and materials containing lead-based paint, deleading, removal of lead from bridges, and demolition.'' In order to develop regulations consistent with TSCA section 402(b)(2), EPA needed to further define the types of buildings and structures subject to the rules as well as to clarify the specific activities defined as constituting lead-based paint activities in these structures.

EPA's approach to these issues in the 1994 proposal generated many comments. After further review of those public comments, EPA concluded that it needs to develop a better understanding of the sectors to be addressed before proceeding with further work on the regulations. Additionally, several years have passed since the 1994 proposal was published, and EPA recognizes that persons who commented on the original proposal may have additional information to add. EPA will consider any additional comments on the 1994 proposal the public wishes to make. However, during the public meeting, EPA is specifically interested in getting additional public comment on the following subjects: Coverage of lead-based paint activities, in particular clarification of the term ''deleading''; the interface between OSHA's lead standards and EPA's TSCA section 402 regulations; distinguishing among various building and structure types; and sources of information for EPA's regulations. EPA expects that the majority of the time will be spent addressing topics under the first issue; however, EPA discusses each issue in detail in this unit and requests comments and additional information on specific items.

A. Issue 1—Coverage of lead-based paint activities, in particular clarification of the term ''deleading''

TSCA section 402(b)(2) includes four separate activities in its definition of lead-based paint activities for buildings and structures. One of these activities is deleading. In the 1994 proposal, EPA used the TSCA section 402(b)(2) terminology when it defined ''deleading'' as ''activities conducted by a person who offers to eliminate lead-based paint or lead-based paint hazards or to plan such activities.'' Additionally, EPA indicated that it was considering prohibiting the use of certain practices commonly used when conducting deleading activities in buildings and structures, because of the potential risk of lead contamination to workers and/or the environment posed by those practices. Public comments on the 1994 proposal raised a number of concerns with regard to deleading as well as identification of lead-based paint activities. Several key concerns are discussed in this unit.

1. *Intentional lead removal vs. maintenance activities.* Many commenters stated that EPA should exempt from the deleading definition activities which are not intended to address lead-based paint but are maintenance activities that involve some incidental disturbance of lead-coated surfaces. However, other commenters felt that although maintenance activities such as overcoating of steel structures may not be intended specifically to eliminate lead-based paint, overcoating should be covered under deleading, because it involves blast cleaning and other activities which generate lead-containing dust, paint chips, and other debris which could be hazardous and should be controlled.

The statutory definition of deleading is ''activities conducted by a person who offers to eliminate lead-based paint or lead-based paint hazards or to plan such activities.'' 42 U.S.C. 2682(b). This definition could reasonably be interpreted to encompass only activities

(including planning) that are intended, alone or in conjunction with other activities, to eliminate lead-based paint or lead-based paint hazards. According to this interpretation, if an activity is not intended to eliminate lead-based paint or a lead-based paint hazard, it would not be considered deleading.

If an intent test were to be applied strictly, generally even a large project which might involve large quantities of lead and/or significant lead exposure, but is not intended at least in part to eliminate lead-based paint or a lead-based paint hazard, would not constitute deleading. However, under section 402(b)(2) the phrase ''lead-based paint activities'' specifically includes, in addition to deleading, removal of lead from bridges and demolition. Therefore, demolition and removal of lead-based paint prior to overcoating a bridge would be covered, regardless of any intent to eliminate lead-based paint or its hazards.

The approach would appear to present several difficulties, including the following strict intent: First, a strict intent standard would be difficult to define and could be subject to loopholes. A second and related problem would be that projects that differ, even slightly, in intent but present the same or similar risks of lead exposure could be treated differently, which would be contrary to the purposes of the statute.

Assuming an intent standard is applied, EPA is considering two alternatives for developing an enforceable regulatory definition of deleading that is consistent with the language and purposes of the statute. One approach would be to interpret the definition to include only activities (including planning) that are specifically intended, alone or in conjunction with other activities, to eliminate lead-based paint or lead-based paint hazards. In order for such a definition to be enforceable, EPA believes it probably would be necessary to set forth objective criteria for determining whether the requisite intent exists. Such criteria might include contract documents or work orders that specifically call for the elimination of lead-based paint or its hazards, or other indicia of intent such as whether the activities will or are designed to result in the elimination of lead-based paint or its hazards. Activities which do not involve any intent to eliminate lead-based paint or its hazards would fall outside the scope of deleading.

An alternative approach to the regulatory definition of deleading would be to construe the ''offers to'' terminology of TSCA section 402(b), such that all activities that would have the effect of eliminating lead-based paint or its hazards would constitute deleading. The basis of this approach would be as follows: If the elimination of lead-based paint or its hazards is an integral part of a project (for instance, removal of old paint prior to repainting), an offer to eliminate lead-based paint or its hazards would be considered part of the offer to perform the project, even where the project also may involve other purposes such as maintenance. Activities that would not have the effect of eliminating lead-based paint or its hazards would not constitute deleading.

The different approaches to defining deleading may have different implications for addressing the issue, raised in comments on the 1994 proposal, of excluding routine maintenance activities from the definition. A strict intent standard, under which deleading would include only those projects which are specifically and expressly intended to eliminate lead-based paint or its hazards, would by its terms exclude activities undertaken for other purposes such as routine maintenance even where they might have effects that would constitute elimination of lead-based paint or its hazards. Under this approach, it would not be necessary to expressly exclude such activities. If, on the other hand, either of the alternative approaches discussed above were adopted, other activities potentially could be expressly excluded on the basis of the statutory definition of ''elimination'' of lead-based paint or its hazards—the deleading definition could exclude projects or activities that would not have that effect. For these purposes EPA could refer to the definition of abatement provided at TSCA section 401(1), which includes several specific examples of lead elimination. Under this approach, activities which might disturb lead or otherwise create the possibility of lead exposure would be considered deleading only if they would result in lead elimination. An additional measure, which could be applied alone or in conjunction with one of the foregoing, would be to adopt a *de minimis* exemption from the deleading definition. The *de minimis* issue is discussed in Unit IV.A.2. of this document.

EPA requests comment on these issues. In particular, EPA seeks comment on whether the statutory deleading definition at TSCA section 402(b) does embody an intent standard or an effect standard, and if so on how such a standard can be implemented, including the approaches outlined in this unit. EPA also seeks comment on whether and how to specify or define activities that would fall outside the scope of deleading.

2. *The need for a de minimis cutoff.* Many commenters on the 1994 proposal argued that EPA should adopt some type of threshold or *de minimis* cutoff below which an activity would not constitute deleading even if it otherwise meets the definition. Several commenters suggested that EPA establish 1,000 square feet as a *de minimis* level below which the deleading definition would not apply. These commenters indicated that many maintenance activities, such as spot welding and pipe cutting, require the removal of small areas of existing coatings and that a 1,000 square foot cutoff would appropriately exclude those activities. Whether a threshold or *de minimis* cutoff for the deleading definition would be necessary or appropriate is not entirely clear, and may depend upon the deleading definition ultimately adopted. As noted in Unit IV.A.1. of this document, the statutory definition of deleading may be interpreted to embody an intent standard, and does not include any consideration of the amount of lead or lead exposure that may be involved in the activity. See TSCA section 402(b). Therefore, if the statute were applied strictly according to its terms, an activity specifically intended to eliminate lead-based paint or a lead-based paint hazard would be considered deleading, even if it were a small project.

Under such an interpretation, EPA probably would not be inclined to adopt a *de minimis* exemption from these requirements. EPA believes that projects specifically designed to eliminate lead-based paint are unlikely to be small, and therefore a *de minimis* cutoff would be of limited utility. Small projects that might qualify for a *de minimis* exemption would be more likely to fall outside the deleading definition as routine maintenance activities, which would be excluded whatever their size.

On the other hand, if an intent standard were not applied or if EPA were to adopt one or the other of the two approaches discussed in Unit IV.A.1 of this document to implementing an intent standard, the deleading definition would cover most if not all activities resulting in the elimination of lead-based paint or its hazards. These approaches would appear to be more likely to result in the regulation of smaller projects. Therefore, if one of these approaches were adopted, EPA believes that it might be appropriate to consider adopting a *de minimis* cutoff below which activities

would be excluded from the deleading definition.

EPA requests comments on these issues as well. EPA would like comments on whether a *de minimis* exemption would be appropriate. In addition, commenters on the 1994 proposal suggested a variety of approaches to developing a *de minimis* cutoff, based on size of disturbed area, concentration of lead in paint, and job duration; EPA requests comment on these and other methods for specifying a *de minimis* level.

3. *Coverage of outside contractors vs. in-house employees.* Several commenters stated that the proposed deleading definition was ambiguous with respect to whether it covered only outside lead contractors, or in-house employees as well. Some argued that the ''offers to'' language included in the statutory deleading definition means that it applies only to outside contractors who ''offer to'' eliminate lead-based paint.

EPA has tentatively concluded that the deleading definition should encompass both in-house personnel and outside contractors. The thrust of the TSCA section 402 provisions relating to public and commercial buildings and steel structures is to ensure not only that contractors performing lead work in these areas are properly trained and certified, but also that any individuals conducting such work are properly trained and perform the work according to the standards called for by TSCA section 402. In this sense these provisions are distinct from those relating to target housing, which are focused solely on contractors. For example, the regulations must require that lead-based paint activities in target housing are conducted by certified contractors, 42 U.S.C. 2682(a)(1), but need not contain such a requirement with regard to lead-based paint activities in public or commercial buildings or steel structures. In addition, the regulations are to ''ensure that individuals engaged in [lead-based paint] activities'' are properly trained, without regard to whether they are employed by outside contractors.

Thus, EPA believes Congress intended that in the area of public and commercial buildings and steel structures, all lead-based paint activities, whether conducted by in-house personnel or outside contractors, are to be governed by the TSCA section 402 program. Since deleading is among the lead-based paint activities that may be conducted in these areas, EPA believes this term should encompass work performed by in-house personnel and outside contractors. The terms of the statutory deleading definition can be read to encompass both groups, in that in the same sense that a lead contractor would offer to perform lead work for a fee, an employee offers to perform duties as assigned in exchange for his or her wages. EPA requests comment on its tentative approaches to this issue.

4. *Prohibited activities.* In the 1994 proposal, EPA asked for comment on whether it should prohibit open-flame burning of painted surfaces, dry scraping or sanding of painted surfaces, and the use of heat guns on painted surfaces (59 FR 45889). EPA received many comments both supporting and opposing its discussion of prohibiting these deleading activities. Some commenters supported the prohibition, stating that there are data showing high-worker exposure to lead during these activities, that the containment used is only partially effective, and that alternative, safer methods exist. Other commenters opposed the prohibition, indicating that these commonly accepted methods of lead-based paint removal could be performed safely, that they are routinely used in deleading operations for which no other practical option exists, and that other methods are not safer or effective. Those commenters also argued that since these activities are allowed under the OSHA regulations, it would be problematic to prohibit them under EPA regulations.

EPA needs additional information before it can develop proposed approaches to this issue. EPA specifically requests comments that would include data on exposure, descriptions of how these activities can be performed safely, discussion of alternative approaches, discussion of situations lacking other practical options, and other information that would allow it to carefully weigh the issues before making its decision.

5. *Identification of lead-based paint activities.* TSCA section 402(b)(2) includes ''identification of lead-based paint and materials containing lead-based paint'' as a lead-based paint activity to be covered under EPA's requirements. In the 1994 proposal, EPA indicated that because of lead's toxicity, identification and sampling to determine the presence of lead-based paint are commonly practiced prior to maintenance work on commercial buildings and steel structures. Therefore, EPA stated that the supervisor should determine if lead-based paint exists prior to starting work. (59 FR 45889).

Many public commenters expressed great concern about EPA's requirement that the supervisor identify the lead-based paint. These commenters indicated that because the lead-based paint identification would be done before contracts are awarded, it was not an appropriate task for the supervisor.

Upon further review, it appears that EPA in its discussion in the proposal was addressing a different task than the public commenters were. EPA was considering the need to identify the presence of lead-based paint prior to the performance of routine maintenance activities as opposed to large deleading projects. Because TSCA section 402(b)(2) separates ''identification of lead-based paint'' from ''deleading,'' EPA believes that any identification of lead-based paint, including during routine maintenance activities, would be covered under the TSCA section 402 regulations. Further, EPA believes that its requirements for supervisor identification of lead-based paint prior to the performance of routine maintenance is appropriate. However, EPA also recognizes that identification of lead-based paint prior to the awarding of a deleading contract does present a different situation. One approach would be for EPA to describe a work practice standard for the identification of lead-based paint without assigning it to a specific discipline. EPA requests comments on whether this or another approach would be more appropriate for discharging its TSCA section 402 obligations to develop regulations for identification of lead-based paint.

B. Issue 2—The interface between OSHA's lead standards and EPA's TSCA section 402 regulations

Congress' mandate that EPA develop regulations governing the conduct of lead-based paint activities naturally meant that EPA must consider regulations for workers. However, OSHA also has regulations covering exposure of workers to lead. In 1978, OSHA promulgated a final lead standard for general industry (29 CFR 1910.55). Further, in addition to requiring EPA to develop regulations, Title X also required OSHA, under section 1031, to issue regulations covering occupational exposure to lead in the construction industry. In 1993, OSHA issued the interim final lead in construction standard (29 CFR 1926.62). After consultation with OSHA, EPA included in its 1994 proposal specific requirements for training of workers conducting lead-based paint activities.

In response to the 1994 proposal, EPA received a number of comments arguing that some of its training requirements would overlap with those imposed under OSHA's regulations. EPA recognizes the importance of

minimizing any duplication or overlap between Federal regulatory programs. However, it is unclear whether there is true duplication in this instance, or if so, whether the simple removal of worker protection elements from EPA's curriculum requirements, as urged by some commenters, would address that issue consistently with EPA's mandate under TSCA section 402.

TSCA section 402(a)(1) directs EPA to establish a training and certification program for individuals and firms (''persons'') engaged in lead-based paint activities. Thus, before a person can conduct actions included among the lead-based paint activities identified in TSCA, or hold itself out as certified to conduct such activities, it must successfully complete the training program established by EPA and obtain the certification. By this program, Congress intended to protect not only the environment and the public in general and those who occupy buildings in which lead-based paint activities are conducted, but the workers themselves as well. See H.R. Rep. No. 852 Pt. 1, 102d Cong., 2d Sess. 44.

The OSHA training requirements apply to any workers who may be exposed to lead, and such workers must be trained initially (i.e., prior to job assignment), and annually thereafter. See 29 CFR 1926.6(l) (lead in construction); 29 CFR 1910.1025(l) (general occupational exposure to lead). OSHA's program is both narrower and broader than EPA's program. It is narrower in the sense that it is focused solely on protecting workers who may be exposed to lead, and it does not require prior certification (although it does require prior training). It is broader in the sense that it is triggered any time there may be worker exposure to lead, not just when a firm conducts lead-based paint activities. In any event, when a firm conducts the ''lead-based paint activities'' defined in the statute, one of the OSHA standards will be triggered. That is, where employees are exposed to lead above the action level of 30$\mu g/m^3$, the lead in construction standard will be triggered. For employees exposed to lead below the action level, the general occupational exposure to lead standard will be triggered.

However, EPA does not believe that the OSHA program is sufficient in and of itself to discharge EPA's responsibilities under TSCA section 402, which include protecting not only workers, but persons other than workers as well as the environment. EPA believes that it is necessary to develop additional regulations to completely address Congress' concerns. In the 1996 final rule for lead-based paint activities in target housing and child-occupied facilities, EPA did not include the type of training requirements that would be included in the OSHA requirements. Instead, EPA included a requirement under the work practice standards at 40 CFR 745.227(e)(3) that all abatement activities be conducted according to EPA's requirements and all other Federal, State, and local requirements. This requirement ensures that OSHA's training requirements will be met. EPA believes that this approach eliminates unnecessary duplication while still discharging the mandates of Title IV. Additionally, EPA encourages training providers to develop courses that include both EPA's and OSHA's requirements applicable to lead-based paint activities.

EPA consulted with OSHA during the development of the 1994 proposal and the 1996 final rule. EPA also will consult with OSHA during the continuing development of the regulations for workers conducting lead-based paint activities in buildings and structures. However, EPA would like to receive additional comment on whether the public believes that the approach used in the 1996 rule for addressing overlap between OSHA regulations and EPA regulations for target housing and child-occupied facilities would also be appropriate for EPA regulations for buildings and structures. EPA requests comments on other approaches that could be used to reduce redundancy in training requirements.

C. Issue 3—Distinguishing among building and structure types

TSCA section 402(b)(2) indicates that lead-based paint activities for ''any public building constructed before 1978, commercial building, bridge, or other structure or superstructure'' should be covered. None of these terms are defined in Title IV, but EPA did define ''public building,'' ''commercial building,'' and ''superstructure'' in the 1994 proposal. In response to the 1994 proposal, EPA received a variety of comments indicating that certain facilities should not be covered for different reasons. Some commenters stated that industrial facilities should not be covered, because they are neither public nor commercial buildings. Others suggested that ''commercial building'' should include any building used primarily for manufacturing, industrial activity, and various services. Still other commenters argued that the only structures that EPA could cover were bridges because these were the only ones specifically mentioned in the statute. However, EPA believes that the phrase ''other structure or superstructure'' is sufficiently broad to capture most buildings and structures in existence. The definitions for buildings and structures will be discussed followed by a discussion of approaches for categorizing requirements.

1. *Defining buildings and structures*—

a. *Buildings.* In the 1994 proposal, individuals and firms conducting lead-based paint activities in public buildings would have been required to adhere to the same regulations as in target housing, regardless of whether children frequented the buildings. However, in response to comments received on this proposal, in the 1996 rule, EPA established a sub-category of public buildings, termed ''child-occupied facilities.'' Under these regulations, individuals and firms conducting lead-based paint activities in child-occupied facilities are subject to the same requirements as individuals and firms conducting those activities in target housing. At the same time, EPA stated that requirements for lead-based paint activities conducted in public buildings other than child-occupied facilities (''public buildings'') would be included in the rulemaking for commercial buildings and steel structures. EPA now must develop a definition that applies to public buildings other than child-occupied facilities.

In the 1994 proposal, EPA distinguished commercial buildings from public buildings by defining commercial buildings as buildings used primarily for commercial or industrial activities and generally not open to the public or occupied or visited by children. Because EPA has already defined the sub-category of child-occupied facilities and has included the rest of public buildings in this rulemaking, it may be necessary to reconsider the relationship of public to commercial buildings and redefine the distinction. EPA received comments on the 1994 proposal suggesting that EPA use more standard building definitions such as those found in building codes which generally classify by use or occupancy.

EPA would like additional comment on whether it is more useful for EPA to adopt standard terminology for building types or whether EPA should continue to distinguish buildings based on public access. The public access issue will also be discussed further in Unit IV.C.2.b. of this document.

b. *Structures.* In the 1994 proposal, EPA defined a ''superstructure'' as a large steel or other industrial structure, including but not limited to bridges or water towers which may contain lead-

based paint. Commenters strongly objected to the term ''superstructures.'' Therefore, in the interim, until a term is defined in the future, EPA will use the term ''steel structure'' in lieu of ''superstructure.'' In the 1994 proposal, EPA indicated that this category would also include water towers, above-ground storage tanks, oil refineries, utility and other structures. Given the language of the statute, EPA believes that it has broad latitude to cover these other types of structures.

EPA would like additional comment on what the best term is for this category of structures.

2. *Determining whether separate requirements should be established according to building/structure types*—

a. *Separate categories for buildings and structures.* In the 1994 proposal, EPA grouped target housing and public buildings together separate from commercial buildings and steel structures. EPA based this distinction on the potential for lead exposure to the public and the differences in the structural design and building materials used. The way that EPA distinguishes between public and commercial buildings may continue to suggest that these two building types be treated separately. Additionally, commenters suggested that there may also be support for treating steel structures separately from both building types. One of the reasons for this distinction was suggested by commenters who indicated that because workers are so strictly controlled by supervisors when conducting lead-based paint activities on steel structures, the primary focus of EPA's requirements should be on the supervisors.

b. *Categories based on public access and environmental concerns.* EPA recognizes that many government and industrial buildings restrict public access and that potential public exposure during any lead-based paint activities would be greatly reduced in those buildings relative to, for example, museums or airports. Nevertheless, Congress specified that EPA regulate lead-based paint activities in buildings and structures, generally. While public access may be low in many buildings, there are still environmental concerns and these buildings are occupied by employees and other persons, in addition to the workers who would be subject to OSHA protection. EPA believes that it is important to prescribe standards to reduce exposure to those persons other than workers who would be present.

Because of the disparity in exposure to the public and the environment presented by the various locations and restrictions on access to buildings and structures, EPA believes that it may be appropriate to define categories of work practice standards based on public exposure/accessibility and proximity to certain environmental features, such as lakes, wetlands, or endangered species. For example, EPA believes that more controls may be warranted when lead-based paint activities are being conducted in a popular museum in a large city or on a water tower located next to a daycare facility or playground than at a restricted access facility or warehouse on the outskirts of town. If EPA takes this approach, EPA would need to consider whether the same or different categories could be used for buildings and structures.

Commenters on the 1994 proposal also raised the issue of ''mixed-use'' buildings where one small area of a building is open to the public (e.g., for bill paying) or serves as a daycare center, but the rest of the building has restricted public access.

EPA requests comments on the suggested approach of categorizing by public and environmental accessibility. EPA requests suggestions on the criteria for the various categories that would be developed under such an approach. In addition, EPA requests comments on alternative approaches that would allow EPA to appropriately fulfill its obligations under TSCA section 402(a).

D. Issue 4—Use of pre-existing courses and regulations

TSCA section 402(a)(1) requires EPA to promulgate regulations governing lead-based paint activities to ensure, among other items, that training programs for individuals engaged in lead-based paint activities are accredited. TSCA section 402(a)(2) states that these accreditation regulations must contain specific requirements for the accreditation of lead-based paint activities training programs. These requirements must include, at least: Minimum requirements for the accreditation of training providers; minimum training curriculum requirements; minimum training hour requirements; minimum hands-on training requirements; minimum trainee competency and proficiency requirements; and minimum requirements for training program quality control.

In the 1994 proposal, EPA laid out specific training requirements and work practice standards for lead-based paint activities in public buildings, commercial buildings, and steel structures. In response to the 1994 proposal, commenters noted that many in-house courses on conducting lead-based paint activities in buildings and structures already existed. Some of these commenters indicated that because of the existence of these courses, there was no need for EPA to develop regulations. Other commenters suggested that EPA incorporate into its regulations pre-existing courses, such as those provided by the Steel Structures Painting Council.

Congress in TSCA section 402(a) required EPA to specify requirements for accreditation of training courses for persons involved in lead-based paint activities. However, EPA recognizes that there are many training programs currently in place and therefore encourages commenters to submit to EPA during the comment period on this document information about training programs that would assist EPA in developing its regulations.

EPA is also aware that subsequent to the publication of the 1994 proposal, some states have promulgated or are in the process of developing State regulations governing lead-based paint activities in buildings and/or structures. EPA is familiar with the Minnesota regulations for removal of lead paint from steel structures and is considering utilizing some of the approaches embodied in those regulations. EPA would also appreciate information from other states, tribes, and localities that have developed or are considering developing regulations covering lead-based paint activities in buildings and/or structures.

V. Public Record

The official record for this rulemaking, as well as the public version, has been established for this rulemaking under docket control number OPPTS–62128B (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located at the address in ''ADDRESSES'' at the beginning of this document.

Electronic comments can be sent directly to EPA at:

oppt.ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by

the docket control number OPPTS–62128B. Electronic comments on this rulemaking may be filed online at many Federal Depository Libraries.

Supplemental documents relating to the rulemaking and the public meeting will be posted at the following Internet address:

http://www.epa.gov/opptintr/lead/index.html

List of Subjects in 40 CFR Part 745

Environmental protection, Hazardous substances, Lead, Reporting and recordkeeping.

Dated: August 19, 1997.

William H. Sanders, III,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 97–22517 Filed 8–21–97; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 23

RIN 1018–AE16

Changes in List of Species in Appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES, or ''the Convention'') regulates international trade in certain animals and plants. Species for which such trade is controlled are listed in Appendices I, II, and III to the Convention.

This document announces decisions by the Conference of the Parties to CITES on amendments to Appendices I and II, and repeats a previous request (62 FR 31054) for comment on whether the United States should enter reservations on any of the amendments. The effect of a reservation would be to exempt this country from implementing CITES for a particular species. However, even if a reservation were taken, many importing countries would require comparable documents, and many importers to the United States would be required, under the Lacey Act Amendments of 1981, to obtain permits issued by foreign countries. The CITES amendments to Appendices I and II described in this document will enter into effect on September 18, 1997, unless specifically indicated otherwise. Reference is also made here to establishment by the Parties of an export quota for the markhor, a species both included in Appendix I and listed as Endangered under the Endangered Species Act, and the implications for the importation of markhor sport-hunted trophies into the United States.

DATES: The amendments to Appendices I and II adopted at the recent meeting of the Conference of the Parties become effective 90 days after their adoption under the terms of CITES and therefore are enforceable as of September 18, 1997, with the exception of the amendments concerning sturgeons, which will take effect on April 1, 1998. The Service will consider all comments received by September 12, 1997, in determining whether the United States should enter any reservations.

ADDRESSES: Please send correspondence concerning this proposed rule to Chief, Office of Scientific Authority; 4401 North Fairfax Drive, Room 750; Arlington, Virginia 22203. Fax number: 703–358–2276. Comments and other information received are available for public inspection by appointment, from 8 a.m. to 4 p.m. Monday through Friday, at the Arlington, Virginia address.

FOR FURTHER INFORMATION CONTACT: Dr. Charles W. Dane, Office of Scientific Authority, U.S. Fish and Wildlife Service, Arlington, Virginia, telephone 703–358–1708.

SUPPLEMENTARY INFORMATION:

Background

CITES regulates import, export, reexport, and introduction from the sea of certain animal and plant species. Species for which the trade is controlled are included in three Appendices. Appendix I includes species threatened with extinction that are or may be affected by trade. Appendix II includes species that, although not necessarily now threatened with extinction, may become so unless trade in them is strictly controlled. It also lists species that must be subject to regulation in order that trade in other listed species may be brought under effective control (e.g., because of similarity-of-appearance problems). Appendix III includes species that any Party identifies as being subject to regulation within its jurisdiction for purposes of preventing or restricting exploitation, and for which it needs the cooperation of other Parties to control trade. Any Party may propose amendments to Appendices I and II for consideration at meetings of the Conference of the Parties. The text of any proposal must be communicated to the CITES Secretariat at least 150 days before the meeting. The Secretariat must then consult the other Parties and appropriate intergovernmental agencies, and communicate their responses to all Parties no later than 30 days before the meeting.

Recent Decisions

The tenth meeting of the Conference of the Parties to CITES (COP10) was held June 9-20, 1997, in Harare, Zimbabwe. At the meeting, the Parties considered 62 different animal proposals and 13 different plant proposals to amend the Appendices. These were described in the **Federal Register** on April 16, 1997, for proposals submitted by the United States (62 FR 18559), and on June 6, 1997, for proposals submitted by other Parties (62 FR 31054). All proposed amendments not withdrawn by the proponents were considered and acted upon by Committee I during the Conference, with each accredited attending Party having one vote. Adoption of amendments by Committee I requires either consensus or, in case of a vote, a two-thirds majority of those Parties present and voting (abstentions not included). Action by Committee I on species proposals was accepted by the Plenary session, unless a motion to reopen debate was put to vote and approved by one-third of the non-abstaining Parties voting.

Debate was reopened and votes recast on the following proposals that had not received the required two-thirds majority in Committee I: the proposal on the southern white rhinoceros (*Ceratotherium simum simum*) by South Africa; the proposal on the ultramarine lorikeet (*Vini ultramarina*) by Germany; and an amended proposal on the hawksbill sea turtle (*Eretmochelys imbricata*) by Cuba. The proposal on the ultramarine lorikeet was adopted in Plenary. The proposal on the southern white rhinoceros and the amended proposal on the hawksbill sea turtle, however, were rejected.

The use of the secret ballot process for voting on species proposals was more widespread at COP10 than at past conferences. This was due in part to a change in the Rules of Procedure adopted at COP9, which reduced the number of seconding Parties required to sustain a motion for a secret ballot, and in part to the number of controversial proposals up for consideration. Secret ballots were cast in Committee I on all whale proposals, the hawksbill turtle proposal, all elephant proposals, and the proposal on bigleaf mahogany. A call by Panama for a secret ballot on the United States' proposal to include the sawfishes in Appendix I was rejected.