

November 25, 2009

United States Environmental Protection Agency
Document Control Office (7407M)
Office of Pollution Prevention and Toxics (OPPT)
1200 Pennsylvania Ave., NW
Washington, DC 20460– 0001

Re: Comments on Proposed Revisions to RRP Rule, Docket EPA–HQ–OPPT–2005–0049

To Whom It May Concern:

On behalf of the National Center for Healthy Housing (NCHH), the Alliance for Healthy Homes (the Alliance), and the Northern Manhattan Improvement Corporation (NMIC), we offer the following comments on the changes EPA has suggested to the Renovation, Repair, and Painting rule (RRP), as published at 74 Fed Reg. 55506, Oct. 28, 2009. NCHH is national nonprofit organization based in Columbia, MD committed to creating healthy and safe homes for children through practical and proven steps. The Alliance is a national, nonprofit, public interest organization based in Washington, DC working to prevent and eliminate hazards in our homes that can harm the health of children, families, and other residents with nearly two decades of experience working on lead poisoning prevention policies. NMIC is a community based nonprofit organization in New York City that provides free legal representation to low-income tenants, redevelops multi-unit residential buildings with a predominately low-income population, and operates a shelter for families of lead-poisoned children.

We strongly support EPA’s efforts to improve the RRP rule by eliminating the Opt-Out provision, requiring renovation firms to disclose additional information to property owners and tenants, and modify training requirements. Our specific comments follow.

I. Eliminating the Owner-Occupied, Opt-Out Provision

EPA’s proposal presents a compelling public health and economic rationale for eliminating the owner-occupied, opt-out provision and making the change effective on or before April 22, 2010. Beyond that rationale, we believe that the existing exemption violated federal law because EPA attempted to redefine the Congressional definition of “target housing.” by excluding some target housing based on claims about its occupancy at the time of the regulated RRP work. Unlike other places in the law such as the definition of lead-based paint, Congress did not authorize EPA to change its definition of target housing. Therefore, the exemption must not go into effect on April 22, 2010.

A. Opt-Out Clause Violated Federal Law

For the record, NCHH, NMIC, and the Alliance want to make clear how the exemption violated the law. The proposed rule resolves this violation, but does not explain it in the preamble to the proposed rule.

Specifically, the current version of the RRP Rule fails to address all target housing, as required by TSCA 402(c)(3).¹ Instead, the RRP Rule establishes a process for homeowners to allow contractors to generate lead hazards if no children or pregnant woman reside in the housing and it is not a child-occupied facility. Section 402(c)(3)² and the Consolidated Appropriations Act of 2008³ required that these buildings be addressed in the rule.

In the current version of the RRP rule at 40 CFR 745.82(c), EPA stated that:

The training requirements in § 745.90 and the work practice standards for renovation activities in § 745.85 apply to all renovations covered by this subpart, except for renovations in target housing for which the firm performing the renovation has obtained a statement signed by the owner that the renovation will occur in the owner's residence, no child under age 6 resides there, no pregnant woman resides there, the housing is not a child-occupied facility, and the owner acknowledges that the renovation firm will not be required to use the work practices contained in EPA's renovation, repair, and painting rule. For the purposes of this section, a child resides in the primary residence of his or her custodial parents, legal guardians, and foster parents. A child also resides in the primary residence of an informal caretaker if the child lives and sleeps most of the time at the caretaker's residence.⁴

In essence, in the current version of the RRP rule, EPA effectively changed the statutory definition of "target housing" by carving out an exemption for owner-occupied housing where children or pregnant women do not reside. The training and work practice standards are the two core substantive requirements in EPA's RRP rule. The other relevant substantive requirement deals with information distribution. But that requirement was mandated by another provision of the law – § 406(b).⁵

In adopting the current version of the RRP rule, EPA reasoned that this exemption was appropriate because the Agency

...believes that primarily focusing society's resources on the housing that presents the greatest risk to children is consistent with Congressional intent. In the Senate report on Title X, Congress noted the need 'for a flexible, targeted approach for protecting children from exposure to lead hazards while maintaining housing affordability' (Ref. 25). The report also noted that 'exposure to lead is primarily caused by ingesting paint dust or chips,' which is the route of exposure of concern primarily for young children, ages 18–27 months. Indeed, in the Congressional findings for Title X, Congress focused on the lead poisoning of children and the

¹ 15 U.S.C. Sec. 2682 (2008).

² 15 U.S.C. 2682(c)(3) (2008). Section 402(c)(3) of the "Residential Lead-Based Paint Hazard Reduction Act of 1992", Pub. L. No. 102-550, 106 Stat 3672 (2008).

³ Consolidated Appropriations Act of 2008, Pub. L. No. 110-161.

⁴ 40 CFR 745.82(c). 73 Fed. Reg. 21759 (22 April 2008)

⁵ 15 U.S.C. 2686(c) (2008).

need to address this as a national priority. [Sec. 1002, Public Law 102–550]. The focus on children can also be inferred from the very definition of “target housing” which on the one hand excludes housing for the elderly and disabled “unless a child under six resides or is expected to reside” there. Similarly, this final rule focuses on the population most at risk and does not provide any exceptions if a child under age 6 resides in the target housing to be renovated.⁶

EPA concluded by stating that it “has determined that allowing these owner-occupants to opt out of the training, certification, and work practice requirements of the rule does not significantly compromise the safety and effectiveness of this rule because the limitations on the applicability of the exception with respect to children under 6 and pregnant women serve to minimize the possibility that a young child or a pregnant woman will be exposed to a lead-based paint hazard resulting from a renovation in target housing.”⁷

The statute is clear that renovations of target housing should be covered, and nothing in the statute limits the mandate to childhood exposures. Indeed, as EPA now acknowledges in its proposed revisions to the rule, “*EPA believes that implementing the regulations without the opt-out provision promotes, to a greater extent, the statutory directive to promulgate regulations covering renovation activities in target housing.*”⁸ EPA does not have the authority to carve out a class of target housing and exempt it from all requirements without making a determination that the activities do not create lead-based paint hazards. EPA made no such determination.

In its justification for the current version of the RRP rule, EPA did not account for the fact renovation work performed in owner-occupied target housing could create lead hazards that can poison non-resident children. For example:

Children living in adjacent housing may be affected by activities prohibited by the RRP rule such as sandblasting and other uncontrolled abrasive operations, as well as activities allowed but controlled through containment under the rule such as extensive hand scraping, all of which can spread lead dust and contaminate lead soil far beyond the property line.

Children and pregnant women may visit the home but not reside there, such as children visiting a grandparent’s home. A single exposure to lead hazards can poison a child or an adult. Frequent and repeated exposures are not needed. Ingestion of less than one thousandth of a gram of lead can poison a child. That ingestion can result from a child rubbing his or her hand on a severely contaminated handrail or playing on a contaminated floor.

Children of workers who take home lead dust

⁶ 73 Fed. Reg. 21710 (22 April 2008)

⁷ 73 Fed. Reg. 21711 (22 April 2008)

⁸ 74 Fed. Reg. 55518, Oct. 28, 2009

Children of future residents who are unaware of the lead hazards created by the previous owner. High levels of lead dust contamination are extremely difficult to clean up and can persist for years, posing hazards to subsequent residents.

In its justification for the current RRP rule, EPA addressed the concern that the children of subsequent owners may be exposed to lead-based paint hazards by stating:

EPA does not believe it is an effective use of society's resources to impose this final rule requirements on all renovations in order to account for the portion of homes without young children that will be sold to families with young children following renovations. Moreover, the Disclosure Rule, 40 CFR part 745, subpart F, requires sellers of target housing to disclose known lead-based paint or lead-based paint hazard information to purchasers and provide them with a copy of the lead hazard information pamphlet entitled *Protect Your Family From Lead in Your Home* (Ref. 7). In the situation described by the commenters, the receipt of this information should prompt the family to inquire about potential lead-based paint hazards in the home, particularly if one of the selling points is that areas of the home have been recently renovated. In addition, EPA continues to recommend that purchasers take advantage of their statutory opportunity to have a lead-based paint inspection or risk assessment done while in the process of purchasing target housing.⁹

EPA's reasoning in its April 2008 decision related to lead poisoning risks to subsequent occupants was seriously flawed. A potential homeowner knowledgeable about the RRP rule is likely to assume that any renovation was done using lead-safe work practices consistent with the RRP rule. There is nothing to alert them to the fact that lead safe work practices and cleaning were not performed; record of the composition of prior households is not ordinarily conveyed. It is unreasonable to assume that a typical homeowner or someone renting a previously owner-occupied dwelling would know the detailed exemptions on the RRP rule. In addition, the *Protect Your Family from Lead in Your Home* booklet required to be provided to prospective buyers and tenants does not contain any reference to EPA's exemption of owner-occupied housing in which no child or pregnant woman is present.

Even if the potential renter or buyer was aware of the potential exemption, there is no obligation of the owner to disclose the opt-out statement or the use of the exemption. The reality is that without specific information to the contrary, such as a special disclosure requirement or lead-dust test results, the subsequent occupants will have no reason to question whether the home may contain lead hazards caused by unsafe remodeling practices.

Thus, EPA's exclusion of owner-occupied housing without resident children or pregnant woman in the current version of the RRP rule was arbitrary, capricious, and short of the public's statutory right. EPA needs to modify the rule by eliminating the opt-out provision as proposed to correct these shortcomings.

⁹ 73 Fed. Reg. 21710 (22 April 2008)

B. Observations on EPA’s Determinations in Preamble to Proposed Rule

In the preamble to the proposed rule, EPA made a number of statements of its beliefs regarding the owner-occupied, opt-out exemption. We are providing these statements in italics below. Following the statement, we provide our comments on each of these statements:

- EPA states, “*After further consideration of the opt-out provision, the Agency believes it is in the best interest of the public to remove the provision.*”¹⁰ We agree.
- EPA states “*Moreover, EPA believes that implementing the regulations without the opt-out provision promotes, to a greater extent, the statutory directive to promulgate regulations covering renovation activities in target housing.*”¹¹ It says later that “*Finally, EPA believes that implementing the regulations without the opt-out provision promotes, to a greater extent, the statutory directive to promulgate regulations covering renovation activities in target housing.*”¹² We agree. It is the only option that is consistent with the law.
- EPA states “*EPA believes that there is already training capacity. In fact, training providers have reported to EPA that they have recently cancelled training offerings due to a lack of demand.*”¹³ We agree. In our discussions with our instructors and other training providers, there appears to be sufficient capacity for the current level of demand. EPA needs to continue its successful efforts to build capacity by working with other agencies to drive training demand. According to EPA’s original economic analysis, it would cost the estimated 236,000 Certified Renovators about \$140 million to complete the training. Of that total, \$50 million was for tuition fees. The balance was for travel expenses and lost income while taking the training. Given the current economic conditions, the federal government needs to seriously consider subsidizing the tuition fees to reduce the burden on renovators. The most likely source of support would be the U.S. Department of Labor workforce development funds or other similar sources, especially those established by the American Recovery and Reinvestment Act. A subsidy for tuition fees would enable 236,000 renovators and the more than 300,000 workers they will train to comply with the rule. The proposed rule would add almost 100,000 renovators who need training. By investing in tuition fees, the Administration can reduce the economic impact on Certified Renovators and even create new job opportunities.
- EPA states, “*After further consideration of the opt-out provision, the Agency believes it is in the best interest of the public to remove the provision. EPA believes that the opt-out provision is not sufficiently protective for children under age 6 and pregnant women, because it does not provide protection from improperly performed renovations for visiting children and pregnant women; for children and pregnant women who move into a newly purchased house that was recently renovated under the opt-out provision; and for children and pregnant women who live adjacent to a home where the exterior is being renovated*

¹⁰ 74 Fed Reg. 55509, Oct. 28, 2009

¹¹ 74 Fed Reg. 55509, Oct. 28, 2009

¹² 74 Fed Reg. 55518, Oct. 28, 2009

¹³ 74 Fed Reg. 55510, Oct. 28, 2009

*under the opt-out provision”*¹⁴ We agree. EPA continues *"In addition, while the RRP rule focused mainly on protecting young children and pregnant women from lead hazards, exposure can result in adverse health effects for older children and adults as well."*¹⁵ We agree as well. Indeed, a recently published study concluded that blood lead levels in six year olds is more strongly associate with cognitive and behavioral development than is blood lead measured in early childhood, and concluded that "efforts to reduce lead exposure should continue as children progress to school age,"¹⁶ nor is there any sound reason to ignore the long term health impacts of lead exposure among adults.¹⁷

- EPA states *"EPA believes that the conclusions it made in 2008 regarding these recommendations are applicable to this proposal, particularly with respect to the removal of the opt-out provision."*¹⁸ We agree. Any alternative to elimination of the opt-out is inconsistent with the law and the law's stated goal of reducing exposure to lead-based paint hazards created by renovation, repair and painting activities.
- EPA states *"EPA considered several significant alternatives to this proposed rule that could affect the economic impacts of the proposed rule on small entities. These alternatives would have applied to both small and large entities, but given the number of small entities in the affected industries, these alternatives would primarily affect small entities. For the reasons described in this unit, EPA believes these alternatives are not consistent with the objectives of the rule."*¹⁹ We agree. The alternatives offered by EPA are as follows:

❖ **Alternative #1: "Delayed effective date.** EPA considered an option that would delay the removal of the opt-out provision by 6 months, and another option that would delay the date by 12 months. These options would make the RRP program more complex to implement and might lead to confusion by renovators and homeowners. These options would also lead to increased exposures during the delay period, including exposures to children under the age of 6 and pregnant women. Therefore, EPA believes

¹⁴ 74 Fed Reg. 55518, Oct. 28, 2009

¹⁵ 74 Fed Reg. 55518, Oct. 28, 2009

¹⁶ Hornung, Lanphear, Dietrich, Age of Greatest Susceptibility to Childhood Lead Exposure: A New Statistical Approach, 117 Env. Health Perspectives (8) 1309, 1312 (August 2009). The authors there cite to several additional recent studies that "have suggested that lead exposures at school age may be more strongly related to decrements in IQ scores or neuroanatomical deficits." Id at 1312.

¹⁷ See, e.g., Kosnett, Recommendations for Medical Management of Adult Lead Exposure, 115 Env. Health Perspectives (3) 463 (2007) (summarizing body of literature on potential for hypertension, effects on renal function, cognitive dysfunction, and adverse female reproductive outcome in adults with blood lead levels < 40 µg/dL); Weuve, Cumulative Exposure to Lead in Relation to Cognitive Function in Older Women, 117 Env. Health Perspectives 574(2009) (cumulative exposure to lead, even at low levels experienced in community settings, may have adverse consequences for women's cognition in older age); Lustberg, Silbergeld, Blood Lead Levels and Mortality, 162 Ach. Intern. Med. 2443-2449 (Nov. 2002) (individuals with elevated blood lead levels experienced significantly increased circulatory and cardiovascular mortality, and lead exposure may increase susceptibility to cancer); Schwartz, Stewart, Bolla, Simon, Bandeen-Roche, Gordon, Links, Todd, Past Adult Lead Exposure Is Associated with Longitudinal Decline in Cognitive Function, 55 Neurology 1144-50 (2000)

¹⁸ 74 Fed Reg. 55520, Oct. 28, 2009

¹⁹ 74 Fed Reg. 55520, Oct. 28, 2009

that these options are not consistent with the stated objectives of the proposed rule."²⁰ We agree with EPA's rejection of this alternative. It is also not consistent with the law. We believe it less confusing to avoid phase-ins of the rule, both for the public and for renovators and firms. When the final rule is published, thousands of renovators already trained will need to be alerted to the cessation of the opt-out. Additionally, consumers need to get a consistent message such that they can understand who they need to hire and why. A delayed effective date would contradict that message, in addition to sanctioning ongoing exposure to lead hazards under the illegal and soon obsolete exemption. Unless the Agency is prepared to identify the affected units and clear them of residual hazards retroactively, no renovation jobs should be exempted under the specious opt-out scheme. EPA has estimated that at least 16,000 children will be affected by removing the opt-out from the regulation; delaying the rule would expose these children to potentially dangerous work, even though the evidence continues to grow, that renovation activity is harmful.²¹ Given that § 402 required these regulations to be promulgated by April 1994 – some 15 years ago – further delay only serves to frustrate the Congressional mandate and fails to protect public health.

❖ **Alternative #2: "Staged approach.** *EPA considered a staged approach that would initially remove the opt-out provision in pre-1960 housing, and then remove it in housing built between 1960 and 1978 a year later. This would make the RRP program more complex to implement and might lead to confusion by renovators and homeowners. It would also increase exposures during the first year of the rule from renovations in houses built between 1960 and 1978, including exposures to children under the age of 6 and pregnant women. EPA does not believe that the reduced burden of a staged approach outweighs the implementation complexity and additional exposures that it would create. Therefore, EPA believes that this option is not consistent with the stated objectives of the rule.*"²² We agree with EPA's rejection of this alternative. It is not consistent with the law. We believe it less confusing to avoid phase-ins of the rule. Consumer needs to get a consistent message. A delayed effective date would contradict that message, in addition to sanctioning ongoing exposure to lead hazards. In addition, this alternative would create even more confusion for consumers than the previous alternative.

❖ **Alternative #3: "Alternate work practices.** *EPA also considered different options for the work practice requirements in housing that was previously eligible for the opt-out provision. Specifically, EPA considered options: With the containment requirements specified in 40 CFR 745.85, but without any cleaning or cleaning verification work practices; with the cleaning and cleaning verification requirements specified in 40 CFR 745.85, but without any containment work practices; with the cleaning requirements specified in 40 CFR 745.85, but without any containment or cleaning verification work practices; and with the containment, cleaning, and cleaning verification requirements specified in 40 CFR 745.85, but without the prohibitions or*

²⁰ 74 Fed Reg. 55520, Oct. 28, 2009

²¹ CDC. Children with Elevated Blood Lead Levels Related to Home Renovation, Repair, and Painting Activities --- New York State, 2006--2007. MMWR. January 30, 2009; 58(03):55-58.

²² 74 Fed Reg. 55520, Oct. 28, 2009

restrictions on paint removal practices specified in 40 CFR 745.85(a)(3) (i.e., open-flame burning or torching, the use of machines that remove paint through high-speed operation without HEPA exhaust control, and heat guns operating in excess of 1,100 degrees Fahrenheit).”²³ We agree with EPA’s rejection of this alternative. It is also not consistent with the law for reasons previously stated. In addition, it would be arbitrary and capricious for EPA to adopt this alternative based on the science it has received on the hazards created from renovations. EPA’s original conclusion that the renovations conducted on homes that qualify for the opt-out clause are no different than homes with children is still valid. Additionally, beyond the legal problems, these options clearly do not meet the goals of protecting occupants of neighboring properties, visitors, or future occupants of the property as all options would continue to allow the spread and accumulation of lead-laden dust.

- EPA states “*However, excluding any single component of the suite of work practices or allowing the prohibited practices to be used led to instances where dust-lead hazards remained. Thus, EPA has concluded that the alternative work practice options are not effective at minimizing exposure to lead-based paint hazards created during renovation activities.*”²⁴ This conclusion was not actually included in preamble to the proposed rule. EPA included it in the draft that EPA sent to the Office of Management and Budget. Based on the correspondence between EPA and the Office of Management and Budget and, by proxy, the Small Business Administration, EPA removed this conclusion. We agree with EPA’s originally stated conclusion. OMB’s and SBA’s contention is not supported by the research or the science. The suite of work practices must be followed as a package.
- EPA states “*Currently EPA believes that the preferred option is the least burdensome option available that achieves a central objective of this proposed rule, which is to minimize exposure to lead-based paint hazards created during renovation, repair, and painting activities in all target housing and other buildings frequented by children under age 6.*”²⁵ We agree.
- EPA states “*EPA has decided it is important to require the RRP work practices and training and certification requirements in target housing even if there is no child under age 6 or pregnant woman residing there.*”²⁶ We agree.

C. Responses to EPA’s Request for Comments in the Preamble to the Proposed Rule:

In the preamble to the proposed rule, EPA specifically requested comments on a number of issues regarding the owner-occupied, opt-out exemption. We are providing these statements in italics below. Following the statement, we provide our comments on each of these statements:

- “*EPA is therefore requesting comment on other possible approaches that would meet EPA’s statutory obligation to apply the regulations to target housing and that the standards be safe,*

²³ 74 Fed Reg. 55520, Oct. 28, 2009

²⁴ EPA Docket Number 2009-10-18-p118-EPA2OMB. Page 32

²⁵ 74 Fed Reg. 555201 Oct. 28, 2009

²⁶ 74 Fed Reg. 55509, Oct. 28, 2009

reliable, and effective. EPA's request is expressly limited to approaches that might apply to this subset of target housing and EPA is not reopening any issue related to the work practices or other requirements of the rule applicable to housing other than owner-occupied target housing that is not a child-occupied facility and where no children under 6 or pregnant women reside."²⁷ We believe that the only way EPA may meet its statutory obligation is by eliminating the owner-occupied, opt-out exemption effective April 22, 2010. Congress did not give EPA the authority to modify the definition of target housing. Any other approach would be contrary to law and would create confusion in the workplace.

- “EPA requests comment on the degree to which the same firms and renovators are likely to work both in opt-out housing and in child-occupied facilities and target housing that are ineligible for the opt-out provision.”²⁸ We do not believe that the market is as segregated as EPA suggests in its analysis. In our review of advertisements and the marketplace, we do not find renovators that serve only owner-occupied housing without children or pregnant women. If renovators were to adopt this practice, we would have concerns about the owner's and the contractor's compliance with the Fair Housing Act to the extent it involves a real estate transaction because it may constitute discrimination based on familial status. Even if it is not a violation of the Fair Housing Act, it is a violation of the spirit of law that EPA should not condone. Given the fact that most renovators do not segregate their business by occupancy (owner or non-owner occupied), the additional costs of eliminating the opt-out provision are only those associated with the materials and time for a particular job – contractors are likely to have to face certification costs under the existing requirements regardless.
- “EPA is requesting comment on an option that requires the RRP work practices only for exterior renovations.”²⁹ We believe that EPA may only meet its statutory obligation by eliminating the owner-occupied, opt-out exemption effective April 22, 2010. EPA already concluded that renovations in the interior of these properties created lead hazards. Therefore it is obligated by the law to address their creation. Failing to prescribe safe practices for interior work could expose visiting children and the families of future purchasers and renters to dangerous levels of leaded dust.
- “The duration of exposure will vary under the different scenarios for which EPA is requesting comment.”³⁰ While the duration of exposure will vary, EPA's analysis demonstrates significant economic benefits to the proposed rule to children and to adults from the avoidance of unnecessary exposure to lead.
- “EPA is requesting comment on an alternative option under which the only work practices applicable to housing that is not a child-occupied facility and where no children or pregnant women reside would be the restriction or prohibition on certain work practice found at 40 CFR 745.85(a)(3).”³¹ We agree with EPA's rejection of this alternative. It is also not

²⁷ 74 Fed Reg. 55509, Oct. 28, 2009

²⁸ 74 Fed Reg. 55517, Oct. 28, 2009

²⁹ 74 Fed Reg. 55509, Oct. 28, 2009

³⁰ 74 Fed Reg. 55509-10, Oct. 28, 2009

³¹ 74 Fed Reg. 55510, Oct. 28, 2009

consistent with the law for reasons previously stated. In addition, it would be arbitrary and capricious for EPA to adopt this alternative based on the science it has received on the hazards created from renovations. EPA's original conclusion that the renovations conducted on homes that qualify for the opt-out clause are no different from those conducted in homes with children is still valid.

- *“EPA is requesting comment on another option under which this subset of target housing would not be subject to the RRP work practices but would instead be subject to dust wipe testing to be performed after the renovation.”*³² This variation could address a number of concerns. If EPA were to pursue this option, EPA would need to require all of the following protections:
 - Independence of the Sampler: Given the risk and implications of a conflict of interest between the renovator, owner and the person taking the sample, the dust testing would need to be conducted by an independent dust sampling technician, lead risk assessor or lead inspector. The approach used by HUD in its Lead-Safe Housing Rule would be one acceptable approach.
 - Elimination of Lead Dust Hazards: The rule would need to explicitly require the elimination of lead dust hazards found as a result of the dust wipe testing and confirm the elimination through subsequent dust wipe testing.
 - Disclosure to Owner: The rule would need to explicitly require that the test results be given to the owner of the property. Otherwise, they will not be subject to the disclosure laws.

Without these measures, the approach would certainly not adequately protect public health; and even with these modifications, older children and adults might still be at risk of lead exposure during unsafe RRP work.

- *“EPA is requesting comment on other options that could apply to this category of houses, including any combination of the alternatives described in this unit.”*³³ We agree with EPA's rejection of exempting categories of houses. It is also not consistent with the law for reasons previously stated.
- *“Because one goal of adopting an alternative approach would be to reduce the cost and burden of compliance, EPA also requests comment on whether segregating owner-occupied target housing that is not a child-occupied facility and where no children under 6 or pregnant women reside in-and-of-itself creates a burdensome complexity for renovators and whether it would thus be preferable to require the full suite of RRP work practice requirements for all target housing.”* We believe that requiring the full suite of RRP work practices for all target housing is not only consistent with the goals and mandates of § 402, but to do otherwise creates a burdensome two-tiered structure that would be difficult for firms and renovators to implement.

³² 74 Fed Reg. 55510, Oct. 28, 2009

³³ 74 Fed Reg. 55510, Oct. 28, 2009

II. Adding Post-Renovation Notification to RRP Rule

EPA's presents a compelling public health and economic rationale for requiring post-renovation notification to owners and occupants of target housing and child-occupied housing constructed before 1978. Beyond that rationale, we believe the lack of a notification violated federal law by failing to require sufficient recordkeeping and reporting requirements to ensure the effective implementation of the RRP rule.

A. Lack of Post-Renovation Notice Violated Federal Law

For the record, NCHH, NMIC and the Alliance want to make clear how the lack of post-renovation notice to the owner, the occupant, or EPA violated the law. The proposed rule resolves the violations but does not explain them in the preamble to the proposed rule.

The current version of the RRP Rule fails to include sufficient recordkeeping and reporting requirements to ensure the effective implementation of the RRP Rule as required by § 407 of Residential Lead-Based Paint Hazard Reduction Act of 1992.³⁴ Section 407 states that “[t]he regulations of the Administrator under this subchapter shall include such recordkeeping and reporting requirements as may be necessary to insure the effective implementation of this subchapter. The regulations may be amended from time to time as necessary.”³⁵

EPA estimated that the current version of the RRP Rule will apply to more than 8.4 million renovation, repair and painting events in its first year.³⁶ When EPA approves improved spot test kits, EPA estimates the number will drop to 4.4 million events each year.³⁷ According to 40 CFR 745.86, certified renovators will need to maintain detailed records of each of these events.³⁸

Unfortunately, EPA's approach in the current version of the RRP rule to recordkeeping makes it very difficult to effectively enforce the rule. In only a couple of days, a renovator could fabricate the recordkeeping. And with 236,000 certified renovators, EPA is unlikely to effectively conduct surprise inspections for more than a sampling of renovators.

Without a realistic threat of a surprise inspection, external documentation of the work – preferably with both the owner and the occupant – is essential to comply with § 407. EPA tacitly acknowledged in its preamble to the final rule the role of external documentation when it rejected arguments for pre-renovation notice to EPA. EPA stated that:

In fact, a prior notification requirement could lead to EPA targeting for inspection those persons who are most likely to be making an effort to comply with the substantive requirements of the regulation. The person who would not bother to comply with the substantive provisions of this rule would most likely avoid filing a prior notification to EPA before beginning a covered renovation, repair, or

³⁴ 15 USC 2687 (2008).

³⁵ *Id.*

³⁶ 73 Fed. Reg. 21750 (22 April 2008).

³⁷ *Id.*

³⁸ 40 C.F.R. 745.86 (2008). 73 Fed. Reg. 21763 (22 April 2008)

painting project. These persons are more likely to be performing renovations in a non-compliant manner than are persons who have complied with a prior notification requirement and told EPA where to find them.³⁹

However, in the current version of the RRP rule, EPA only requires the following information exchanges to serve as external documentation of the work:

1. Various acknowledgements under the pre-renovation information distribution requirements;⁴⁰
2. If an owner-occupied residence is exempt from the rules, a signed statement from the owner declaring that training and work practice requirements do not apply because no children or pregnant women reside in the home and that it is not a child-occupied facility.⁴¹ [soon obsolete]
3. If spot test kits are used, notice to person who contracted for the renovation within 30 days of completing the renovation describing their use.⁴²
4. If dust clearance sampling is performed, a copy of report to person who contracted for the renovation within 30 days of completing the renovation.⁴³

These requirements are simply insufficient to verify that the work practices were followed and the post-renovation cleaning verification properly completed. The first three only apply to transactions that are completed before the work is done.⁴⁴ Only the fourth one applies after the work is done. EPA has written the rules so dust clearance sampling will be the exception rather than standard practice.⁴⁵

Under the current version of the RRP rule, there is little renovator communication with the owner and the occupant confirming that the work was properly completed. The certified renovator is not required to show or describe to anyone the post-renovation cleaning verification, even if the certified renovator twice failed to clean-up the work area so it was cleaner than the cleaning verification card.⁴⁶ This lack of accountability to the owner and occupant is likely to result in shortcuts, especially on post-renovation, cleaning verification.

³⁹ 73 Fed. Reg. 21746 (22 April 2008).

⁴⁰ 40 C.F.R. 745.86(b)(1) to (b)(5) (2008).

⁴¹ 40 C.F.R. 745.86(b)(6) (2008).

⁴² 40 C.F.R. 745.86(c) (2008).

⁴³ 40 C.F.R. 745.86(d) (2008).

⁴⁴ The exception is for work performed in common areas of multi-unit, target housing where notice is given to each affected unit. In this situation, the certified renovator must update the notice of changes to the scope, locations and dates of work. 40 C.F.R. 745.84(b)(4) (2008).

⁴⁵ The dust clearance sampling only relieves the certified renovator of post-renovation cleaning verification if the contract or other rules require it. 40 C.F.R. 85(c) (2008).

⁴⁶ 40 C.F.R. 745.86(b). After the second failure, the certified renovator is directed to “wait for 1 hour or until the entire surface within the work area has dried completely, whichever is longer. After waiting for the entire surface within the work area to dry, wipe each section of the surface that has not yet achieved post-renovation cleaning verification with a dry disposable cleaning cloth. After this wipe, that section of the surface has been adequately cleaned.”

In the preamble to the current version of the RRP rule, EPA failed to consider public comments calling for EPA to supplement the pre-renovation notices with post-renovation notices to would provide this external documentation. Post-renovation notices would have empowered both the owner and the occupant to review the work and confirm the results. When a certified renovator fails the second cleaning verification, he or she could double-check the work or conduct lead dust sampling to determine whether lead hazards remain after the work was “completed.” Reporting post-cleaning testing would create little additional burden since the certified renovator would have already established the means to make the report when the renovator completed the pre-renovation notice and the certified renovator was already personally on-site to complete the post-cleaning activities.

It appears that EPA improperly interpreted the word “reporting” in § 407 to mean only reporting to EPA. Section 407 called for sufficient recordkeeping and reporting. It did not specify that the reporting only meant reporting to EPA. EPA ignored comments calling for reporting to the owner and occupant. As a result, EPA failed to meet its statutory responsibilities for recordkeeping and reporting. The Agency acted in a manner that is arbitrary, capricious, and short of the public’s statutory right. EPA needs to undertake rulemaking to correct these shortcomings.

B. Observations on EPA’s Determinations in Preamble to Proposed Rule

In the preamble to the proposed rule, EPA made a number of statements of its beliefs regarding the post-renovation notice requirement. We are providing these statements in italics below. Following the statement, we provide our comments on each of these statements:

- EPA states “*EPA has also determined that public policy would be better served by using the renovation firm recordkeeping requirements to increase awareness of the RRP rule requirements among owners and occupants of renovated target housing or child-occupied facilities.*”⁴⁷ We agree. It is essential that owners -- and especially occupants -- learn what actually happened as a result of the renovation. As with other commercial transactions, delivering documentation of what was delivered with the request for payment makes good business sense, since the consumer is exchanging remuneration for the service provided. Professional painters and contractors already provide such information; the reporting requirement standardizes some essential components of this “receipt” and mirrors what must already be retained in the recordkeeping requirement
- EPA states “*As a result, EPA has determined that copies of the records required to be maintained by renovation firms to document compliance with the work practice requirements, if provided to the owners and occupants of the renovated buildings, would serve to reinforce the information provided by the “Renovate Right” pamphlet on the potential hazards of renovations and on the RRP rule requirements.*”⁴⁸ We agree.

⁴⁷ 74 Fed Reg. 55513, Oct. 28, 2009

⁴⁸ 74 Fed Reg. 55514, Oct. 28, 2009

- EPA states “EPA has determined that providing owners and occupants of renovated buildings with copies of the records documenting the renovation firm’s compliance with the RRP rule’s training and work practice requirements will serve to reinforce information on both the potential hazards of renovations and on the RRP rule’s requirements.”⁴⁹ We agree.

C. Comments on EPA’s Proposal for Post-Renovation Notice

Although the Agency did not request specific comments, there are several items in the post-renovation recordkeeping topic that merit further consideration:

- The requirement for posted information about renovations in common areas referenced in 745.86(c)(2) should ensure that the information is findable and informative. At minimum the requirement should be no less specific than the other common area notification. First, the requirement should specify “informational signs.” Second, like 745.84(c)(2), the signs should describe the general nature and locations of the renovation and the completion date. This would prevent the use of generic vague notices posted continuously.
- The description of the substance of the post-renovation information as described in the proposed subsection 745.86(c)(3) is insufficient. In the rule, the Agency should repeat the elements of the lists referenced, include the text of the form, or provide an outline that has some logical order understandable to the consumer.
- With the recordkeeping requirement the Agency has an opportunity and a duty to ensure that dust testing and clearance information is understandable. There needs to be a plain-language report for the occupant. Reports provided by inspectors and risk assessors in connection with lead poisoning investigations and abatement jobs are interpreted by case managers and abatement firms. We suggest that the Agency insert a specific requirement for clear language report within subsection 745.85(c) that states the results of lab analysis by room, specifies which samples had hazardous levels of lead dust, and indicates the importance of and alternatives for eliminating the dust hazards. Additionally the Agency should add a clear-language reporting requirement to the responsibilities of the dust sampling technician so that both the renovator and the occupants have clear information.

III. Extending Certification for Those Certified Prior to April 22, 2010

EPA requested comment on, “...whether it should extend the certification for renovators that get their certification by April 22, 2010.” We strongly support extending the certification expiration dates for renovators who take the class prior to the rule effective date of April 22, 2010 to July 1, 2015. Our organizations have worked to encourage renovators and workers to become trained as early as possible. There is an inherent incentive to delay obtaining the first five-year certification until the effective date of the rule in order to maximize the period for which the certification is valid. It is preferable that renovators complete training as soon as possible so that they can learn lead safe work practices and begin implementing them in their jobs, thus protecting children, other residents, and workers from lead exposure. Further, the extension of the initial certification period for renovators will reduce the potential for logistical problems like waiting lists for

⁴⁹ 74 Fed Reg. 55518, Oct. 28, 2009

training during the final days before the effective date. We believe any benefit gained by having more renovators trained sooner more than outweighs the prolonged gap between initial training date for those certified before April 23, 2010 and the first refresher training date that will be caused by the extension.

Further, we encourage EPA to extend the certification period similarly for certified firms that become certified prior to the rule effective date. The same reverse incentive applies to firm certifications, for which the certification fee is higher yet the scheduling requirement is less burdensome since it only involves completing a form instead of attending a class. Encouraging firms to become certified sooner will help prevent a flood of applications from overwhelming EPA's system, will help ensure renovation firms are factoring the concept of lead safe work practice requirements into renovation projects, and bidding correctly on future jobs that may take place after the rule goes into effect. An extension for firms will also help ensure an adequate supply of certified firms on April 22, 2010. We see no reason not to extend the certification to July 1, 2015 for firms that apply prior to the implementation date.

IV. Principal Instructor Qualifications

EPA requested comments on, "...whether the 16-hour training requirement for Principle [*sic*] Instructors should be reduced to 8 hours." The Alliance and NCHH strongly support such a change⁵⁰. In order to meet the current standard, a potential Principal Instructor who has not had previous lead training would have to take either a Lead Abatement Worker class (16 hours in most jurisdictions, although 24 hours is required by several states) or take both of the initial classes for Certified Renovator and Dust Sampling Technician. As EPA noted in its proposal, the availability of a Lead Abatement Worker course is limited in many parts of the country.

As a demonstration of the difficulty of obtaining a sixteen-hour class, the Alliance is currently working on increasing the capacity of local organizations to offer the Renovator class in Mississippi. We have identified a number of partners interested in providing the class, including a university, a community development corporation, and an organization providing job skills training in the construction sector. All of the organizations and their staff have excellent qualifications for teaching the class, including extensive experience in the renovation industry, extensive experience in adult education, and familiarity with lead, in many cases gained through teaching the 8-hour HUD/EPA joint curriculum aimed at HUD Lead Safe Housing Rule compliance. Despite this wealth of background knowledge and desire to train, most members of this training community have not completed accredited lead-based paint activities classes. Meeting the 16-hour requirement has proved to be a substantial barrier to developing accredited trainer capacity for the RRP program. At the time we started the project, there were no entities within the State of Mississippi who were accredited by the State to provide lead abatement worker classes⁵¹. The entities who were approved by the State were located outside of Mississippi, meaning our partners would have had to expend considerable resources to travel out of state in order to meet the 16-hour requirement. Eventually, the Alliance was able to identify a

⁵⁰ NMIC expresses no opinion at this time on this question and therefore does not join in the comments on this section.

⁵¹ E-mail from Gwendolyn J. Braddy, Ph.D, Environmental Administrator, Mississippi State Department of Environmental Quality to Patrick MacRoy, Alliance for Healthy Homes, 6/24/09

trainer located in Georgia who was willing both to become accredited in Mississippi and travel to a location in Mississippi to teach the lead abatement worker class to our partners. If it were not for a generous contribution from a private foundation to fund this training, however, it is unlikely it could have taken place. Forcing potential trainers to either travel hundreds of miles or pay an accredited trainer to travel hundreds of miles is a substantial barrier to achieving EPA's stated goal of accrediting additional training providers.

Additionally, the mere presence of an accredited training provider in a state does not mean that classes will be offered in a reasonable timeframe or are accessible. As an example, in October the Alliance delivered a presentation to a group of housing professionals and trainers in Portland, OR to encourage participants to become accredited renovation trainers. Several individuals are interested, but need the 16-hours of training. Oregon currently only has one accredited lead-based paint training program⁵². The next time this program is scheduled to offer the 16-hour Lead Abatement Worker Class is January 18-19th, and that delivery will be in Spokane, WA⁵³, 350 miles from Portland. Even if these potential trainers were able and willing to wait another three months and drive six hours to Spokane, given that EPA is generally taking three months to review and approve accreditation applications, it is unlikely that any would even be able to offer Renovator classes prior to the April 22, 2010 rule effective date. We believe that it is extremely detrimental both to the long-term success of the RRP rule and ultimately to children's health that well-qualified potential trainers are being thwarted by EPA's regulatory requirements in their attempts to become accredited.

Further, we do not believe that the 16-hour lead-specific training requirement substantially contributes to the Principal Instructor being able to competently teach the Renovator class. The simplest way for new trainers to meet this requirement is to take the 16-hour lead abatement worker class. The goal of this class is to prepare individuals to work on a job site abating lead-based paint. As such, as outlined in 40 CFR 745.225(d)(5), the abatement worker course must cover: 1. The role of the abatement worker, 2. Background on lead, 3. Background information on laws that pertain to lead abatement, 4. Lead-based paint hazard recognition and control, 5. Lead-based paint abatement methods, 6. Interior dust abatement methods, and 7. Soil and exterior dust abatement methods. Of these seven topic areas, only topic 2, the background on lead, is an identical requirement to what the Principal Instructor is to be teaching Renovators according to 745.225(d)(6). The other six topic areas, while perhaps loosely related, are substantially different in content from the curriculum requirements for teaching Certified Renovators. Therefore, EPA's requirement that Principal Instructors have 16 hours of lead-specific training to teach the Renovator class is forcing trainers to attend a class that shares little content with what they are going to be teaching and therefore contributes little to ensure they have the competence to teach the Renovator class.

While we support EPA's efforts to ensure that those teaching Renovator classes are adequately versed in lead safe work practices and the RRP rule itself, we do not believe that there is any reason to believe that completion of 16 hours of lead-specific class work achieves this goal.

⁵² Per the state at <http://www.oregon.gov/DHS/ph/leadpaint/accred.shtml> Accessed 11/16/09

⁵³ Per schedule at:

http://www.wrltc.com/index.php?page=shop.product_details&flypage=flypage.tpl&product_id=2&category_id=1&option=com_virtuemart&Itemid=56 Accessed 11/16/09

Rather than demonstrating competence of the material they are going to be teaching, this requirement serves only to prove that they have some minimal competence in other regulations and work practices pertaining to lead. In fact, the EPA explicitly acknowledges that an individual who has completed the lead abatement worker class lacks the training to work as a Renovator under the RRP rule, requiring them under 745.90(a)(2) to first take a Renovator Refresher class. The RRP rule has no requirements for lead inspection or risk assessment. Given that EPA has determined that these other classes are irrelevant to practice Renovation, it seems highly illogical that completion of any is essentially being required to teach Renovation.

Therefore, given the fact that the 16-hour requirement is doing little to ensure the competence of Principal Instructors to teach the Renovator class and is presenting a substantial barrier to becoming a Principal Instructor, we strongly support EPA's elimination of the 16-hour lead-specific training requirement. In its place, we would prefer EPA established a mechanism to ensure the Principal Instructor had mastery of the RRP regulation itself, perhaps through successful completion of a train the trainer class, successful completion of the class they are seeking to teach, or through passing an EPA developed exam on the regulation and lead safe work practices. This would actually help achieve the outcome EPA is seeking: instructors who are competent in what they are teaching. However, we recognize the logistical and practical difficulties with implementing this change in requirements, and if EPA is unwilling to move in this direction at this time, then we believe that changing the requirement to 8-hours of accredited training is a tolerable compromise, as this would at least allow potential Renovator instructors to only have to pass the Renovator class itself.

V. Other Comments

1. **Making the Rule Less Ambiguous or Inconsistent:** While EPA did not request comments on other changes to the rule, we believe that EPA should make smaller fixes to the rule that remove confusion and ambiguity in the current version of the rule. We are attaching our recommendations.
2. **Considering all Economic Benefits:** In the proposed rule, EPA stated that *"In quantifying the benefits for the RRP rulemaking EPA considered only the benefits associated with the avoided incidence of IQ loss in children under the age of 6 from reduced lead exposure. These estimates only partially account for the benefits of the RRP rule. These estimates did not include an assessment of at-risk subpopulations or of population level effects other than lost income. The benefits associated with avoiding the other adverse effects associated with lead exposure to both children and adults were excluded from this analysis."*⁵⁴

EPA went on to say that *"EPA requests information on how it can more fully quantify the benefits associated with these effects for purposes of this proposed rule. To facilitate your preparation of comments on this point, the following is an excerpt from the preamble of the 2008 final Lead National Ambient Air Quality Standard (NAAQS) (Ref. 3). This discussion is based on EPA's "Air Quality Criteria Document" (the "Criteria Document," Ref. 13). See also the letters dated March 27, 2007 (Ref. 14) and September 27, 2007 (Ref. 15) from the*

⁵⁴ 74 Fed Reg. 55511, Oct. 28, 2009

Clean Air Scientific Advisory Committee's (CASAC) Lead Review Panel. The major adverse effects associated with exposure to lead are also discussed in Chapter 5 of the Economic Analysis (Ref. 5).⁵⁵

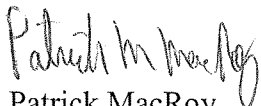
While the benefits from the rule to children under six years of age are significant, we believe that EPA needs to include all economic benefits from reducing exposure to lead-based paint hazards. They should consider benefits to children other than IQ and they need to consider the benefits to older children and adults. It should use the model it used for the National Ambient Air Quality Standards. We believe it is especially important for EPA to consider these benefits on the subsequent phases of the rulemaking to implement the settlement agreement with public interest petitioners. These phases deal with lead dust testing, achieving clearance levels, public buildings built before 1978 and commercial buildings that create lead-based paint hazards.

Thank you for the opportunity to comment on this proposal. We appreciate the hard work EPA staff has put into implementing this rule and look forward to continuing to work with EPA to eliminate childhood lead poisoning.

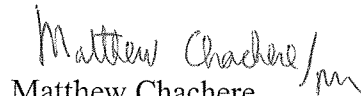
Sincerely,



Rebecca Morley
Executive Director
National Center for
Healthy Housing



Patrick MacRoy
Executive Director
Alliance for Healthy
Homes



Matthew Chachere
Staff Attorney
Northern Manhattan
Improvement Corporation

⁵⁵ 74 Fed Reg. 55511, Oct. 28, 2009

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PART 745—LEAD-BASED PAINT POISONING PREVENTION IN CERTAIN RESIDENTIAL STRUCTURES

Subpart E—Residential Property Renovation

[§ 745.80 Purpose.](#)

[§ 745.81 Effective dates.](#)

[§ 745.82 Applicability.](#)

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[§ 745.85 Work practice standards.](#)

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[§ 745.87 Enforcement and inspections.](#)

[§ 745.88 Recognized test kits.](#)

[§ 745.89 Firm certification.](#)

[§ 745.90 Renovator certification and dust sampling technician certification.](#)

[§ 745.91 Suspending, revoking, or modifying an individual's or firm's certification.](#)

[§ 745.92 Fees for the accreditation of renovation and dust sampling technician training and the certification of renovation firms.](#)

The National Center for Healthy Housing and the Alliance for Healthy Homes developed this list of proposed fixes that EPA or states could make to the Lead Renovation, Repair and Painting Rule when they consider the revisions or adoption of the rule. The changes are highlighted in Word track changes with an explanation in comments. Please contact Tom Neltner at 443-539-4160 or tneltner@nchh.org or Jane Malone at jmalone@afhh.org or 202-347-7610 ext 12.

§ 745.80 Purpose.

This subpart contains regulations developed under sections 402 and 406 of the Toxic Substances Control Act (15 U.S.C. 2682 and 2686) and applies to all renovations performed for compensation in target housing and child-occupied facilities. The purpose of this subpart is to ensure the following:

- (a) Owners and occupants of target housing and child-occupied facilities receive information on **the potential for** **TGN1** lead-based paint hazards before these renovations begin; and
- (b) Individuals performing renovations regulated in accordance with § 745.82 are properly trained; renovators and firms performing these renovations are certified; and the work practices in § 745.85 are followed during these renovations.

§ 745.81 Effective dates.

- (a) *Training, certification and accreditation requirements and work practice standards.* The training, certification and accreditation requirements and work practice standards in this subpart are applicable in any State or Indian Tribal area that does not have a renovation program that is authorized under subpart Q of this part. The training, certification and accreditation requirements and work practice standards in this subpart will become effective as follows:

- (1) *Training programs.* Effective June 21, 2008, no training program may provide, offer, or claim to provide training or refresher training for EPA certification as a renovator or a dust sampling

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technician without accreditation from EPA under § 745.225. Training programs may apply for accreditation under § 745.225 beginning April 22, 2009.

(2) *Firms.*

(i) Firms may apply for certification under § 745.89 beginning October 22, 2009.

(ii) On or after April 22, 2010, no firm may perform, offer, or claim to perform renovations without certification from EPA under § 745.89 in target housing or child-occupied facilities, unless the renovation qualifies for one of the exceptions identified in § 745.82(a) or (c).

(3) *Individuals.* On or after April 22, 2010, all renovations must be directed by renovators certified in accordance with § 745.90(a) and performed by certified renovators or individuals trained in accordance with § 745.90(b)(2) in target housing or child-occupied facilities, unless the renovation qualifies for one of the exceptions identified in § 745.82(a) or (c).

(4) *Work practices.* On or after April 22, 2010, all renovations must be performed in accordance with the work practice standards in § 745.85 and the associated recordkeeping requirements in § 745.86(b)(6) and (b)(7) in target housing or child-occupied facilities, unless the renovation qualifies for one of the exceptions identified in § 745.82(a) or (c).

(5) The suspension and revocation provisions in § 745.91 are effective April 22, 2010.

(b) *Renovation-specific pamphlet.* Before December 22, 2008, renovators or firms performing renovations in States and Indian Tribal areas without an authorized program may provide owners and occupants with either of the following EPA pamphlets: *Protect Your Family From Lead in Your Home* or *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools*. After that date, *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools* must be ~~used~~ provided exclusively. [TGN2]

(c) *Pre-Renovation Education Rule.* With the exception of the requirement to use the pamphlet entitled *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools*, the provisions of the Pre-Renovation Education Rule in this subpart have been in effect since June 1999.

§ 745.82 Applicability.

(a) This subpart applies to all renovations performed for compensation in target housing and child-occupied facilities, except for the following:

(1) Renovations in target housing or child-occupied facilities in which a written determination has been made by an inspector or risk assessor (certified pursuant to either Federal regulations at § 745.226 or a State or Tribal certification program authorized pursuant to § 745.324) that the components affected by the renovation are free of paint or other surface coatings that contain lead equal to or in excess of 1.0 milligrams/per square centimeter (mg/cm²) or 0.5% by weight, where the firm performing the renovation has obtained a copy of the determination.

(2) Renovations in target housing or child-occupied facilities in which a certified renovator, using an EPA recognized test kit as defined in § 745.83 and following the kit manufacturer's instructions, has tested each component affected by the renovation and determined that the components are free of paint or other surface coatings that contain lead equal to or in excess of 1.0 mg/cm² or 0.5% by weight. If several components of the same type of components make up an integrated whole, such as the individual stair treads and risers of a single staircase, the renovator is required to test only one of the individual components, unless the individual components appear to have been repainted or refinished separately. [TGN3]

(b) The information distribution requirements in § 745.84 do not apply to emergency renovations, which are renovation activities that were not planned but result from a sudden, unexpected event (such as non-routine failures of equipment) that, if not immediately attended to, presents a safety or public health hazard, or threatens equipment and/or property with significant damage. Interim controls performed in response to an elevated blood lead level in a resident child are also emergency renovations. Emergency renovations other than interim controls are also exempt from the warning sign, containment, and waste

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handling, ~~training, and certification~~ requirements in §§ 745.85, 745.89, and 745.90 to the extent necessary to respond to the emergency. [TGN4] Emergency renovations are not exempt from the cleaning requirements of § 745.85(a)(5), which must be performed by certified renovators or individuals trained in accordance with § 745.90(b)(2), the cleaning verification requirements of § 745.85(b), which must be performed by certified renovators, and the recordkeeping requirements of § 745.86(b)(6) and (b)(7).

- (c) The training requirements in § 745.90 and the work practice standards for renovation activities in § 745.85 apply to all renovations covered by this subpart, except for renovations in target housing for which the firm performing the renovation has obtained a statement signed by the owner that the renovation will occur in the owner's residence, no child under age 6 resides there, no pregnant woman resides there, the housing is not a child-occupied facility, and the owner acknowledges that the renovation firm will not be required to use the work practices contained in EPA's renovation, repair, and painting rule. For the purposes of this section, a child resides in the primary residence of his or her custodial parents, legal guardians, and foster parents. A child also resides in the primary residence of an informal caretaker if the child lives and sleeps most of the time at the caretaker's residence.

§ 745.83 Definitions.

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

- *Administrator* means the Administrator of the Environmental Protection Agency.
- *Child-occupied facility* means a building, or 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 include, but are not limited to, day care centers, preschools and kindergarten classrooms. Child-occupied facilities may be located in target housing or in public or commercial buildings. With respect to common areas in public or commercial buildings that contain child-occupied facilities, the child-occupied facility encompasses only those common areas that are routinely used by children under age 6, such as restrooms and cafeterias. Common areas that children under age 6 only pass through, such as hallways, stairways, and garages are not included. In addition, with respect to exteriors of public or commercial buildings that contain child-occupied facilities, the child-occupied facility encompasses only the exterior sides of the building that are immediately adjacent to the child-occupied facility or the common areas routinely used by children under age 6.
- *Claim to provide* means an advertisement or promotion by a firm that it is ready, willing, and able to conduct renovations covered by § 745.82. [TGN5]
- *Cleaning verification card* means a card developed and distributed, or otherwise approved, by EPA for the purpose of determining, through comparison of wet and dry disposable cleaning cloths with the card, whether post-renovation cleaning has been properly completed.
- *Compensation* means payment directly or indirectly to the firm performing the renovation. It does not include renovations performed by individuals who are not compensated for the work they perform. [TGN6]
- *Component or building component* means specific design or structural elements or fixtures of a building or residential dwelling that are distinguished from each other by form, function, and location. These include, but are not limited to, interior components such as: Ceilings, crown molding, walls, chair rails, doors, door trim, floors, fireplaces, radiators and other heating units, shelves, shelf supports, stair treads, stair risers, stair stringers, newel posts, railing caps, balustrades, windows and trim (including sashes, window heads, jambs, sills or stools and troughs), built in cabinets, columns, beams, bathroom vanities, counter tops, and air conditioners; and exterior components such as: Painted roofing, chimneys, flashing, gutters and downspouts, ceilings, soffits, fascias, rake boards, cornerboards, bulkheads, doors and door trim, fences, floors, joists, lattice work, railings and railing caps, siding, handrails, stair risers and treads,

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stair stringers, columns, balustrades, windowsills or stools and troughs, casings, sashes and wells, and air conditioners.

- Demolition means to removing all or part of a painted substrate on a wall, ceiling, or floor. [TGN7]
- Disturb means to break the surface of, disrupt, or remove paint. If the paint is intact and not deteriorated, disturb does not include cleaning the surface of the paint or attaching a component on top of the paint. [TGN8]
- *Dry disposable cleaning cloth* means a commercially available dry, electrostatically charged, white disposable cloth designed to be used for cleaning hard surfaces such as uncarpeted floors or counter tops.
- *Firm* means a company, partnership, corporation, sole proprietorship or individual doing business, association, or other business entity; a Federal, State, Tribal, or local government agency; or a nonprofit organization.
- HEPA vacuum means a vacuum cleaner which has been designed, operated, and maintained with a high-efficiency particulate air (HEPA) filter as the last filtration stage. A HEPA filter is a filter that is capable of capturing particles of 0.3 microns with 99.97% efficiency. The vacuum cleaner must be designed, operated, and maintained [TGN9] so that all of the air drawn into the machine is expelled through the HEPA filter with none of the air [TGN10] leaking past it. A vacuum must have sufficient suction to capture the dust that must be collected. [TGN11] A vacuum that complies with ANSI/IESO Standard 4310-2009 for Portable High Efficiency Air Filtration Device Field Testing and Validation Standard as a Class 3, 4, or 5 device is considered a HEPA vacuum. [TGN12]
- HEPA exhaust control means a HEPA vacuum attached to the machine in such a manner that it captures the air, dust, and debris disturbed by the machine. [TGN13]
- *Interim controls* means a set of measures designed to temporarily reduce human exposure or likely exposure to lead-based paint hazards, including specialized cleaning, repairs, maintenance, painting, temporary containment, ongoing monitoring of lead-based paint hazards or potential hazards, and the establishment and operation of management and resident education programs.
- *Minor repair and maintenance activities* are activities, including minor heating, ventilation or air conditioning work, electrical work, and plumbing, that disrupt 6 square feet or less of painted surface per room for interior activities or 20 square feet or less of painted surface for exterior activities where none of the work practices prohibited or restricted by § 745.85(a)(3) are used and where the work does not involve window replacement or demolition of painted surface areas. When removing or demolishing or demolishing painted components, or portions of painted components, the entire surface area removed or demolished or demolished is the amount of painted surface disturbed. [TGN14] Jobs, other than emergency renovations, performed in the same room within the same 30 days must be considered the same job for the purpose of determining whether the job is a minor repair and maintenance activity excluding that portion of the work conducted pursuant to the work practice standards at § 745.85. [TGN15]
- *Pamphlet* means the EPA pamphlet titled *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools* developed under section 406(a) of TSCA for use in complying with section 406(b) of TSCA, or any State or Tribal pamphlet approved by EPA pursuant to 40 CFR 745.326 that is developed for the same purpose. This includes reproductions of the pamphlet when copied in full and without revision or deletion of material from the pamphlet (except for the addition or revision of State or local sources of information). Before December 22, 2008, the term “pamphlet” also means any pamphlet developed by EPA under section 406(a) of TSCA or any State or Tribal pamphlet approved by EPA pursuant to § 745.326.
- *Person* means any natural or judicial person including any individual, corporation, partnership, or association; any Indian Tribe, State, or political subdivision thereof; any interstate body; and any department, agency, or instrumentality of the Federal Government.
- *Recognized test kit* means a commercially available kit recognized by EPA under § 745.88 as being capable of allowing a user to determine the presence of lead at levels equal to or in excess of 1.0

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milligrams per square centimeter, or more than 0.5% lead by weight, in a paint chip, paint powder, or painted surface.

- *Renovation* means the modification of any existing structure, or portion thereof, that results in the disturbance of painted surfaces, unless that activity is performed as part of an abatement as defined by this part (40 CFR 745.223). The term renovation includes (but is not limited to): The removal, modification or repair of painted surfaces or painted components (e.g., modification of painted doors, surface restoration, window repair, surface preparation activity (such as sanding, scraping, or other such activities that may generate paint dust)); the removal of building components (e.g., walls, ceilings, plumbing, windows); weatherization projects (e.g., cutting holes in painted surfaces to install blown-in insulation or to gain access to attics, planing thresholds to install weather-stripping), [demolition](#) [TGN16] and interim controls that disturb painted surfaces. A renovation performed for the purpose of converting a building, or part of a building, into target housing or a child-occupied facility is a renovation under this subpart. The term renovation does not include minor repair and maintenance activities.
- *Renovator* means an individual who either performs or directs workers who perform renovations. A certified renovator is a renovator who has successfully completed a renovator course accredited by EPA or an EPA-authorized State or Tribal program.
- *Training hour* means at least 50 minutes of actual learning, including, but not limited to, time devoted to lecture, learning activities, small group activities, demonstrations, evaluations, and hands-on experience.
- *Wet disposable cleaning cloth* means a commercially available, premoistened white disposable cloth designed to be used for cleaning hard surfaces such as uncarpeted floors or counter tops.
- *Wet mopping system* means a device with the following characteristics: A long handle, a mop head designed to be used with disposable absorbent cleaning pads, a reservoir for cleaning solution, and a built-in mechanism for distributing or spraying the cleaning solution onto a floor, or a method of equivalent efficacy.
- *Work area* means the area that the certified renovator establishes to contain the dust and debris generated by a renovation.

§ 745.84 Information distribution requirements.

- (a) *Renovations in dwelling units.* No more than 60 days before beginning renovation activities in any residential dwelling unit of target housing, the firm performing the renovation must:
- (1) Provide the owner of the unit with the pamphlet, and comply with one of the following:
 - (i) Obtain, from the owner, a written acknowledgment that the owner has received the pamphlet.
 - (ii) Obtain a certificate of mailing at least 7 days prior to the renovation.
 - (2) In addition to the requirements in paragraph (a)(1) of this section, [if the owner does not occupy the dwelling unit, provide an adult occupant of the unit with the pamphlet and information describing the general nature and locations of the renovation and the anticipated start and completion dates,](#) [TGN17] and comply with one of the following:
 - (i) [Obtain, from the adult occupant, a written acknowledgment that the occupant has received the pamphlet and information;](#) or certify in writing that a pamphlet [and the information](#) [TGN18] has been delivered to the dwelling and that the firm performing the renovation has been unsuccessful in obtaining a written acknowledgment from an adult occupant. Such certification must include the address of the unit undergoing renovation, the date and method of delivery of the pamphlet, names of the persons delivering the pamphlet, reason for lack of acknowledgment (e.g., occupant refuses to sign, no adult occupant available), the signature of a representative of the firm performing the renovation, and the date of signature.
 - (ii) Obtain a certificate of mailing at least 7 days prior to the renovation.
- (b) *Renovations in common areas.* No more than 60 days before beginning renovation activities in common areas of multi-unit target housing, the firm performing the renovation must:

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- 1) Provide the owner with the pamphlet, and comply with one of the following:
 - (i) Obtain, from the owner, a written acknowledgment that the owner has received the pamphlet.
 - (ii) Obtain a certificate of mailing at least 7 days prior to the renovation.
 - (2) *Comply with one of the following.*
 - (i) Notify in writing, or ensure written notification of, each affected unit and make the pamphlet available upon request prior to the start of renovation. Such notification shall be accomplished by distributing written notice to each affected unit. The notice shall describe the general nature and locations of the planned renovation activities; the expected starting and ending dates; and a statement of how the occupant can obtain the pamphlet, at no charge, from the firm performing the renovation, or
 - (ii) While the renovation is ongoing, post informational signs describing the general nature and locations of the renovation and the anticipated completion date. These signs must be posted in areas where they are likely to be seen by the occupants of all of the affected units. The signs must be accompanied by a posted copy of the pamphlet or information on how interested occupants can review a copy of the pamphlet or obtain a copy from the renovation firm at no cost to occupants.
 - (3) Prepare, sign, and date a statement describing the steps performed to notify all occupants of the intended renovation activities and to provide the pamphlet.
 - (4) If the scope, locations, or expected starting and ending dates of the planned renovation activities change after the initial notification, and the firm provided written initial notification to each affected unit, the firm performing the renovation must provide further written notification to the owners and occupants providing revised information on the ongoing or planned activities. This subsequent notification must be provided before the firm performing the renovation initiates work beyond that which was described in the original notice.
- (c) *Renovations in child-occupied facilities.* No more than 60 days before beginning renovation activities in any child-occupied facility, the firm performing the renovation must:
- (1)
 - (i) Provide the owner of the building with the pamphlet, and comply with one of the following:
 - (A) Obtain, from the owner, a written acknowledgment that the owner has received the pamphlet.
 - (B) Obtain a certificate of mailing at least 7 days prior to the renovation.
 - (ii) If the child-occupied facility is not the owner of the building, provide an adult representative of the child-occupied facility with the pamphlet, and comply with one of the following:
 - (A) Obtain, from the adult representative, a written acknowledgment that the adult representative has received the pamphlet; or certify in writing that a pamphlet has been delivered to the facility and that the firm performing the renovation has been unsuccessful in obtaining a written acknowledgment from an adult representative. Such certification must include the address of the child-occupied facility undergoing renovation, the date and method of delivery of the pamphlet, names of the persons delivering the pamphlet, reason for lack of acknowledgment (e.g., representative refuses to sign), the signature of a representative of the firm performing the renovation, and the date of signature.
 - (B) Obtain a certificate of mailing at least 7 days prior to the renovation.
 - (2) Provide the parents and guardians of children using the child-occupied facility with the pamphlet and information describing the general nature and locations of the renovation and the anticipated completion date by complying with one of the following:
 - (i) Mail or hand-deliver the pamphlet and the renovation information to each parent or guardian of a child using the child-occupied facility.
 - (ii) While the renovation is ongoing, post informational signs describing the general nature and locations of the renovation and the anticipated completion date. These signs must be posted in areas where they can be seen by the parents or guardians of the children frequenting the child-

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occupied facility. The signs must be accompanied by a posted copy of the pamphlet or information on how interested parents or guardians can review a copy of the pamphlet or obtain a copy from the renovation firm at no cost to the parents or guardians.

- (3) The renovation firm must prepare, sign, and date a statement describing the steps performed to notify all parents and guardians of the intended renovation activities and to provide the pamphlet.
- (d) *Written acknowledgment.* The written acknowledgments required by paragraphs (a)(1)(i), (a)(2)(i), (b)(1)(i), (c)(1)(i)(A), and (c)(1)(ii)(A) of this section must:
 - (1) Include a statement recording the owner or occupant's name and acknowledging receipt of the pamphlet prior to the start of renovation, the address of the unit undergoing renovation, the signature of the owner or occupant as applicable, and the date of signature.
 - (2) Be either a separate sheet or part of any written contract or service agreement for the renovation.
 - (3) Be written in the same language as the text of the contract or agreement for the renovation or, in the case of non-owner occupied target housing, in the same language as the lease or rental agreement or the pamphlet.

§ 745.85 Work practice standards.

- (a) *Standards for renovation activities.* Renovations must be performed by certified firms using certified renovators as directed in § 745.89. The responsibilities of certified firms are set forth in § 745.89(d) and the responsibilities of certified renovators are set forth in § 745.90(b).
 - (1) *Occupant protection.* Firms must post signs clearly defining the work area and warning occupants and other persons not involved in renovation activities to remain outside of the work area. To the extent practicable, these signs must be in the primary language of the occupants. These signs must be posted before beginning the renovation and must remain in place and readable until the renovation and the post-renovation cleaning verification have been completed. If warning signs have been posted in accordance with 24 CFR 35.1345(b)(2) or 29 CFR 1926.62(m), additional signs are not required by this section.
 - (2) *Containing the work area.* Before beginning the renovation, the firm must isolate the work area so that no dust or debris leaves the work area while the renovation is being performed. In addition, the firm must maintain the integrity of the containment by ensuring that any plastic or other impermeable materials are not torn or displaced, and taking any other steps necessary to ensure that no dust or debris leaves the work area while the renovation is being performed. The firm must also ensure that containment is installed in such a manner that it does not interfere with occupant and worker egress in an emergency.
 - (i) *Interior renovations.* The firm must:
 - (A) Remove all objects from the work area, including furniture, rugs, and window coverings, or cover them with plastic sheeting or other impermeable material with all seams and edges taped or otherwise sealed.
 - (B) Close and cover all ducts opening in the work area with taped down plastic sheeting or other impermeable material.
 - (C) Close windows and doors in the work area. Doors must be covered with plastic sheeting or other impermeable material. Doors used as an entrance to the work area must be covered with plastic sheeting or other impermeable material in a manner that allows workers to pass through while confining dust and debris to the work area.
 - (D) Cover the floor surface, including installed carpet, with taped-down plastic sheeting or other impermeable material in the work area 6 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to contain the dust, whichever is greater.
 - (E) Use precautions to ensure that all personnel, tools, and other items, including the exteriors of containers of waste, are free of dust and debris before leaving the work area.

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- (ii) *Exterior renovations.* The firm must:
- (A) Close all doors and windows within 20 feet of the renovation. On multi-story buildings, close all doors and windows within 20 feet of the renovation on the same floor as the renovation, and close all doors and windows on all floors below that are the same horizontal distance from the renovation.
 - (B) Ensure that doors within the work area that will be used while the job is being performed are covered with plastic sheeting or other impermeable material in a manner that allows workers to pass through while confining dust and debris to the work area.
 - (C) Cover the ground with plastic sheeting or other disposable impermeable material extending 10 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to collect falling paint debris, whichever is greater, unless the property line prevents 10 feet of such ground covering.
 - (D) If weather conditions or the proximity of another building are likely to cause dust and debris to migrate from the work area~~In certain situations~~, the renovation firm must take extra precautions to isolate the work area from the wind and rain to prevent the migration in~~containing the work area~~ to ensure that dust and debris from the renovation does not contaminate other buildings or other areas of the property or migrate to adjacent properties. [TGN19]
- (3) *Prohibited and restricted practices.* The work practices listed below shall be prohibited or restricted during a renovation as follows: [TGN20]
- (i) Open-flame burning or torching of ~~lead-based~~ paint is prohibited.
 - (ii) The use of machines that ~~disturbs~~ remove [TGN21] ~~lead-based~~ paint through high speed operation such as sanding, grinding, power planing, needle gun, abrasive blasting, or sandblasting, is prohibited unless the machines are used with HEPA exhaust control. [TGN22]
 - (iii) Operating a heat gun on ~~lead-based~~ paint is permitted only at temperatures below 1100 degrees Fahrenheit.
- (4) *Waste from renovations*
- (i) Waste from renovation activities must be contained to prevent releases of dust and debris before the waste is removed from the work area for storage or disposal. If a chute is used to remove waste from the work area, it must be covered.
 - (ii) At the conclusion of each work day and at the conclusion of the renovation, waste that has been collected from renovation activities must be stored under containment, in an enclosure, or behind a barrier that prevents release of dust and debris out of the work area and prevents access to dust and debris.
 - (iii) When the firm transports waste from renovation activities, the firm must contain the waste to prevent release of dust and debris.
- (5) *Cleaning the work area.* After the renovation has been completed, the firm must clean the work area until no dust, debris or residue remains.
- (i) *Interior and exterior renovations.* The firm must:
 - (A) Collect all paint chips and debris and, without dispersing any of it, seal this material in a heavy-duty bag.
 - (B) Remove the protective sheeting. Mist the sheeting before folding it, fold the dirty side inward, and either tape shut to seal or seal in heavy-duty bags. Sheeting used to isolate contaminated rooms from non-contaminated rooms must remain in place until after the cleaning and removal of other sheeting. Dispose of the sheeting as waste.
 - (ii) *Additional cleaning for interior renovations.* The firm must clean all objects and surfaces in the work area and within 2 feet of the work area in the following manner, cleaning from higher to lower:

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- (A) *Walls*. Clean walls starting at the ceiling and working down to the floor by either vacuuming with a HEPA vacuum or wiping with a damp cloth.
 - (B) *Remaining surfaces*. Thoroughly vacuum all remaining surfaces and objects in the work area, including furniture and fixtures, with a HEPA vacuum. The HEPA vacuum must be equipped with a beater bar when vacuuming carpets and rugs.
 - (C) Wipe all remaining surfaces and objects in the work area, except for carpeted or upholstered surfaces, with a damp cloth. Mop uncarpeted floors thoroughly, using a mopping method that keeps the wash water separate from the rinse water, such as the 2-bucket mopping method, or using a wet mopping system.
- (b) *Standards for post-renovation cleaning verification*—
- (1) *Interiors*.
 - (i) A certified renovator must perform a visual inspection to determine whether dust, debris or residue is still present. If dust, debris or residue is present, these conditions must be removed by re-cleaning and another visual inspection must be performed.
 - (ii) After a successful visual inspection, a certified renovator must:
 - (A) Verify that each windowsill in the work area has been adequately cleaned, using the following procedure.
 - (1) Wipe the windowsill with a wet disposable cleaning cloth that is damp to the touch. If the cloth matches or is lighter than the cleaning verification card, the windowsill has been adequately cleaned.
 - (2) If the cloth does not match and is darker than the cleaning verification card, re-clean the windowsill as directed in paragraphs (a)(5)(ii)(B) and (a)(5)(ii)(C) of this section, then either use a new cloth or fold the used cloth in such a way that an unused surface is exposed, and wipe the surface again. If the cloth matches or is lighter than the cleaning verification card, that windowsill has been adequately cleaned.
 - (3) If the cloth does not match and is darker than the cleaning verification card, wait for 1 hour or until the surface has dried completely, whichever is longer.
 - (4) After waiting for the windowsill to dry, wipe the windowsill with a dry disposable cleaning cloth. After this wipe, the windowsill has been adequately cleaned.
 - (B) Wipe uncarpeted floors and countertops within the work area with a wet disposable cleaning cloth. Floors must be wiped using an application device with a long handle and a head to which the cloth is attached. The cloth must remain damp at all times while it is being used to wipe the surface for post-renovation cleaning verification. If the surface within the work area is greater than 40 square feet, the surface within the work area must be divided into roughly equal sections that are each less than 40 square feet. Wipe each such section separately with a new wet disposable cleaning cloth. If the cloth used to wipe each section of the surface within the work area matches the cleaning verification card, the surface has been adequately cleaned.
 - (1) If the cloth used to wipe a particular surface section does not match the cleaning verification card, re-clean that section of the surface as directed in paragraphs (a)(5)(ii)(B) and (a)(5)(ii)(C) of this section, then use a new wet disposable cleaning cloth to wipe that section again. If the cloth matches the cleaning verification card, that section of the surface has been adequately cleaned.
 - (2) If the cloth used to wipe a particular surface section does not match the cleaning verification card after the surface has been recleaned, wait for 1 hour or until the entire surface within the work area has dried completely, whichever is longer.
 - (3) After waiting for the entire surface within the work area to dry, wipe each section of the surface that has not yet achieved post-renovation cleaning verification with a dry disposable cleaning cloth. After this wipe, that section of the surface has been adequately cleaned.

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- (iii) When the work area passes the post-renovation cleaning verification, remove the warning signs.
- (2) *Exteriors.* A certified renovator must perform a visual inspection to determine whether dust, debris or residue is still present on surfaces in and below the work area, including windowsills and the ground. If dust, debris or residue is present, these conditions must be eliminated and another visual inspection must be performed. When the area passes the visual inspection, remove the warning signs.
- (c) *Optional dust clearance testing.* Cleaning verification need not be performed if the contract between the renovation firm and the person contracting for the renovation or another Federal, State, Territorial, Tribal, or local law or regulation requires:
- (1) The renovation firm to perform dust clearance sampling at the conclusion of a renovation covered by this subpart.
 - (2) The dust clearance samples ~~are required~~ to be collected by a certified inspector, risk assessor or dust sampling technician.
 - (3) If the lead level (as determined by laboratory analysis) of a dust clearance sample is not below the clearance standards in § 745.227(e)(8) or any applicable State, Territorial, Tribal, or local standard for the same type of surface, the renovation firm is required to re-clean the work area until subsequent dust clearance sample results are below the applicable clearance ~~standards in § 745.227(e)(8) or any applicable State, Territorial, Tribal, or local~~ standard.^[TGN23]
- (d) *Activities conducted after post-renovation cleaning verification.* Activities that do not disturb paint, such as applying paint to walls that have already been prepared, are not regulated by this subpart if they are conducted after post-renovation cleaning verification has been performed.

§ 745.86 Recordkeeping and reporting requirements.

- (a) Firms performing renovations must retain and, if requested, make available to EPA all records necessary to demonstrate compliance with this subpart for a period of 3 years following completion of the renovation. This 3-year retention requirement does not supersede longer obligations required by other provisions for retaining the same documentation, including any applicable State or Tribal laws or regulations.
- (b) Records that must be retained pursuant to paragraph (a) of this section shall include (where applicable):
- (1) Reports certifying that a determination had been made by an inspector (certified pursuant to either Federal regulations at § 745.226 or an EPA-authorized State or Tribal certification program) that lead-based paint is not present on the components affected by the renovation, as described in § 745.82(b)(1).
 - (2) Signed and dated acknowledgments of receipt as described in § 745.84(a)(1)(i), (a)(2)(i), (b)(1)(i), (c)(1)(i)(A), and (c)(1)(ii)(A).
 - (3) Certifications of attempted delivery as described in § 745.84(a)(2)(i) and (c)(1)(ii)(A).
 - (4) Certificates of mailing as described in § 745.84(a)(1)(ii), (a)(2)(ii), (b)(1)(ii), (c)(1)(i)(B), and (c)(1)(ii)(B).
 - (5) Records of notification activities performed regarding common area renovations, as described in § 745.84(b)(3) and (b)(4), and renovations child-occupied facilities, as described in § 745.84(c)(2).
 - (6) Any signed and dated statements received from owner-occupants documenting that the requirements of § 745.85 do not apply. These statements must include a declaration that the renovation will occur in the owner's residence, a declaration that no children under age 6 reside there, a declaration that no pregnant woman resides there, a declaration that the housing is not a child-occupied facility, the address of the unit undergoing renovation, the owner's name, an acknowledgment by the owner that the work practices to be used during the renovation will not necessarily include all of the lead-safe work practices contained in EPA's renovation, repair, and painting rule, the signature of the owner, and the date of signature. These statements must be written in the same language as the text of the renovation contract, if any.

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- (7) Documentation of compliance with the requirements of § 745.85, including documentation that a certified renovator was assigned to the project, that the certified renovator provided on-the-job training for workers used on the project, that the certified renovator performed or directed workers who performed all of the tasks described in § 745.85(a), and that the certified renovator performed the post-renovation cleaning verification described in § 745.85(b). If the renovation firm was unable to comply with all of the requirements of this rule due to an emergency as defined in § 745.82, the firm must document the nature of the emergency and the provisions of the rule that were not followed. This documentation must include a copy of the certified renovator's training certificate, and a certification by the certified renovator assigned to the project that:
- (i) Training was provided to workers (topics must be identified for each worker).
 - (ii) Warning signs were posted at the entrances to the work area.
 - (iii) If test kits were used, that the specified brand of kits was used at the specified locations and that the results were as specified.
 - (iv) The work area was contained by:
 - (A) Removing or covering all objects in the work area (interiors).
 - (B) Closing and covering all HVAC ducts in the work area (interiors).
 - (C) Closing all windows in the work area (interiors) or closing all windows in and within 20 feet of the work area (exteriors).
 - (D) Closing and sealing all doors in the work area (interiors) or closing and sealing all doors in and within 20 feet of the work area (exteriors).
 - (E) Covering doors in the work area that were ~~being used~~ while the job was being performed to allow passage but prevent spread of dust and debris outside the work area and debris outside the work area.^[TGN24]
 - (F) Covering the floor surface, including installed carpet, with taped-down plastic sheeting or other impermeable material in the work area 6 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to contain the dust, whichever is greater (interiors) or covering the ground with plastic sheeting or other disposable impermeable material anchored to the building extending 10 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to collect falling paint debris, whichever is greater, unless the property line prevents 10 feet of such ground covering, weighted down by heavy objects (exteriors).
 - (G) Installing (if necessary) vertical containment to prevent migration of dust and debris to adjacent property (exteriors).
 - (v) Waste was contained on-site and while being transported offsite.
 - (vi) The work area was properly cleaned after the renovation by:
 - (A) Picking up all chips and debris, misting protective sheeting, folding it dirty side inward, and taping it for removal.
 - (B) Cleaning the work area surfaces and objects using a HEPA vacuum and/or wet cloths or mops (interiors).
 - (vii) The certified renovator performed the post-renovation cleaning verification (the results of which must be briefly described, including the number of wet and dry cloths used).
- (c) When test kits are used, the renovation firm must, within 30 days of the completion of the renovation, provide identifying information as to the manufacturer and model of the test kits used, a description of the components that were tested including their locations, and the test kit results to the person who contracted for the renovation.
- (d) If dust clearance sampling is performed in lieu of cleaning verification as permitted by § 745.85(c), the renovation firm must provide, within 30 days of the completion of the renovation, a copy of the dust sampling or clearance reports^[TGN25] to the person who contracted for the renovation.

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§ 745.87 Enforcement and inspections.

- (a) Failure or refusal to comply with any provision of this subpart is a violation of TSCA section 409 (15 U.S.C. 2689).
- (b) Failure or refusal to establish and maintain records or to make available or permit access to or copying of records, as required by this subpart, is a violation of TSCA sections 15 and 409 (15 U.S.C. 2614 and 2689).
- (c) Failure or refusal to permit entry or inspection as required by 40 CFR 745.87 and TSCA section 11 (15 U.S.C. 2610) is a violation of sections 15 and 409 (15 U.S.C. 2614 and 2689).
- (d) Violators may be subject to civil and criminal sanctions pursuant to TSCA section 16 (15 U.S.C. 2615) for each violation.
- (e) Lead-based paint is assumed to be present at renovations covered by this subpart. EPA may conduct inspections and issue subpoenas pursuant to the provisions of TSCA section 11 (15 U.S.C. 2610) to ensure compliance with this subpart.

§ 745.88 Recognized test kits.

- (a) Effective June 6, 2008, EPA recognizes the test kits that have been determined by National Institute of Standards and Technology research to meet the negative response criteria described in paragraph (c)(1) of this section. This recognition will last until EPA publicizes its recognition of the first test kit that meets both the negative response and positive response criteria in paragraph (c) of this section.
- (b) No other test kits will be recognized until they are tested through EPA's Environmental Technology Verification Program or other equivalent EPA approved testing program.
 - (1) Effective September 1, 2008, to initiate the testing process, a test kit manufacturer must submit a sufficient number of kits, along with the instructions for using the kits, to EPA. The test kit manufacturer should first visit the following website for information on where to apply:
<http://www.epa.gov/etv/howtoapply.html>.
 - (2) After the kit has been tested through the Environmental Technology Verification Program or other equivalent approved EPA testing program, EPA will review the report to determine whether the required criteria have been met.
 - (3) Before September 1, 2010, test kits must meet only the negative response criteria in paragraph (c)(1) of this section. The recognition of kits that meet only this criteria will last until EPA publicizes its recognition of the first test kits that meets both of the criteria in paragraph (c) of this section.
 - (4) After September 1, 2010, test kits must meet both of the criteria in paragraph (c) of this section.
 - (5) If the report demonstrates that the kit meets the required criteria, EPA will issue a notice of recognition to the kit manufacturer, provide them with the report, and post the information on EPA's website.
 - (6) If the report demonstrates that the kit does not meet the required criteria, EPA will notify the kit manufacturer and provide them with the report.
- (c) *Response criteria*—
 - (1) *Negative response criteria.* For paint containing lead at or above the regulated level, 1.0 mg/cm² or 0.5% by weight, a demonstrated probability (with 95% confidence) of a negative response less than or equal to 5% of the time.
 - (2) *Positive response criteria.* For paint containing lead below the regulated level, 1.0 mg/cm² or 0.5% by weight, a demonstrated probability (with 95% confidence) of a positive response less than or equal to 10% of the time.

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§ 745.89 Firm certification.

(a) *Initial certification.*

- (1) Firms that perform renovations for compensation must apply to EPA for certification to perform renovations or dust sampling. To apply, a firm must submit to EPA a completed "Application for Firms," signed by an authorized agent of the firm, and pay at least the correct amount of fees. If a firm pays more than the correct amount of fees, EPA will reimburse the firm for the excess amount.
- (2) After EPA receives a firm's application, EPA will take one of the following actions within 90 days of the date the application is received:
 - (i) EPA will approve a firm's application if EPA determines that it is complete and that the environmental compliance history of the firm, its principals, or its key employees does not show an unwillingness or inability to maintain compliance with environmental statutes or regulations. An application is complete if it contains all of the information requested on the form and includes at least the correct amount of fees. When EPA approves a firm's application, EPA will issue the firm a certificate with an expiration date not more than 5 years from the date the application is approved. EPA certification allows the firm to perform renovations covered by this section in any State or Indian Tribal area that does not have a renovation program that is authorized under subpart Q of this part.
 - (ii) EPA will request a firm to supplement its application if EPA determines that the application is incomplete. If EPA requests a firm to supplement its application, the firm must submit the requested information or pay the additional fees within 30 days of the date of the request.
 - (iii) EPA will not approve a firm's application if the firm does not supplement its application in accordance with paragraph (a)(2)(ii) of this section or if EPA determines that the environmental compliance history of the firm, its principals, or its key employees demonstrates an unwillingness or inability to maintain compliance with environmental statutes or regulations. EPA will send the firm a letter giving the reason for not approving the application. EPA will not refund the application fees. A firm may reapply for certification at any time by filing a new, complete application that includes the correct amount of fees.

(b) *Re-certification.* To maintain its certification, a firm must be recertified by EPA every 5 years.

- (1) *Timely and complete application.* To be re-certified, a firm must submit a complete application for re-certification. A complete application for re-certification includes a completed "Application for Firms" which contains all of the information requested by the form and is signed by an authorized agent of the firm, noting on the form that it is submitted as a re-certification. A complete application must also include at least the correct amount of fees. If a firm pays more than the correct amount of fees, EPA will reimburse the firm for the excess amount.
 - (i) An application for re-certification is timely if it is postmarked 90 days or more before the date the firm's current certification expires. If the firm's application is complete and timely, the firm's current certification will remain in effect until its expiration date or until EPA has made a final decision to approve or disapprove the re-certification application, whichever is later.
 - (ii) If the firm submits a complete re-certification application within less than 90 days before its current certification expires, and EPA does not approve the application before the expiration date, the firm's current certification will expire and the firm will not be able to must not perform, offer to perform, or claim to perform ~~conduct~~ renovations until EPA approves its re-certification application. [TGN26]
 - (iii) If the firm fails to obtain recertification before the firm's current certification expires, the firm must not perform renovations or dust sampling until it is certified anew pursuant to paragraph (a) of this section.
- (2) *EPA action on an application.* After EPA receives a firm's application for re-certification, EPA will review the application and take one of the following actions within 90 days of receipt:

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- (i) EPA will approve a firm's application if EPA determines that it is timely and complete and that the environmental compliance history of the firm, its principals, or its key employees does not show an unwillingness or inability to maintain compliance with environmental statutes or regulations. When EPA approves a firm's application for re-certification, EPA will issue the firm a new certificate with an expiration date 5 years from the date that the firm's current certification expires. EPA certification allows the firm to perform renovations or dust sampling covered by this section in any State or Indian Tribal area that does not have a renovation program that is authorized under subpart Q of this part.
 - (ii) EPA will request a firm to supplement its application if EPA determines that the application is incomplete.
 - (iii) EPA will not approve a firm's application if it is not received or is not complete as of the date that the firm's current certification expires, or if EPA determines that the environmental compliance history of the firm, its principals, or its key employees demonstrates an unwillingness or inability to maintain compliance with environmental statutes or regulations. EPA will send the firm a letter giving the reason for not approving the application. EPA will not refund the application fees. A firm may reapply for certification at any time by filing a new application and paying the correct amount of fees.
- (c) *Amendment of certification.* A firm must amend its certification within 90 days of the date a change occurs to information included in the firm's most recent application. If the firm fails to amend its certification within 90 days of the date the change occurs, the firm may not perform renovations or dust sampling until its certification is amended.
- (1) To amend a certification, a firm must submit a completed "Application for Firms," signed by an authorized agent of the firm, noting on the form that it is submitted as an amendment and indicating the information that has changed. The firm must also pay at least the correct amount of fees.
 - (2) If additional information is needed to process the amendment, or the firm did not pay the correct amount of fees, EPA will request the firm to submit the necessary information or fees. The firm's certification is not amended until the firm complies with the request.
 - (3) Amending a certification does not affect the certification expiration date.
- (d) *Firm responsibilities.* Firms performing renovations must ensure that:
- (1) All individuals performing renovation activities on behalf of the firm are either certified renovators or have been trained by a certified renovator in accordance with § 745.90.
 - (2) A certified renovator is assigned to each renovation performed by the firm and discharges all of the certified renovator responsibilities identified in § 745.90.
 - (3) All renovations performed by the firm are performed in accordance with the work practice standards in § 745.85.
 - (4) The pre-renovation education requirements of § 745.84 have been performed.
 - (5) The recordkeeping requirements of § 745.86 are met.

§ 745.90 Renovator certification and dust sampling technician certification.

- (a) *Renovator certification and dust sampling technician certification.*
- (1) To become a certified renovator or certified dust sampling technician, an individual must successfully complete the appropriate course accredited by EPA under § 745.225 or by a State or Tribal program that is authorized under subpart Q of this part. The course completion certificate serves as proof of certification. EPA renovator certification allows the certified individual to perform renovations covered by this section in any State or Indian Tribal area that does not have a renovation program that is authorized under subpart Q of this part. EPA dust sampling technician certification allows the certified individual to perform dust clearance sampling under § 745.85(c) in any State or Indian Tribal area that does not have a renovation program that is authorized under subpart Q of this part.

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- (2) Individuals who have successfully completed an accredited abatement worker or supervisor course, or individuals who have successfully completed an EPA, HUD, or EPA/HUD model renovation training course [or a renovation training course accredited by a State program](#) may take an accredited refresher renovator training course in lieu of the initial renovator training course to become a certified renovator. [TGN27]
 - (3) Individuals who have successfully completed an accredited lead-based paint inspector or risk assessor course may take an accredited refresher dust sampling technician course in lieu of the initial training to become a certified dust sampling technician.
 - (4) To maintain renovator certification or dust sampling technician certification, an individual must complete a renovator or dust sampling technician refresher course accredited by EPA under § 745.225 or by a State or Tribal program that is authorized under subpart Q of this part within 5 years of the date the individual completed the initial course described in paragraph (a)(1) of this section. If the individual does not complete a refresher course within this time, the individual must re-take the initial course to become certified again.
 - (5) [A person who is both a certified abatement supervisor and a certified renovator can meet the renovator refresher requirements by completing a combined abatement supervisor-renovator refresher course as provided in 225\(e\)\(6\).](#) [TGN28]
- (b) *Renovator responsibilities.* Certified renovators are responsible for ensuring compliance with § 745.85 at all renovations to which they are assigned. A certified renovator:
- (1) Must perform all of the tasks described in § 745.85(b) and must either perform or direct workers who perform all of the tasks described in § 745.85(a).
 - (2) Must provide training to workers on the work practices [in § 745.85\(a\)](#) [TGN29] they will be using in performing their assigned tasks.
 - (3) Must be physically present at the work site when the signs required by § 745.85(a)(1) are posted, while the work area containment required by § 745.85(a)(2) is being established, and while the work area cleaning required by § 745.85(a)(5) is performed.
 - (4) Must regularly direct work being performed by other individuals to ensure that the work practices are being followed, including maintaining the integrity of the containment barriers and ensuring that dust or debris does not spread beyond the work area.
 - (5) Must be available, either on-site or by telephone, at all times that renovations are being conducted.
 - (6) When requested by the party contracting for renovation services, must use an acceptable test kit to determine whether components to be affected by the renovation contain lead-based paint.
 - (7) Must have with them at the work site copies of their initial course completion certificate and their most recent refresher course completion certificate.
 - (8) Must prepare the records required by § 745.86(b)(7).
- (c) *Dust sampling technician responsibilities.* When performing optional dust clearance sampling under § 745.85(c), a certified dust sampling technician:
- (1) Must collect dust samples in accordance with § 745.227(e)(8), must send the collected samples to a laboratory recognized by EPA under TSCA section 405(b), and must compare the results to the clearance levels in accordance with § 745.227(e)(8).
 - (2) Must have with them at the work site copies of their initial course completion certificate and their most recent refresher course completion certificate.

§ 745.91 Suspending, revoking, or modifying an individual's or firm's certification.

- (a)
- (1) *Grounds for suspending, revoking, or modifying an individual's certification.* EPA may suspend, revoke, or modify an individual's certification if the individual fails to comply with Federal lead-based paint statutes or regulations. EPA may also suspend, revoke, or modify a certified renovator's certification if the renovator fails to ensure that all assigned renovations comply with § 745.85. In

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addition to an administrative or judicial finding of violation, execution of a consent agreement in settlement of an enforcement action constitutes, for purposes of this section, evidence of a failure to comply with relevant statutes or regulations.

- (2) *Grounds for suspending, revoking, or modifying a firm's certification.* EPA may suspend, revoke, or modify a firm's certification if the firm:
 - (i) Submits false or misleading information to EPA in its application for certification or re-certification.
 - (ii) Fails to maintain or falsifies records required in § 745.86.
 - (iii) Fails to comply, or an individual performing a renovation on behalf of the firm fails to comply, with Federal lead-based paint statutes or regulations. In addition to an administrative or judicial finding of violation, execution of a consent agreement in settlement of an enforcement action constitutes, for purposes of this section, evidence of a failure to comply with relevant statutes or regulations.
- (b) *Process for suspending, revoking, or modifying certification.*
 - (1) Prior to taking action to suspend, revoke, or modify an individual's or firm's certification, EPA will notify the affected entity in writing of the following:
 - (i) The legal and factual basis for the proposed suspension, revocation, or modification.
 - (ii) The anticipated commencement date and duration of the suspension, revocation, or modification.
 - (iii) Actions, if any, which the affected entity may take to avoid suspension, revocation, or modification, or to receive certification in the future.
 - (iv) The opportunity and method for requesting a hearing prior to final suspension, revocation, or modification.
 - (2) If an individual or firm requests a hearing, EPA will:
 - (i) Provide the affected entity an opportunity to offer written statements in response to EPA's assertions of the legal and factual basis for its proposed action.
 - (ii) Appoint an impartial official of EPA as Presiding Officer to conduct the hearing.
 - (3) The Presiding Officer will:
 - (i) Conduct a fair, orderly, and impartial hearing within 90 days of the request for a hearing.
 - (ii) Consider all relevant evidence, explanation, comment, and argument submitted.
 - (iii) Notify the affected entity in writing within 90 days of completion of the hearing of his or her decision and order. Such an order is a final agency action which may be subject to judicial review. The order must contain the commencement date and duration of the suspension, revocation, or modification.
 - (4) If EPA determines that the public health, interest, or welfare warrants immediate action to suspend the certification of any individual or firm prior to the opportunity for a hearing, it will:
 - (i) Notify the affected entity in accordance with paragraph (b)(1)(i) through (b)(1)(iii) of this section, explaining why it is necessary to suspend the entity's certification before an opportunity for a hearing.
 - (ii) Notify the affected entity of its right to request a hearing on the immediate suspension within 15 days of the suspension taking place and the procedures for the conduct of such a hearing.
 - (5) Any notice, decision, or order issued by EPA under this section, any transcript or other verbatim record of oral testimony, and any documents filed by a certified individual or firm in a hearing under this section will be available to the public, except as otherwise provided by section 14 of TSCA or by part 2 of this title. Any such hearing at which oral testimony is presented will be open to the public, except that the Presiding Officer may exclude the public to the extent necessary to allow presentation of information which may be entitled to confidential treatment under section 14 of TSCA or part 2 of this title.
 - (6) EPA will maintain a publicly available list of entities whose certification has been suspended, revoked, modified, or reinstated.

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- (7) Unless the decision and order issued under paragraph (b)(3)(iii) of this section specify otherwise:
- (i) An individual whose certification has been suspended must take a refresher training course (renovator or dust sampling technician) in order to make his or her certification current.
 - (ii) An individual whose certification has been revoked must take an initial renovator or dust sampling technician course in order to become certified again.
 - (iii) A firm whose certification has been revoked must reapply for certification after the revocation ends in order to become certified again. If the firm's certification has been suspended and the suspension ends less than 5 years after the firm was initially certified or re-certified, the firm does not need to do anything to re-activate its certification.

§ 745.92 Fees for the accreditation of renovation and dust sampling technician training and the certification of renovation firms.

- (a) *Persons who must pay fees.* Fees in accordance with paragraph (b) of this section must be paid by:
- (1) *Training programs—*
 - (i) *Nonexempt training programs.* All nonexempt training programs applying to EPA for the accreditation and reaccreditation of training programs in one or more of the following disciplines: Renovator, dust sampling technician.
 - (ii) *Exemption.* No fee shall be imposed on any training program operated by a State, federally recognized Indian Tribe, local government, or nonprofit organization. This exemption does not apply to the certification of firms or individuals.
 - (2) *Firms.* All firms applying to EPA for certification and re-certification to conduct renovations.
- (b) *Fee amounts—*
- (1) *Certification and accreditation fees.* Initial and renewal certification and accreditation fees are specified in the following table:

Training Program	Accreditation	Re-accreditation (every 4 years, see 40 CFR 745.225(f)(1) for details)
Initial Renovator or Dust Sampling Technician Course	\$560	\$340
Refresher Renovator or Dust Sampling Technician Course	\$400	\$310
Renovation Firm	Certification	Re-certification (every 5 years see 40 CFR 745.89(b))
Firm	\$300	\$300
Combined Renovation and Lead-based Paint Activities Firm Application	\$550	\$550
Combined Renovation and Lead-based Paint Activities Tribal Firm Application	\$20	\$20
Tribal Firm	\$20	\$20

- (2) *Lost certificate.* A \$15 fee will be charged for the replacement of a firm certificate.
 - (3) *Amendment.* [There is no fee for amendments to an application. \[TGN30\]](#)
- (c) *Certificate replacement.* Firms seeking certificate replacement must:
- (1) Complete the applicable portions of the “Application for Firms” in accordance with the instructions provided.
 - (2) Submit the application and a payment of \$15 in accordance with the instructions provided with the application package.
- (d) *Failure to remit fees.*

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- (1) EPA will not provide certification, recertification, accreditation, or reaccreditation for any firm or training program that does not remit fees described in paragraph (b) of this section in accordance with the procedures specified in 40 CFR 745.89.
- (2) EPA will not replace a certificate for any firm that does not remit the \$15 fee in accordance with the procedures specified in paragraph (c) of this section.

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PART 745—LEAD-BASED PAINT POISONING PREVENTION IN CERTAIN RESIDENTIAL STRUCTURES

Subpart L Lead-Based Paint Activities

§ 745.220 Scope and applicability.

- (a) This subpart contains procedures and requirements for the accreditation of training programs for lead-based paint activities and renovations, procedures and requirements for the certification of individuals and firms engaged in lead-based paint activities, and work practice standards for performing such activities. This subpart also requires that, except as discussed below, all lead-based paint activities, as defined in this subpart, be performed by certified individuals and firms.
- (b) This subpart applies to all individuals and firms who are engaged in lead-based paint activities as defined in §745.223, except persons who perform these activities within residential dwellings that they own, unless the residential dwelling is occupied by a person or persons other than the owner or the owner's immediate family while these activities are being performed, or a child residing in the building has been identified as having an elevated blood lead level. This subpart applies only in those States or Indian Country that do not have an authorized State or Tribal program pursuant to §745.324 of subpart Q.
- (c) Each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government having jurisdiction over any property or facility, or engaged in any activity resulting, or which may result, in a lead-based paint hazard, and each officer, agent, or employee thereof shall be subject to, and comply with, all Federal, State, interstate, and local requirements, both substantive and procedural, including the requirements of this subpart regarding lead-based paint, lead-based paint activities, and lead-based paint hazards.
- (d) While this subpart establishes specific requirements for performing lead-based paint activities should they be undertaken, nothing in this subpart requires that the owner or occupant undertake any particular lead-based paint activity.

§ 745.223 Definitions.

The definitions in subpart A apply to this subpart. In addition, the following definitions apply.

- *Abatement* means any measure or set of measures designed to permanently eliminate lead-based paint hazards. Abatement includes, but is not limited to:
 - (1) The removal of paint and dust, the permanent enclosure or encapsulation of lead-based paint, the replacement of painted surfaces or fixtures, or the removal or permanent covering of soil, when lead-based paint hazards are present in such paint, dust or soil; and
 - (2) All preparation, cleanup, disposal, and post-abatement clearance testing activities associated with such measures.
 - (3) Specifically, abatement includes, but is not limited to:
 - (i) Projects for which there is a written contract or other documentation, which provides that an individual or firm will be conducting activities in or to a residential dwelling or child-occupied facility that:
 - (A) Shall result in the permanent elimination of lead-based paint hazards; or
 - (B) Are designed to permanently eliminate lead-based paint hazards and are described in paragraphs (1) and (2) of this definition.
 - (ii) Projects resulting in the permanent elimination of lead-based paint hazards, conducted by firms or individuals certified in accordance with §745.226, unless such projects are covered by paragraph (4) of this definition;

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(iii) Projects resulting in the permanent elimination of lead-based paint hazards, conducted by firms or individuals who, through their company name or promotional literature, represent, advertise, or hold themselves out to be in the business of performing lead-based paint activities as identified and defined by this section, unless such projects are covered by paragraph (4) of this definition;
or

(iv) Projects resulting in the permanent elimination of lead-based paint hazards, that are conducted in response to State or local abatement orders.

(4) Abatement does not include renovation, remodeling, landscaping or other activities, when such activities are not designed to permanently eliminate lead-based paint hazards, but, instead, are designed to repair, restore, or remodel a given structure or dwelling, even though these activities may incidentally result in a reduction or elimination of lead-based paint hazards. Furthermore, abatement does not include interim controls, operations and maintenance activities, or other measures and activities designed to temporarily, but not permanently, reduce lead-based paint hazards.

- *Accredited training program* means a training program that has been accredited by EPA pursuant to §745.225 to provide training for individuals engaged in lead-based paint activities.
- *Adequate quality control* means a plan or design which ensures the authenticity, integrity, and accuracy of samples, including dust, soil, and paint chip or paint film samples. Adequate quality control also includes provisions for representative sampling.
- *Business day* means Monday through Friday with the exception of Federal holidays.
- *Certified firm* means a company, partnership, corporation, sole proprietorship, association, or other business entity that performs lead-based paint activities to which EPA has issued a certificate of approval pursuant to §745.226(f).
- *Certified inspector* means an individual who has been trained by an accredited training program, as defined by this section, and certified by EPA pursuant to §745.226 to conduct inspections. A certified inspector also samples for the presence of lead in dust and soil for the purposes of abatement clearance testing.
- *Certified abatement worker* means an individual who has been trained by an accredited training program, as defined by this section, and certified by EPA pursuant to §745.226 to perform abatements.
- *Certified project designer* means an individual who has been trained by an accredited training program, as defined by this section, and certified by EPA pursuant to §745.226 to prepare abatement project designs, occupant protection plans, and abatement reports.
- *Certified risk assessor* means an individual who has been trained by an accredited training program, as defined by this section, and certified by EPA pursuant to §745.226 to conduct risk assessments. A risk assessor also samples for the presence of lead in dust and soil for the purposes of abatement clearance testing.
- *Certified supervisor* means an individual who has been trained by an accredited training program, as defined by this section, and certified by EPA pursuant to §745.226 to supervise and conduct abatements, and to prepare occupant protection plans and abatement reports.
- *Child-occupied facility* means a building, or portion of a building, constructed prior to 1978, visited regularly by the same child, 6 years of age or under, 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 visit lasts at least 6 hours, and the combined annual visits last at least 60 hours. Child-occupied facilities may include, but are not limited to, day-care centers, preschools and kindergarten classrooms.
- *Clearance levels* are values that indicate the maximum amount of lead permitted in dust on a surface following completion of an abatement activity.
- *Common area* means a portion of a building that is generally accessible to all occupants. Such an area may include, but is not limited to, hallways, stairways, laundry and recreational rooms, playgrounds, community centers, garages, and boundary fences.

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- *Component or building component* means specific design or structural elements or fixtures of a building, residential dwelling, or child-occupied facility that are distinguished from each other by form, function, and location. These include, but are not limited to, interior components such as: ceilings, crown molding, walls, chair rails, doors, door trim, floors, fireplaces, radiators and other heating units, shelves, shelf supports, stair treads, stair risers, stair stringers, newel posts, railing caps, balustrades, windows and trim (including sashes, window heads, jambs, sills or stools and troughs), built in cabinets, columns, beams, bathroom vanities, counter tops, and air conditioners; and exterior components such as: painted roofing, chimneys, flashing, gutters and downspouts, ceilings, soffits, fascias, rake boards, cornerboards, bulkheads, doors and door trim, fences, floors, joists, lattice work, railings and railing caps, siding, handrails, stair risers and treads, stair stringers, columns, balustrades, window sills or stools and troughs, casings, sashes and wells, and air conditioners.
- *Containment* means a process to protect workers and the environment by controlling exposures to the lead-contaminated dust and debris created during an abatement.
- *Course agenda* means an outline of the key topics to be covered during a training course, including the time allotted to teach each topic.
- *Course test* means an evaluation of the overall effectiveness of the training which shall test the trainees' knowledge and retention of the topics covered during the course.
- *Course test blue print* means written documentation identifying the proportion of course test questions devoted to each major topic in the course curriculum.
- *Deteriorated paint* means [any interior or exterior paint or other coating that is peeling, chipping, chalking, or cracking, or any paint or coating located on an interior or exterior surface or fixture that is otherwise damaged or separated from the substrate. ~~paint that is cracking, flaking, chipping, peeling, or otherwise separating from the substrate of a building component.~~](#) [TGN311](#)
- *Discipline* means one of the specific types or categories of lead-based paint activities identified in this subpart for which individuals may receive training from accredited programs and become certified by EPA. For example, "abatement worker" is a discipline.
- *Distinct painting history* means the application history, as indicated by its visual appearance or a record of application, over time, of paint or other surface coatings to a component or room.
- *Documented methodologies* are methods or protocols used to sample for the presence of lead in paint, dust, and soil.
- *Elevated blood lead level (EBL)* means an excessive absorption of lead that is a confirmed concentration of lead in whole blood of 20 µg/dl (micrograms of lead per deciliter of whole blood) for a single venous test or of 15–19 µg/dl in two consecutive tests taken 3 to 4 months apart.
- *Encapsulant* means a substance that forms a barrier between lead-based paint and the environment using a liquid-applied coating (with or without reinforcement materials) or an adhesively bonded covering material.
- *Encapsulation* means the application of an encapsulant.
- *Enclosure* means the use of rigid, durable construction materials that are mechanically fastened to the substrate in order to act as a barrier between lead-based paint and the environment.
- *Guest instructor* means an individual designated by the training program manager or principal instructor to provide instruction specific to the lecture, hands-on activities, or work practice components of a course.
- *Hands-on skills assessment* means an evaluation which tests the trainees' ability to satisfactorily perform the work practices and procedures identified in §745.225(d), as well as any other skill taught in a training course.
- *Hazardous waste* means any waste as defined in 40 CFR 261.3.
- *Inspection* means a surface-by-surface investigation to determine the presence of lead-based paint and the provision of a report explaining the results of the investigation.

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- *Interim certification* means the status of an individual who has successfully completed the appropriate training course in a discipline from an accredited training program, as defined by this section, but has not yet received formal certification in that discipline from EPA pursuant to §745.226. Interim certifications expire 6 months after the completion of the training course, and is equivalent to a certificate for the 6-month period.
- *Interim controls* means a set of measures designed to temporarily reduce human exposure or likely exposure to lead-based paint hazards, including specialized cleaning, repairs, maintenance, painting, temporary containment, ongoing monitoring of lead-based paint hazards or potential hazards, and the establishment and operation of management and resident education programs.
- *Lead-based paint* means paint or other surface coatings that contain lead equal to or in excess of 1.0 milligrams per square centimeter or more than 0.5 percent by weight.
- *Lead-based paint activities* means, in the case of target housing and child-occupied facilities, inspection, risk assessment, and abatement, as defined in this subpart.
- *Lead-based paint activities courses* means initial and refresher training courses (worker, supervisor, inspector, risk assessor, project designer) provided by accredited training programs.
- *Lead-based paint hazard* means any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, or lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects as identified by the Administrator pursuant to TSCA section 403.
- *Lead-hazard screen* is a limited risk assessment activity that involves limited paint and dust sampling as described in §745.227(c).
- *Living area* means any area of a residential dwelling used by one or more children age 6 and under, including, but not limited to, living rooms, kitchen areas, dens, play rooms, and children's bedrooms.
- *Local government* means a county, city, town, borough, parish, district, association, or other public body (including an agency comprised of two or more of the foregoing entities) created under State law.
- *Multi-family dwelling* means a structure that contains more than one separate residential dwelling unit, which is used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of one or more persons.
- *Nonprofit* means an entity which has demonstrated to any branch of the Federal Government or to a State, municipal, tribal or territorial government, that no part of its net earnings inure to the benefit of any private shareholder or individual.
- *Paint in poor condition* means more than 10 square feet of deteriorated paint on exterior components with large surface areas; or more than 2 square feet of deteriorated paint on interior components with large surface areas (e.g., walls, ceilings, floors, doors); or more than 10 percent of the total surface area of the component is deteriorated on interior or exterior components with small surface areas (window sills, baseboards, soffits, trim).
- *Permanently covered soil* means soil which has been separated from human contact by the placement of a barrier consisting of solid, relatively impermeable materials, such as pavement or concrete. Grass, mulch, and other landscaping materials are not considered permanent covering.
- *Person* means any natural or judicial person including any individual, corporation, partnership, or association; any Indian Tribe, State, or political subdivision thereof; any interstate body; and any department, agency, or instrumentality of the Federal government.
- *Principal instructor* means the individual who has the primary responsibility for organizing and teaching a particular course and is physically present to conduct the course.^[TGN32]
- *Recognized laboratory* means an environmental laboratory recognized by EPA pursuant to TSCA section 405(b) as being capable of performing an analysis for lead compounds in paint, soil, and dust.
- *Reduction* means measures designed to reduce or eliminate human exposure to lead-based paint hazards through methods including interim controls and abatement.

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- *Residential dwelling* means (1) a detached single family dwelling unit, including attached structures such as porches and stoops; or (2) a single family dwelling unit in a structure that contains more than one separate residential dwelling unit, which is used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of one or more persons.
- *Risk assessment* means (1) an on-site investigation to determine the existence, nature, severity, and location of lead-based paint hazards, and (2) the provision of a report by the individual or the firm conducting the risk assessment, explaining the results of the investigation and options for reducing lead-based paint hazards.
- *Start date* means the first day of any lead-based paint activities training course or lead-based paint abatement activity.
- *Start date provided to EPA* means the start date included in the original notification or the most recent start date provided to EPA in an updated notification.
- *State* means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Canal Zone, American Samoa, the Northern Mariana Islands, or any other territory or possession of the United States.
- *Target housing* means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any one or more children age 6 years or under resides or is expected to reside in such housing for the elderly or persons with disabilities) or any 0-bedroom dwelling.
- *Training curriculum* means an established set of course topics for instruction in an accredited training program for a particular discipline designed to provide specialized knowledge and skills.
- *Training hour* means at least 50 minutes of actual learning, including, but not limited to, time devoted to lecture, learning activities, small group activities, demonstrations, evaluations, and/or hands-on experience.
- *Training manager* means the individual responsible for administering a training program and monitoring the performance of principal instructors and guest instructors.
- *Training provider* means any organization or entity accredited under §745.225 to offer lead-based paint activities courses.
- *Visual inspection for clearance testing* means the visual examination of a residential dwelling or a child-occupied facility following an abatement to determine whether or not the abatement has been successfully completed.
- *Visual inspection for risk assessment* means the visual examination of a residential dwelling or a child-occupied facility to determine the existence of deteriorated lead-based paint or other potential sources of lead-based paint hazards.

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

(a) *Scope.*

- (1) A training program may seek accreditation to offer courses in any of the following disciplines: Inspector, risk assessor, supervisor, project designer, abatement worker, renovator, and dust sampling technician. A training program may also seek accreditation to offer refresher courses for each of the above listed disciplines.
- (2) Training programs may first apply to EPA for accreditation of their lead-based paint activities courses or refresher courses pursuant to this section on or after August 31, 1998. Training programs may first apply to EPA for accreditation of their renovator or dust sampling technician courses or refresher courses pursuant to this section on or after April 22, 2009.
- (3) A training program must not provide, offer, or claim to provide EPA-accredited lead-based paint activities courses without applying for and receiving accreditation from EPA as required under paragraph (b) of this section on or after March 1, 1999. A training program must not provide, offer, or claim to provide EPA-accredited renovator or dust sampling technician courses without applying for

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and receiving accreditation from EPA as required under paragraph (b) of this section on or after June 6, 2008.

- (b) *Application process.* The following are procedures a training program must follow to receive EPA accreditation to offer lead-based paint activities courses, renovator courses, or dust sampling technician courses:
- (1) A training program seeking accreditation shall submit a written application to EPA containing the following information:
 - (i) The training program's name, address, and telephone number.
 - (ii) A list of courses for which it is applying for accreditation. For the purposes of this section, courses taught in different languages are considered different courses, and each must independently meet the accreditation requirements.
 - (iii) A statement signed by the training program manager certifying that the training program meets the requirements established in paragraph (c) of this section. If a training program uses EPA-recommended model training materials, or training materials approved by a State or Indian Tribe that has been authorized by EPA under subpart Q of this part, the training program manager shall include a statement certifying that, as well.
 - (iv) If a training program does not use EPA-recommended model training materials or training materials approved by an authorized State or Indian Tribe, its application for accreditation shall also include:
 - (A) A copy of the student and instructor manuals, or other materials to be used for each course.
 - (B) A copy of the course agenda for each course.
 - (C) When applying for accreditation of a course in a language other than English, a signed statement from a qualified, independent translator that they had compared the course to the English language version and found the translation to be accurate.
 - (v) All training programs shall include in their application for accreditation the following:
 - (A) A description of the facilities and equipment to be used for lecture and hands-on training.
 - (B) A copy of the course test blueprint for each course.
 - (C) A description of the activities and procedures that will be used for conducting the assessment of hands-on skills for each course.
 - (D) A copy of the quality control plan as described in paragraph (c)(9) of this section.
 - (2) If a training program meets the requirements in paragraph (c) of this section, then EPA shall approve the application for accreditation no more than ~~60-180~~ days after receiving a complete application from the training program. [TGN33][TGN34] In the case of approval, a certificate of accreditation shall be sent to the applicant. In the case of disapproval, a letter describing the reasons for disapproval shall be sent to the applicant. Prior to disapproval, EPA may, at its discretion, work with the applicant to address inadequacies in the application for accreditation. EPA may also request additional materials retained by the training program under paragraph (i) of this section. If a training program's application is disapproved, the program may reapply for accreditation at any time. [EPA has 30 days to approve or reject an amendment from an accredited training provider.](#) [TGN35]
 - (3) A training program may apply for accreditation to offer courses or refresher courses in as many disciplines as it chooses. A training program may seek accreditation for additional courses at any time as long as the program can demonstrate that it meets the requirements of this section.
 - (4) A training program applying for accreditation must submit the appropriate fees in accordance with §745.238.
- (c) Requirements for the accreditation of training programs. For a training program to obtain accreditation from EPA to offer lead-based paint activities courses, renovator courses, or dust sampling technician courses, the program must meet the following requirements:
- (1) The training program shall employ a training manager who has:
 - (i) At least 2 years of experience, education, or training in teaching workers or adults; or

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- (ii) ~~(ii)~~ A bachelor's ~~or graduate~~ degree in building construction technology, engineering, industrial hygiene, safety, public health, education, business administration or program management or a related field; or
- (iii) A or graduate degree in any field; or]
- TGN36(iii) Two years of experience in managing a training program specializing in environmental hazards; and
- (iv) Demonstrated experience, education, or training in the construction industry including: lead or asbestos abatement, painting, carpentry, renovation, remodeling, occupational safety and health, or industrial hygiene.
- (2) The training manager shall designate a qualified principal instructor for each course who has:
- (i) Demonstrated experience, education, or training in teaching workers or adults; and
- (ii) Successfully completed an at least 16 hours of any EPA-accredited or EPA-authorized State or Tribal-accredited lead-specific delivery of the course training; and TGN37
- (iii) Demonstrated experience, education, or training in lead or asbestos abatement, painting, carpentry, renovation, remodeling, occupational safety and health, or industrial hygiene.
- (3) The principal instructor shall be responsible for the organization of the course and oversight of the teaching of all course material. The training manager may designate guest instructors as needed to provide instruction specific to the lecture, hands-on activities, or work practice components of a course.
- (4) The following documents shall be recognized by EPA as evidence that training managers and principal instructors have the education, work experience, training requirements or demonstrated experience, specifically listed in paragraphs (c)(1) and (c)(2) of this section. This documentation need not be submitted with the accreditation application, but, if not submitted, shall be retained by the training program as required by the recordkeeping requirements contained in paragraph (i) of this section. Those documents include the following:
- (i) Official academic transcripts or diploma as evidence of meeting the education requirements.
- (ii) Resumes, letters of reference, or documentation of work experience, as evidence of meeting the work experience requirements.
- (iii) Certificates from train-the-trainer courses and lead-specific training courses, as evidence of meeting the training requirements.
- (5) The training program shall ensure the availability of, and provide adequate facilities for, the delivery of the lecture, course test, hands-on training, and assessment activities. This includes providing training equipment that reflects current work practices and maintaining or updating the equipment and facilities as needed.
- (6) To become accredited in the following disciplines, the training program shall provide training courses that meet the following training hour requirements. The lecture portion of the training program may be delivered in an on-line synchronous or asynchronous format TGN38:
- (i) The inspector course shall last a minimum of 24 training hours, with a minimum of 8 hours devoted to hands-on training activities. The minimum curriculum requirements for the inspector course are contained in paragraph (d)(1) of this section.
- (ii) The risk assessor course shall last a minimum of 16 training hours, with a minimum of 4 hours devoted to hands-on training activities. The minimum curriculum requirements for the risk assessor course are contained in paragraph (d)(2) of this section.
- (iii) The supervisor course shall last a minimum of 32 training hours, with a minimum of 8 hours devoted to hands-on activities. The minimum curriculum requirements for the supervisor course are contained in paragraph (d)(3) of this section.
- (iv) The project designer course shall last a minimum of 8 training hours. The minimum curriculum requirements for the project designer course are contained in paragraph (d)(4) of this section.

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- (v) The abatement worker course shall last a minimum of 16 training hours, with a minimum of 8 hours devoted to hands-on training activities. The minimum curriculum requirements for the abatement worker course are contained in paragraph (d)(5) of this section.
 - (vi) The renovator course must last a minimum of 8 training hours, with a minimum of 2 hours devoted to hands-on training activities. The minimum curriculum requirements for the renovator course are contained in paragraph (d)(6) of this section. Hands-on training activities must cover renovation methods that minimize the creation of dust and lead-based paint hazards, interior and exterior containment and cleanup methods, and post-renovation cleaning verification.
 - (vii) The dust sampling technician course must last a minimum of 8 training hours, with a minimum of 2 hours devoted to hands-on training activities. The minimum curriculum requirements for the dust sampling technician course are contained in paragraph (d)(7) of this section. Hands-on training activities must cover dust sampling methodologies.
- (7) For each course offered, the training program shall conduct either a course test at the completion of the course, and if applicable, a hands-on skills assessment, or in the alternative, a proficiency test for that discipline. Each individual must successfully complete the hands-on skills assessment and receive a passing score on the course test to pass any course, or successfully complete a proficiency test.
- (i) The training manager is responsible for maintaining the validity and integrity of the hands-on skills assessment or proficiency test to ensure that it accurately evaluates the trainees' performance of the work practices and procedures associated with the course topics contained in paragraph (d) of this section.
 - (ii) The training manager is responsible for maintaining the validity and integrity of the course test to ensure that it accurately evaluates the trainees' knowledge and retention of the course topics.
 - (iii) The course test shall be developed in accordance with the test blueprint submitted with the training accreditation application.
- (8) The training program shall issue unique course completion certificates to each individual who passes the training course. The course completion certificate shall include:
- (i) The name, a unique identification number, and address of the individual.
 - (ii) The name of the particular course that the individual completed.
 - (iii) Dates of course completion/test passage.
 - (iv) Expiration date of interim certification for initial inspector, risk assessor, project designer, supervisor, or abatement worker courses, which shall be 6 months from the date of course completion.^[TGN39]
 - (v) The name, address, and telephone number of the training program.
 - (iv) For initial inspector, risk assessor, project designer, supervisor, or abatement worker course completion certificates, the expiration date of interim certification, which is 6 months from the date of course completion.
 - (v) For renovator and dust sampling technician course completion certificates, a photograph of the individual.
 - (vi) The language in which the course was taught.
- (9) The training manager shall develop and implement a quality control plan. The plan shall be used to maintain and improve the quality of the training program over time. This plan shall contain at least the following elements:
- (i) Procedures for periodic revision of training materials and the course test to reflect innovations in the field.
 - (ii) Procedures for the training manager's annual review of principal instructor competency.
- (10) Courses offered by the training program must teach the work practice standards contained in § 745.85 or § 745.227, as applicable, in such a manner that trainees are provided with the knowledge

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needed to perform the renovations or lead-based paint activities they will be responsible for conducting.

- (11) The training manager shall be responsible for ensuring that the training program complies at all times with all of the requirements in this section.
- (12) The training manager shall allow EPA to audit the training program to verify the contents of the application for accreditation as described in paragraph (b) of this section.
- (13) The training manager must provide notification of lead-based paint activities courses offered.
 - (i) The training manager must provide EPA with notification of all lead-based paint activities courses offered. The original notification must be received by EPA at least 7 business days prior to the start date of any lead-based paint activities course.
 - (ii) The training manager must provide EPA updated notification when lead-based paint activities courses will begin on a date other than the start date specified in the original notification, as follows:
 - (A) For lead-based paint activities courses beginning prior to the start date provided to EPA, an updated notification must be received by EPA at least 7 business days before the new start date.
 - (B) For lead-based paint activities courses beginning after the start date provided to EPA, an updated notification must be received by EPA at least 2 business days before the start date provided to EPA.
 - (iii) The training manager must update EPA of any change in location of lead-based paint activities courses at least 7 business days prior to the start date provided to EPA.
 - (iv) The training manager must update EPA regarding any course cancellations, or any other change to the original notification. Updated notifications must be received by EPA at least 2 business days prior to the start date provided to EPA.
 - (v) Each notification, including updates, must include the following:
 - (A) Notification type (original, update, cancellation).
 - (B) Training program name, EPA accreditation number, address, and telephone number.
 - (C) Course discipline, type (initial/ refresher), and the language in which instruction will be given.
 - (D) Date(s) and time(s) of training.
 - (E) Training location(s) telephone number, and address.
 - (F) Principal instructor's name.
 - (G) Training manager's name and signature.
 - (vi) Notification must be accomplished using any of the following methods: Written notification, or electronically using the Agency's Central Data Exchange (CDX). Written notification of lead-based paint activities course schedules can be accomplished by using either the sample form titled "Lead-Based Paint Activities Training Course Schedule" or a similar form containing the information required in paragraph (c)(13)(v) 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>.
 - (vii) Lead-based paint activities courses must not begin on a date, or at a location other than that specified in the original notification unless an updated notification identifying a new start date or location is submitted, in which case the course must begin on the new start date and/or location specified in the updated notification.
 - (viii) No training program shall provide lead-based paint activities courses without first notifying EPA of such activities in accordance with the requirements of this paragraph.

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- (14) The training manager must provide notification following completion of lead-based paint activities courses.
- (i) The training manager must provide EPA notification after the completion of any lead-based paint activities course. This notice must be received by EPA no later than 10 business days following course completion.
 - (ii) The notification must include the following:
 - (A) Training program name, EPA accreditation number, address, and telephone number.
 - (B) Course discipline and type (initial/refreshers).
 - (C) Date(s) of training.
 - (D) The following information for each student who took the course:
 - (1) Name.
 - (2) Address.
 - (3) Date of birth.
 - (4) Course completion certificate number.
 - (5) Course test score.
 - (6) A digital photograph of the student.
 - (E) Training manager's name and signature.
 - (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 lead-based paint activities training courses can be accomplished by using either the sample form titled "Lead-Based Paint Activities 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>.
- (d) *Minimum training curriculum requirements.* To become accredited to offer lead-based paint courses instruction in the specific disciplines listed below, training programs must ensure that their courses of study include, at a minimum, the following course topics. Requirements ending in an asterisk (*) indicate areas that require hands-on activities as an integral component of the course.
- (1) *Inspector.*
 - (i) Role and responsibilities of an inspector.
 - (ii) Background information on lead and its adverse health effects.
 - (iii) Background information on Federal, State, and local regulations and guidance that pertains to lead-based paint and lead-based paint activities.
 - (iv) Lead-based paint inspection methods, including selection of rooms and components for sampling or testing.*
 - (v) Paint, dust, and soil sampling methodologies.*
 - (vi) Clearance standards and testing, including random sampling.*
 - (vii) Preparation of the final inspection report.*
 - (viii) Recordkeeping.
 - (2) *Risk assessor.*
 - (i) Role and responsibilities of a risk assessor.
 - (ii) Collection of background information to perform a risk assessment.
 - (iii) Sources of environmental lead contamination such as paint, surface dust and soil, water, air, packaging, and food.
 - (iv) Visual inspection for the purposes of identifying potential sources of lead-based paint hazards.*
 - (v) Lead hazard screen protocol.

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- (vi) Sampling for other sources of lead exposure.*
 - (vii) Interpretation of lead-based paint and other lead sampling results, including all applicable State or Federal guidance or regulations pertaining to lead-based paint hazards.*
 - (viii) Development of hazard control options, the role of interim controls, and operations and maintenance activities to reduce lead-based paint hazards.
 - (ix) Preparation of a final risk assessment report.
- (3) *Supervisor.*
- (i) Role and responsibilities of a supervisor.
 - (ii) Background information on lead and its adverse health effects.
 - (iii) Background information on Federal, State, and local regulations and guidance that pertain to lead-based paint abatement.
 - (iv) Liability and insurance issues relating to lead-based paint abatement.
 - (v) Risk assessment and inspection report interpretation.*
 - (vi) Development and implementation of an occupant protection plan and abatement report.
 - (vii) Lead-based paint hazard recognition and control.*
 - (viii) Lead-based paint abatement and lead-based paint hazard reduction methods, including restricted practices.*
 - (ix) Interior dust abatement/cleanup or lead-based paint hazard control and reduction methods.*
 - (x) Soil and exterior dust abatement or lead-based paint hazard control and reduction methods.*
 - (xi) Clearance standards and testing.
 - (xii) Cleanup and waste disposal.
 - (xiii) Recordkeeping.
- (4) *Project designer.*
- (i) Role and responsibilities of a project designer.
 - (ii) Development and implementation of an occupant protection plan for large scale abatement projects.
 - (iii) Lead-based paint abatement and lead-based paint hazard reduction methods, including restricted practices for large-scale abatement projects.
 - (iv) Interior dust abatement/cleanup or lead hazard control and reduction methods for large-scale abatement projects.
 - (v) Clearance standards and testing for large scale abatement projects.
 - (vi) Integration of lead-based paint abatement methods with modernization and rehabilitation projects for large scale abatement projects.
- (5) *Abatement worker.*
- (i) Role and responsibilities of an abatement worker.
 - (ii) Background information on lead and its adverse health effects.
 - (iii) Background information on Federal, State and local regulations and guidance that pertain to lead-based paint abatement.
 - (iv) Lead-based paint hazard recognition and control.*
 - (v) Lead-based paint abatement and lead-based paint hazard reduction methods, including restricted practices.*
 - (vi) Interior dust abatement methods/cleanup or lead-based paint hazard reduction.*
 - (vii) Soil and exterior dust abatement methods or lead-based paint hazard reduction.*
- (6) *Renovator—*
- (i) Role and responsibility of a renovator.
 - (ii) Background information on lead and its adverse health effects.
 - (iii) Background information on EPA, HUD, OSHA, and other Federal, State, and local regulations and guidance that pertains to lead-based paint and renovation activities.
 - (iv) Procedures for using acceptable test kits to determine whether paint is lead-based paint.

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- (v) Renovation methods to minimize the creation of dust and lead-based paint hazards.
 - (vi) Interior and exterior containment and cleanup methods.
 - (vii) Methods to ensure that the renovation has been properly completed, including cleaning verification, and clearance testing.
 - (viii) Waste handling and disposal.
 - (ix) Providing on-the-job training to other workers.
 - (x) Record preparation.
- (7) *Dust sampling technician.*
- (i) Role and responsibility of a dust sampling technician.
 - (ii) Background information on lead and its adverse health effects.
 - (iii) Background information on Federal, State, and local regulations and guidance that pertains to lead-based paint and renovation activities.
 - (iv) Dust sampling methodologies.
 - (v) Clearance standards and testing.
 - (vi) Report preparation.
- (e) *Requirements for the accreditation of refresher training programs.* A training program may seek accreditation to offer refresher training courses in any of the following disciplines: Inspector, risk assessor, supervisor, project designer, abatement worker, renovator, and dust sampling technician. To obtain EPA accreditation to offer refresher training, a training program must meet the following minimum requirements:
- (1) Each refresher course shall review the curriculum topics of the full-length courses listed under paragraph (d) of this section, as appropriate. In addition, to become accredited to offer refresher training courses, training programs shall ensure that their courses of study include, at a minimum, the following:
 - (i) An overview of current safety practices relating to lead-based paint activities in general, as well as specific information pertaining to the appropriate discipline.
 - (ii) Current laws and regulations relating to lead-based paint activities in general, as well as specific information pertaining to the appropriate discipline.
 - (iii) Current technologies relating to lead-based paint activities in general, as well as specific information pertaining to the appropriate discipline.
 - (2) Refresher courses for inspector, risk assessor, supervisor, and abatement worker must last a minimum of 8 training hours. Refresher courses for project designer, renovator, and dust sampling technician must last a minimum of 4 training hours. [The lecture portion of the refresher courses may be delivered in an on-line synchronous or asynchronous format.](#) TGN40
 - (3) For each course offered, the training program shall conduct a hands-on assessment (if applicable), and at the completion of the course, a course test.
 - (4) A training program may apply for accreditation of a refresher course concurrently with its application for accreditation of the corresponding training course as described in paragraph (b) of this section. If so, EPA shall use the approval procedure described in paragraph (b) of this section. In addition, the minimum requirements contained in paragraphs (c) (except for the requirements in paragraph (c)(6)), and (e)(1), (e)(2) and (e)(3) of this section shall also apply.
 - (5) A training program seeking accreditation to offer refresher training courses only shall submit a written application to EPA containing the following information:
 - (i) The refresher training program's name, address, and telephone number.
 - (ii) A list of courses for which it is applying for accreditation.
 - (iii) A statement signed by the training program manager certifying that the refresher training program meets the minimum requirements established in paragraph (c) of this section, except for the requirements in paragraph (c)(6) of this section. If a training program uses EPA-developed model training materials, or training materials approved by a State or Indian Tribe that has been

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authorized by EPA under §745.324 to develop its refresher training course materials, the training manager shall include a statement certifying that, as well.

- (iv) If the refresher training course materials are not based on EPA-developed model training materials or training materials approved by an authorized State or Indian Tribe, the training program's application for accreditation shall include:
 - (A) A copy of the student and instructor manuals to be used for each course.
 - (B) A copy of the course agenda for each course.
- (v) All refresher training programs shall include in their application for accreditation the following:
 - (A) A description of the facilities and equipment to be used for lecture and hands-on training.
 - (B) A copy of the course test blueprint for each course.
 - (C) A description of the activities and procedures that will be used for conducting the assessment of hands-on skills for each course (if applicable).
 - (D) A copy of the quality control plan as described in paragraph (c)(9) of this section.
- (vi) The requirements in paragraphs (c)(1) through (c)(5), and (c)(7) through (c)(14) of this section apply to refresher training providers.
- (vii) If a refresher training program meets the requirements listed in this paragraph, then EPA shall approve the application for accreditation no more than 180 days after receiving a complete application from the refresher training program. In the case of approval, a certificate of accreditation shall be sent to the applicant. In the case of disapproval, a letter describing the reasons for disapproval shall be sent to the applicant. Prior to disapproval, EPA may, at its discretion, work with the applicant to address inadequacies in the application for accreditation. EPA may also request additional materials retained by the refresher training program under paragraph (i) of this section. If a refresher training program's application is disapproved, the program may reapply for accreditation at any time.

(6) A training program may combine the refresher courses for renovator and supervisors that meets the minimum requirements for both courses if it is accredited for both refresher courses. A person who is both a certified abatement supervisor and a certified renovator can meet the refresher requirements for both certifications by completing this one course at one time. [TGN41]

- (f) *Re-accreditation of training programs.*
 - (1) Unless re-accredited, a training program's accreditation (including refresher training accreditation) shall expire 4 years after the date of issuance. If a training program meets the requirements of this section, the training program shall be re-accredited.
 - (2) A training program seeking re-accreditation shall submit an application to EPA no later than 180 days before its accreditation expires. If a training program does not submit its application for re-accreditation by that date, EPA cannot guarantee that the program will be re-accredited before the end of the accreditation period.
 - (3) The training program's application for re-accreditation shall contain:
 - (i) The training program's name, address, and telephone number.
 - (ii) A list of courses for which it is applying for re-accreditation.
 - (iii) A description of any changes to the training facility, equipment or course materials since its last application was approved that adversely affects the students ability to learn.
 - (iv) A statement signed by the program manager stating:
 - (A) That the training program complies at all times with all requirements in paragraphs (c) and (e) of this section, as applicable; and
 - (B) The recordkeeping and reporting requirements of paragraph (i) of this section shall be followed.
 - (v) A payment of appropriate fees in accordance with §745.238.
 - (4) Upon request, the training program shall allow EPA to audit the training program to verify the contents of the application for re-accreditation as described in paragraph (f)(3) of this section.

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(g) *Suspension, revocation, and modification of accredited training programs.*

- (1) EPA may, after notice and an opportunity for hearing, suspend, revoke, or modify training program accreditation (including refresher training accreditation) if a training program, training manager, or other person with supervisory authority over the training program has:
 - (i) Misrepresented the contents of a training course to EPA and/or the student population.
 - (ii) Failed to submit required information or notifications in a timely manner.
 - (iii) Failed to maintain required records.
 - (iv) Falsified accreditation records, instructor qualifications, or other accreditation-related information or documentation.
 - (v) Failed to comply with the training standards and requirements in this section.
 - (vi) Failed to comply with Federal, State, or local lead-based paint statutes or regulations.
 - (vii) Made false or misleading statements to EPA in its application for accreditation or re-accreditation which EPA relied upon in approving the application.
- (2) In addition to an administrative or judicial finding of violation, execution of a consent agreement in settlement of an enforcement action constitutes, for purposes of this section, evidence of a failure to comply with relevant statutes or regulations.

(h) *Procedures for suspension, revocation or modification of training program accreditation.*

- (1) Prior to taking action to suspend, revoke, or modify the accreditation of a training program, EPA shall notify the affected entity in writing of the following:
 - (i) The legal and factual basis for the suspension, revocation, or modification.
 - (ii) The anticipated commencement date and duration of the suspension, revocation, or modification.
 - (iii) Actions, if any, which the affected entity may take to avoid suspension, revocation, or modification, or to receive accreditation in the future.
 - (iv) The opportunity and method for requesting a hearing prior to final EPA action to suspend, revoke or modify accreditation.
 - (v) Any additional information, as appropriate, which EPA may provide.
- (2) If a hearing is requested by the accredited training program, EPA shall:
 - (i) Provide the affected entity an opportunity to offer written statements in response to EPA's assertions of the legal and factual basis for its proposed action, and any other explanations, comments, and arguments it deems relevant to the proposed action.
 - (ii) Provide the affected entity such other procedural opportunities as EPA may deem appropriate to ensure a fair and impartial hearing.
 - (iii) Appoint an official of EPA as Presiding Officer to conduct the hearing. No person shall serve as Presiding Officer if he or she has had any prior connection with the specific matter.
- (3) The Presiding Officer appointed pursuant to paragraph (h)(2) of this section shall:
 - (i) Conduct a fair, orderly, and impartial hearing within 90 days of the request for a hearing.
 - (ii) Consider all relevant evidence, explanation, comment, and argument submitted.
 - (iii) Notify the affected entity in writing within 90 days of completion of the hearing of his or her decision and order. Such an order is a final agency action which may be subject to judicial review.
- (4) If EPA determines that the public health, interest, or welfare warrants immediate action to suspend the accreditation of any training program prior to the opportunity for a hearing, it shall:
 - (i) Notify the affected entity of its intent to immediately suspend training program accreditation for the reasons listed in paragraph (g)(1) of this section. If a suspension, revocation, or modification notice has not previously been issued pursuant to paragraph (g)(1) of this section, it shall be issued at the same time the emergency suspension notice is issued.
 - (ii) Notify the affected entity in writing of the grounds for the immediate suspension and why it is necessary to suspend the entity's accreditation before an opportunity for a suspension, revocation or modification hearing.

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- (iii) Notify the affected entity of the anticipated commencement date and duration of the immediate suspension.
- (iv) Notify the affected entity of its right to request a hearing on the immediate suspension within 15 days of the suspension taking place and the procedures for the conduct of such a hearing.
- (5) Any notice, decision, or order issued by EPA under this section, any transcripts or other verbatim record of oral testimony, and any documents filed by an accredited training program in a hearing under this section shall be available to the public, except as otherwise provided by section 14 of TSCA or by part 2 of this title. Any such hearing at which oral testimony is presented shall be open to the public, except that the Presiding Officer may exclude the public to the extent necessary to allow presentation of information which may be entitled to confidential treatment under section 14 of TSCA or part 2 of this title.
- (6) The public shall be notified of the suspension, revocation, modification or reinstatement of a training program's accreditation through appropriate mechanisms.
- (7) EPA shall maintain a list of parties whose accreditation has been suspended, revoked, modified or reinstated.
- (i) *Training program recordkeeping requirements.*
 - (1) Accredited training programs shall maintain, and make available to EPA, upon request, the following records:
 - (i) All documents specified in paragraph (c)(4) of this section that demonstrate the qualifications listed in paragraphs (c)(1) and (c)(2) of this section of the training manager and principal instructors.
 - (ii) Current curriculum/course materials and documents reflecting any changes made to these materials.
 - (iii) The course test blueprint.
 - (iv) Information regarding how the hands-on assessment is conducted including, but not limited to:
 - (A) Who conducts the assessment.
 - (B) How the skills are graded.
 - (C) What facilities are used.
 - (D) The pass/fail rate.
 - (v) The quality control plan as described in paragraph (c)(9) of this section.
 - (vi) Results of the students' hands-on skills assessments and course tests, and a record of each student's course completion certificate.
 - (vii) Any other material not listed above in paragraphs (i)(1)(i) through (i)(1)(vi) of this section that was submitted to EPA as part of the program's application for accreditation.
 - (2) The training program shall retain these records at the address specified on the training program accreditation application (or as modified in accordance with paragraph (i)(3) of this section for a minimum of 3-5 years and 6 months.^[TGN42]
 - (3) The training program shall notify EPA in writing within 30 days of changing the address specified on its training program accreditation application or transferring the records from that address.

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**PART 745—LEAD-BASED PAINT POISONING PREVENTION
IN CERTAIN RESIDENTIAL STRUCTURES**

**Subpart Q
State and Indian Tribal Programs**

§ 745.320 Scope and purpose.

- (a) This subpart establishes the requirements that State or Tribal programs must meet for authorization by the Administrator to administer and enforce the standards, regulations, or other requirements established under TSCA section 402 and/or section 406 and establishes the procedures EPA will follow in approving, revising, and withdrawing approval of State or Tribal programs.
- (b) For State or Tribal lead-based paint training and certification programs, a State or Indian Tribe may seek authorization to administer and enforce §§745.225, 745.226, and 745.227. The provisions of §§745.220, 745.223, 745.233, 745.235, 745.237, and 745.239 shall be applicable for the purposes of such program authorization.
- (c) A State or Indian Tribe may seek authorization to administer and enforce all of the provisions of subpart E of this part, just the pre-renovation education provisions of subpart E of this part, or just the training, certification, accreditation, and work practice provisions of subpart E of this part. The provisions of §§ 745.324 and 745.326 apply for the purposes of such program authorizations.
- (d) A State or Indian Tribe applying for program authorization may seek either interim approval or final approval of the compliance and enforcement portion of the State or Tribal lead-based paint program pursuant to the procedures at §745.327(a).
- (e) State or Tribal submissions for program authorization shall comply with the procedures set out in this subpart.
- (f) Any State or Tribal program approved by the Administrator under this subpart shall at all times comply with the requirements of this subpart.
- (g) In many cases States will lack authority to regulate activities in Indian Country. This lack of authority does not impair a State's ability to obtain full program authorization in accordance with this subpart. EPA will administer the program in Indian Country if neither the State nor Indian Tribe has been granted program authorization by EPA.

§ 745.323 Definitions.

The definitions in subpart A apply to this subpart. In addition, the definitions in §745.223 and the following definitions apply:

Indian Country means

- (1) all land within the limits of any American Indian reservation under the jurisdiction of the U.S. government, notwithstanding the issuance of any patent, and including rights-of-way running throughout the reservation;
- (2) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or outside the limits of a State; and
- (3) all Indian allotments, the Indian titles which have not been extinguished, including rights-of-way running through the same.

Indian Tribe means any Indian Tribe, band, nation, or community recognized by the Secretary of the Interior and exercising substantial governmental duties and powers.

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§ 745.324. Authorization of State or Tribal programs.

(a) *Application content and procedures.*

- (1) Any State or Indian Tribe that seeks authorization from EPA to administer and enforce the provisions of subpart E or subpart L of this part must submit an application to the Administrator in accordance with this paragraph.
- (2) Before developing an application for authorization, a State or Indian Tribe shall disseminate a public notice of intent to seek such authorization and provide an opportunity for a public hearing.
- (3) A State or Tribal application shall include:
 - (i) A transmittal letter from the State Governor or Tribal Chairperson (or equivalent official) requesting program approval.
 - (ii) A summary of the State or Tribal program. This summary will be used to provide notice to residents of the State or Tribe.
 - (iii) A description of the State or Tribal program in accordance with paragraph (b) of this section.
 - (iv) An Attorney General's or Tribal Counsel's (or equivalent) statement in accordance with paragraph (c) of this section.
 - (v) Copies of all applicable State or Tribal statutes, regulations, standards, and other materials that provide the State or Indian Tribe with the authority to administer and enforce a lead-based paint program.
- (4) After submitting an application, the Agency will publish a Federal Register notice that contains an announcement of the receipt of the State or Tribal application, the summary of the program as provided by the State or Tribe, and a request for public comments to be mailed to the appropriate EPA Regional Office. This comment period shall last for no less than 45 days. EPA will consider these comments during its review of the State or Tribal application.
- (5) Within 60 days of submission of a State or Tribal application, EPA will, if requested, conduct a public hearing in each State or Indian Country seeking program authorization and will consider all comments submitted at that hearing during the review of the State or Tribal application.

(b) *Program description.* A State or Indian Tribe seeking to administer and enforce a program under this subpart must submit a description of the program. The description of the State or Tribal program must include:

- (1)
 - (i) The name of the State or Tribal agency that is or will be responsible for administering and enforcing the program, the name of the official in that agency designated as the point of contact with EPA, and addresses and phone numbers where this official can be contacted.
 - (ii) Where more than one agency is or will be responsible for administering and enforcing the program, the State or Indian Tribe must designate a primary agency to oversee and coordinate administration and enforcement of the program and serve as the primary contact with EPA.
 - (iii) In the event that more than one agency is or will be responsible for administering and enforcing the program, the application must also include a description of the functions to be performed by each agency. The description shall explain and how the program will be coordinated by the primary agency to ensure consistency and effective administration of the lead-based paint training accreditation and certification program within the State or Indian Tribe.
- (2) To demonstrate that the State or Tribal program is at least as protective as the Federal program, fulfilling the criteria in paragraph (e)(2)(i) of this section, the State or Tribal application must include:
 - (i) A description of the program that demonstrates that the program contains all of the elements specified in §745.325, §745.326, or both; and
 - (ii) An analysis of the State or Tribal program that compares the program to the Federal program in subpart E or subpart L of this part, or both. This analysis must demonstrate how the program is, in the State's or Indian Tribe's assessment, at least as protective as the elements in the Federal program at subpart E or subpart L of this part, or both. EPA will use this analysis to evaluate the

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protectiveness of the State or Tribal program in making its determination pursuant to paragraph (e)(2)(i) of this section.

- (3) To demonstrate that the State or Tribal program provides adequate enforcement, fulfilling the criteria in paragraph (e)(2)(ii) of this section, the State or Tribal application must include a description of the State or Tribal lead-based paint compliance and enforcement program that demonstrates that the program contains all of the elements specified at §745.327. This description shall include copies of all policies, certifications, plans, reports, and other materials that demonstrate that the State or Tribal program contains all of the elements specified at §745.327.

(4)

- (i) The program description for an Indian Tribe shall also include a map, legal description, or other information sufficient to identify the geographical extent of the territory over which the Indian Tribe exercises jurisdiction.

- (ii) The program description for an Indian Tribe shall also include a demonstration that the Indian Tribe:

(A) Is recognized by the Secretary of the Interior.

(B) Has an existing government exercising substantial governmental duties and powers.

(C) Has adequate civil regulatory jurisdiction (as shown in the Tribal legal certification in paragraph (c)(2) of this section) over the subject matter and entities regulated.

(D) Is reasonably expected to be capable of administering the Federal program for which it is seeking authorization.

- (iii) If the Administrator has previously determined that an Indian Tribe has met the prerequisites in paragraphs (b)(4)(ii)(A) and (B) of this section for another EPA program, the Indian Tribe need provide only that information unique to the lead-based paint program required by paragraphs (b)(4)(ii)(C) and (D) of this section.

(c) *Attorney General's statement.*

- (1) A State or Indian Tribe must submit a written statement signed by the Attorney General or Tribal Counsel (or equivalent) certifying that the laws and regulations of the State or Indian Tribe provide adequate legal authority to administer and enforce the State or Tribal program. This statement shall include citations to the specific statutes and regulations providing that legal authority.

- (2) The Tribal legal certification (the equivalent to the Attorney General's statement) may also be submitted and signed by an independent attorney retained by the Indian Tribe for representation in matters before EPA or the courts pertaining to the Indian Tribe's program. The certification shall include an assertion that the attorney has the authority to represent the Indian Tribe with respect to the Indian Tribe's authorization application.

- (3) If a State application seeks approval of its program to operate in Indian Country, the required legal certification shall include an analysis of the applicant's authority to implement its provisions in Indian Country. The applicant shall include a map delineating the area over which it seeks to operate the program.

(d) *Program certification.*

- (1) At the time of submitting an application, a State may also certify to the Administrator that the State program meets the requirements contained in paragraphs (e)(2)(i) and (e)(2)(ii) of this section.

- (2) If this certification is contained in a State's application, the program shall be deemed to be authorized by EPA until such time as the Administrator disapproves the program application or withdraws the program authorization. A program shall not be deemed authorized pursuant to this subpart to the extent that jurisdiction is asserted over Indian Country, including non-member fee lands within an Indian reservation.

- (3) If the application does not contain such certification, the State program will be authorized only after the Administrator authorizes the program in accordance with paragraph (e) of this section.

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- (4) This certification shall take the form of a letter from the Governor or the Attorney General to the Administrator. The certification shall reference the program analysis in paragraph (b)(3) of this section as the basis for concluding that the State program is at least as protective as the Federal program, and provides adequate enforcement.
- (e) *EPA approval.*
- (1) EPA will fully review and consider all portions of a State or Tribal application.
 - (2) Within 180 days of receipt of a complete State or Tribal application, the Administrator shall either authorize the program or disapprove the application. The Administrator shall authorize the program, after notice and the opportunity for public comment and a public hearing, only if the Administrator finds that:
 - (i) The State or Tribal program is at least as protective of human health and the environment as the corresponding Federal program under subpart E or subpart L of this part, or both; and
 - (ii) The State or Tribal program provides adequate enforcement.
 - (3) EPA shall notify in writing the State or Indian Tribe of the Administrator's decision to authorize the State or Tribal program or disapprove the State's or Indian Tribe's application.
 - (4) If the State or Indian Tribe applies for authorization of State or Tribal programs under both subpart E and subpart L, EPA may, as appropriate, authorize one program and disapprove the other.
- (f) *EPA administration and enforcement.*
- (1) If a State or Indian Tribe does not have an authorized program to administer and enforce subpart L of this part in effect by August 31, 1998, the Administrator shall, by such date, establish and enforce the provisions of subpart L of this part as the Federal program for that State or Indian Country.
 - (2) If a State or Indian Tribe does not have an authorized program to administer and enforce the pre-renovation education requirements of subpart E of this part by August 31, 1998, the Administrator will, by such date, enforce those provisions of subpart E of this part as the Federal program for that State or Indian Country. If a State or Indian Tribe does not have an authorized program to administer and enforce the training, certification and accreditation requirements and work practice standards of subpart E of this part by April 22, 2009, the administrator will, by such date, enforce those provisions of subpart E of this part as the Federal program for that State or Indian Country.
- (g) *Oversight.* EPA shall periodically evaluate the adequacy of a State's or Indian Tribe's implementation and enforcement of its authorized programs.
- (h) *Reports.* Beginning 12 months after the date of program authorization, the primary agency for each State or Indian Tribe that has an authorized program shall submit a written report to the EPA Regional Administrator for the Region in which the State or Indian Tribe is located. This report shall be submitted at least once every 12 months for the first 3 years after program authorization. If these reports demonstrate successful program implementation, the Agency will automatically extend the reporting interval to every 2 years. If the subsequent reports demonstrate problems with implementation, EPA will require a return to annual reporting until the reports demonstrate successful program implementation, at which time the Agency will extend the reporting interval to every 2 years. The report shall include the following information:
- (1) Any significant changes in the content or administration of the State or Tribal program implemented since the previous reporting period; and
 - (2) All information regarding the lead-based paint enforcement and compliance activities listed at §745.327(d) "Summary on Progress and Performance."
- (i) *Withdrawal of authorization.*
- (1) If EPA concludes that a State or Indian Tribe is not administering and enforcing an authorized program in compliance with the standards, regulations, and other requirements of sections 401 through 412 of TSCA and this subpart, the Administrator shall notify the primary agency for the State or Indian Tribe in writing and indicate EPA's intent to withdraw authorization of the program.
 - (2) The Notice of Intent to Withdraw shall:

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- (i) Identify the program aspects that EPA believes are inadequate and provide a factual basis for such findings.
 - (ii) Include copies of relevant documents.
 - (iii) Provide an opportunity for the State or Indian Tribe to respond either in writing or at a meeting with appropriate EPA officials.
- (3) EPA may request that an informal conference be held between representatives of the State or Indian Tribe and EPA officials.
- (4) Prior to issuance of a withdrawal, a State or Indian Tribe may request that EPA hold a public hearing. At this hearing, EPA, the State or Indian Tribe, and the public may present facts bearing on whether the State's or Indian Tribe's authorization should be withdrawn.
- (5) If EPA finds that deficiencies warranting withdrawal did not exist or were corrected by the State or Indian Tribe, EPA may rescind its Notice of Intent to Withdraw authorization.
- (6) Where EPA finds that deficiencies in the State or Tribal program exist that warrant withdrawal, an agreement to correct the deficiencies shall be jointly prepared by the State or Indian Tribe and EPA. The agreement shall describe the deficiencies found in the program, specify the steps the State or Indian Tribe has taken or will take to remedy the deficiencies, and establish a schedule, no longer than 180 days, for each remedial action to be initiated.
- (7) If the State or Indian Tribe does not respond within 60 days of issuance of the Notice of Intent to Withdraw or an agreement is not reached within 180 days after EPA determines that a State or Indian Tribe is not in compliance with the Federal program, the Agency shall issue an order withdrawing the State's or Indian Tribe's authorization.
- (8) By the date of such order, the Administrator will establish and enforce the provisions of subpart E or subpart L of this part, or both, as the Federal program for that State or Indian Country.

§ 745.325 Lead-based paint activities: State and Tribal program requirements.

- (a) *Program elements.* To receive authorization from EPA, a State or Tribal program must contain at least the following program elements for lead-based paint activities:
- (1) Procedures and requirements for the accreditation of lead-based paint activities training programs.
 - (2) Procedures and requirements for the certification of individuals engaged in lead-based paint activities.
 - (3) Work practice standards for the conduct of lead-based paint activities.
 - (4) Requirements that all lead-based paint activities be conducted by appropriately certified contractors.
 - (5) Development of the appropriate infrastructure or government capacity to effectively carry out a State or Tribal program.
- (b) *Accreditation of training programs.* The State or Indian Tribe must have either:
- (1) Procedures and requirements for the accreditation of training programs that establish:
 - (i) Requirements for the accreditation of training programs, including but not limited to:
 - (A) Training curriculum requirements.
 - (B) Training hour requirements.
 - (C) Hands-on training requirements.
 - (D) Trainee competency and proficiency requirements.
 - (E) Requirements for training program quality control.
 - (ii) Procedures for the re-accreditation of training programs.
 - (iii) Procedures for the oversight of training programs.
 - (iv) Procedures for the suspension, revocation, or modification of training program accreditations; or
 - (2) Procedures or regulations, for the purposes of certification, for the acceptance of training offered by an accredited training provider in a State or Tribe authorized by EPA.
- (c) *Certification of individuals.* The State or Indian Tribe must have requirements for the certification of individuals that:
- (1) Ensure that certified individuals:

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- (i) Are trained by an accredited training program; and
- (ii) Possess appropriate education or experience qualifications for certification.
- (2) Establish procedures for re-certification.
- (3) Require the conduct of lead-based paint activities in accordance with work practice standards established by the State or Indian Tribe.
- (4) Establish procedures for the suspension, revocation, or modification of certifications.
- (5) Establish requirements and procedures for the administration of a third-party certification exam.
- (d) *Work practice standards for the conduct of lead-based paint activities.* The State or Indian Tribe must have requirements or standards that ensure that lead-based paint activities are conducted reliably, effectively, and safely. At a minimum the State's or Indian Tribe's work practice standards for conducting inspections, risk assessments, and abatements must contain the requirements specified in paragraphs (d)(1), (d)(2), and (d)(3) of this section.
 - (1) The work practice standards for the inspection for the presence of lead-based paint must require that:
 - (i) Inspections are conducted only by individuals certified by the appropriate State or Tribal authority to conduct inspections.
 - (ii) Inspections are conducted in a way that identifies the presence of lead-based paint on painted surfaces within the interior or on the exterior of a residential dwelling or child-occupied facility.
 - (iii) Inspections are conducted in a way that uses documented methodologies that incorporate adequate quality control procedures.
 - (iv) A report is developed that clearly documents the results of the inspection.
 - (v) Records are retained by the certified inspector or the firm.
 - (2) The work practice standards for risk assessment must require that:
 - (i) Risk assessments are conducted only by individuals certified by the appropriate State or Tribal authority to conduct risk assessments.
 - (ii) Risk assessments are conducted in a way that identifies and reports the presence of lead-based paint hazards.
 - (iii) Risk assessments consist of, at least:
 - (A) An assessment, including a visual inspection, of the physical characteristics of the residential dwelling or child-occupied facility;
 - (B) Environmental sampling for lead in paint, dust, and soil;
 - (C) Environmental sampling requirements for lead in paint, dust, and soil that allow for comparison to the standards for lead-based paint hazards established or revised by the State or Indian Tribe pursuant to paragraph (e) of this section; and
 - (D) A determination of the presence of lead-based paint hazards made by comparing the results of visual inspection and environmental sampling to the standards for lead-based paint hazards established or revised by the State or Indian Tribe pursuant to paragraph (e) of this section.
 - (iv) The program elements required in paragraph (d)(2)(iii)(C) and (d)(2)(iii)(D) of this section shall be adopted in accordance with the schedule for the demonstration required in paragraph (e) of this section.
 - (v) The risk assessor develops a report that clearly presents the results of the assessment and recommendations for the control or elimination of all identified hazards.
 - (vi) The certified risk assessor or the firm retains the appropriate records.
 - (3) The work practice standards for abatement must require that:
 - (i) Abatements are conducted only by individuals certified by the appropriate State or Tribal authority to conduct or supervise abatements.
 - (ii) Abatements permanently eliminate lead-based paint hazards and are conducted in a way that does not increase the hazards of lead-based paint to the occupants of the dwelling or child-occupied facility.

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- (iii) Abatements include post-abatement lead in dust clearance sampling and conformance with clearance levels established or adopted by the State or Indian Tribe.
 - (iv) The abatement contractor develops a report that describes areas of the residential dwelling or child-occupied facility abated and the techniques employed.
 - (v) The certified abatement contractor or the firm retains appropriate records.
- (e) The State or Indian Tribe must demonstrate that it has standards for identifying lead-based paint hazards and clearance standards for dust, that are at least as protective as the standards in §745.227 as amended on February 5, 2001. A State or Indian Tribe with such a section 402 program approved before February 5, 2003 shall make this demonstration no later than the first report submitted pursuant to §745.324(h) on or after February 5, 2003. A State or Indian Tribe with such a program submitted but not approved before February 5, 2003 may make this demonstration by amending its application or in its first report submitted pursuant to §745.324(h). A State or Indian Tribe submitting its program on or after February 5, 2003 shall make this demonstration in its application.

§ 745.326 Renovation: State and Tribal program requirements.

- (a) *Program elements.* To receive authorization from EPA, a State or Tribal program must contain the following program elements:
- (1) For pre-renovation education programs, procedures and requirements for the distribution of lead hazard information to owners and occupants of target housing and child-occupied facilities before renovations for compensation.
 - (2) For renovation training, certification, accreditation, and work practice standards programs:
 - (i) Procedures and requirements for the accreditation of renovation and dust sampling technician training programs.
 - (ii) Procedures and requirements for the certification of renovators and dust sampling technicians.
 - (iii) Procedures and requirements for the certification of ~~individuals and/or firms.~~^[TGN43]
 - (iv) Requirements that all renovations be conducted by appropriately certified individuals and/or firms.
 - (v) Work practice standards for the conduct of renovations.
 - (3) For all renovation programs, development of the appropriate infrastructure or government capacity to effectively carry out a State or Tribal program.
- (b) *Pre-renovation education.* To be considered at least as protective as the Federal program, the State or Tribal program must:
- (1) Establish clear standards for identifying renovation activities that trigger the information distribution requirements.
 - (2) Establish procedures for distributing the lead hazard information to owners and occupants of housing and child-occupied facilities prior to renovation activities.
 - (3) Require that the information to be distributed include a description of the renovation work to be performed and ^[TGN44] either the pamphlet titled *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools*, developed by EPA under section 406(a) of TSCA, or an alternate pamphlet or package of lead hazard information that has been submitted by the State or Tribe, reviewed by EPA, and approved by EPA for that State or Tribe. Such information must contain renovation-specific information similar to that in *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools*, must meet the content requirements prescribed by section 406(a) of TSCA, and must be in a format that is readable to the diverse audience of housing and child-occupied facility owners and occupants in that State or Tribe.
 - (i) A State or Tribe with a pre-renovation education program approved before June 6, 2008 must demonstrate that it meets the requirements of this section no later than the first report that it submits pursuant to § 745.324(h) on or after April 22, 2009.

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- (ii) A State or Tribe with an application for approval of a pre-renovation education program submitted but not approved before June 6, 2008 must demonstrate that it meets the requirements of this section either by amending its application or in the first report that it submits pursuant to § 745.324(h) of this part on or after April 22, 2009.
- (iii) A State or Indian Tribe submitting its application for approval of a pre-renovation education program on or after June 6, 2008 must demonstrate in its application that it meets the requirements of this section.
- (c) *Accreditation of training programs.* To be considered at least as protective as the Federal program, the State or Tribal program must meet the requirements of either paragraph (c)(1) or (c)(2) of this section:
 - (1) The State or Tribal program must establish accreditation procedures and requirements, including:
 - (i) Procedures and requirements for the accreditation of training programs, including, but not limited to:
 - (A) Training curriculum requirements.
 - (B) Training hour requirements.
 - (C) Hands-on training requirements.
 - (D) Trainee competency and proficiency requirements.
 - (E) Requirements for training program quality control.
 - (ii) Procedures and requirements for the re-accreditation of training programs.
 - (iii) Procedures for the oversight of training programs.
 - (iv) Procedures and standards for the suspension, revocation, or modification of training program accreditations; or
 - (2) The State or Tribal program must establish procedures and requirements for the acceptance of renovation training offered by training providers accredited by EPA or a State or Tribal program authorized by EPA under this [subpart to qualify a renovator for certification by the State or Tribal program.](#)^[TGN45]
- (d) *Certification of renovators.* To be considered at least as protective as the Federal program, the State or Tribal program must:
 - (1) Establish procedures and requirements for individual certification that ensure that certified renovators are trained by an accredited training program.
 - (2) Establish procedures and requirements for re-certification.
 - (3) Establish procedures for the suspension, revocation, or modification of certifications.
- (e) *Work practice standards for renovations.* To be considered at least as protective as the Federal program, the State or Tribal program must establish standards that ensure that renovations are conducted reliably, effectively, and safely. At a minimum, the State or Tribal program must contain the following requirements:
 - (1) Renovations must be conducted only by [certified renovation firms and certified renovators working for certified contractors](#)~~firms~~ [renovators working for certified renovation firms.](#)^[TGN46]
 - (2) Renovations are conducted using lead-safe work practices that are at least as protective ~~to occupants~~ as the requirements in § 745.85.^[TGN47]
 - (3) Certified [renovation firms](#)~~contractors~~ ~~firms~~ must retain appropriate records.^[TGN48]

§ 745.327 State or Indian Tribal lead-based paint compliance and enforcement programs.

- (a) *Approval of compliance and enforcement programs.* A State or Indian Tribe seeking authorization of a lead-based paint program can apply for and receive either interim or final approval of the compliance and enforcement program portion of its lead-based paint program. Indian Tribes are not required to exercise criminal enforcement jurisdiction as a condition for program authorization.
 - (1) *Interim approval.* Interim approval of the compliance and enforcement program portion of the State or Tribal lead-based paint program may be granted by EPA only once, and subject to a specific expiration date.

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- (i) To be considered adequate for purposes of obtaining interim approval for the compliance and enforcement program portion of a State or Tribal lead-based paint program, a State or Indian Tribe must, in its application described at §745.324(a):
 - (A) Demonstrate it has the legal authority and ability to immediately implement the elements in paragraph (b) of this section. This demonstration shall include a statement that the State or Indian Tribe, during the interim approval period, shall carry out a level of compliance monitoring and enforcement necessary to ensure that the State or Indian Tribe addresses any significant risks posed by noncompliance with lead-based paint activity requirements.
 - (B) Present a plan with time frames identified for implementing in the field each element in paragraph (c) of this section. All elements of paragraph (c) of this section must be fully implemented no later than 3 years from the date of EPA's interim approval of the compliance and enforcement program portion of a State or Tribal lead-based paint program. A statement of resources must be included in the State or Tribal plan which identifies what resources the State or Indian Tribe intends to devote to the administration of its lead-based paint compliance and enforcement program.
 - (C) Agree to submit to EPA the Summary on Progress and Performance of lead-based paint compliance and enforcement activities as described at paragraph (d) of this section.
 - (ii) Any interim approval granted by EPA for the compliance and enforcement program portion of a State or Tribal lead-based paint program will expire no later than 3 years from the date of EPA's interim approval. One hundred and eighty days prior to this expiration date, a State or Indian Tribe shall apply to EPA for final approval of the compliance and enforcement program portion of a State or Tribal lead-based paint program. Final approval shall be given to any State or Indian Tribe which has in place all of the elements of paragraphs (b), (c), and (d) of this section. If a State or Indian Tribe does not receive final approval for the compliance and enforcement program portion of a State or Tribal lead-based paint program by the date 3 years after the date of EPA's interim approval, the Administrator shall, by such date, initiate the process to withdraw the State or Indian Tribe's authorization pursuant to §745.324(i).
- (2) *Final approval.* Final approval of the compliance and enforcement program portion of a State or Tribal lead-based paint program can be granted by EPA either through the application process described at §745.324(a), or, for States or Indian Tribes which previously received interim approval as described in paragraph (a)(1) of this section, through a separate application addressing only the compliance and enforcement program portion of a State or Tribal lead-based paint program.
- (i) For the compliance and enforcement program to be considered adequate for final approval through the application described at §745.324(a), a State or Indian Tribe must, in its application:
 - (A) Demonstrate it has the legal authority and ability to immediately implement the elements in paragraphs (b) and (c) of this section.
 - (B) Submit a statement of resources which identifies what resources the State or Indian Tribe intends to devote to the administration of its lead-based paint compliance and enforcement program.
 - (C) Agree to submit to EPA the Summary on Progress and Performance of lead-based paint compliance and enforcement activities as described at paragraph (d) of this section.
 - (ii) For States or Indian Tribes which previously received interim approval as described in paragraph (a)(1) of this section, in order for the State or Tribal compliance and enforcement program to be considered adequate for final approval through a separate application addressing only the compliance and enforcement program portion of a State or Tribal lead-based paint program, a State or Indian Tribe must, in its application:
 - (A) Demonstrate that it has the legal authority and ability to immediately implement the elements in paragraphs (b) and (c) of this section.

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- (B) Submit a statement which identifies the resources the State or Indian Tribe intends to devote to the administration of its lead-based paint compliance and enforcement program.
 - (C) Agree to submit to EPA the Summary on Progress and Performance of lead-based paint compliance and enforcement activities as described at paragraph (d) of this section.
 - (D) To the extent not previously submitted through the application described at §745.324(a), submit copies of all applicable State or Tribal statutes, regulations, standards, and other material that provide the State or Indian Tribe with authority to administer and enforce the lead-based paint compliance and enforcement program, and copies of the policies, certifications, plans, reports, and any other documents that demonstrate that the program meets the requirements established in paragraphs (b) and (c) of this section.
- (b) *Standards, regulations, and authority.* The standards, regulations, and authority described in paragraphs (b)(1) through (b)(4) of this section are part of the required elements for the compliance and enforcement portion of a State or Tribal lead-based paint program.
- (1) *Lead-based paint activities and requirements.* State or Tribal lead-based paint compliance and enforcement programs will be considered adequate if the State or Indian Tribe demonstrates, in its application at §745.324(a), that it has established a lead-based paint program containing the following requirements:
 - (i) Accreditation of training programs as described at §745.325(b).
 - (ii) Certification of individuals engaged in lead-based paint activities as described at §745.325(c).
 - (iii) Standards for the conduct of lead-based paint activities as described at §745.325(d); and, as appropriate,
 - (iv) Requirements that regulate the conduct of renovation activities as described at § 745.326.
 - (2) *Authority to enter.* State or Tribal officials must be able to enter, through consent, warrant, or other authority, premises or facilities where lead-based paint activities violations may occur for purposes of conducting inspections.
 - (i) State or Tribal officials must be able to enter premises or facilities where those engaged in training for lead-based paint activities conduct business.
 - (ii) For the purposes of enforcing a renovation program, State or Tribal officials must be able to enter a firm's place of business or work site.
 - (iii) State or Tribal officials must have authority to take samples and review records as part of the lead-based paint activities inspection process.
 - (3) *Flexible remedies.* A State or Tribal lead-based paint compliance and enforcement program must provide for a diverse and flexible array of enforcement remedies. At a minimum, the remedies that must be reflected in an enforcement response policy must include the following:
 - (i) Warning letters, Notices of Noncompliance, Notices of Violation, or the equivalent;
 - (ii) Administrative or civil actions, including penalty authority (e.g., accreditation or certification suspension, revocation, or modification); and
 - (iii) Authority to apply criminal sanctions or other criminal authority using existing State or Tribal laws, as applicable.
 - (4) *Adequate resources.* An application must include a statement that identifies the resources that will be devoted by the State or Indian Tribe to the administration of the State or Tribal lead-based paint compliance and enforcement program. This statement must address fiscal and personnel resources that will be devoted to the program.
- (c) *Performance elements.* The performance elements described in paragraphs (c)(1) through (c)(7) of this section are part of the required elements for the compliance and enforcement program portion of a State or Tribal lead-based paint program.
- (1) *Training.* A State or Tribal lead-based paint compliance and enforcement program must implement a process for training enforcement and inspection personnel and ensure that enforcement personnel and inspectors are well trained. Enforcement personnel must understand case development procedures and

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the maintenance of proper case files. Inspectors must successfully demonstrate knowledge of the requirements of the particular discipline (e.g., abatement supervisor, and/or abatement worker, and/or lead-based paint inspector, and/or risk assessor, and/or project designer) for which they have compliance monitoring and enforcement responsibilities. Inspectors must also be trained in violation discovery, methods of obtaining consent, evidence gathering, preservation of evidence and chain-of-custody, and sampling procedures. A State or Tribal lead-based paint compliance and enforcement program must also implement a process for the continuing education of enforcement and inspection personnel.

- (2) *Compliance assistance.* A State or Tribal lead-based paint compliance and enforcement program must provide compliance assistance to the public and the regulated community to facilitate awareness and understanding of and compliance with State or Tribal requirements governing the conduct of lead-based paint activities. The type and nature of this assistance can be defined by the State or Indian Tribe to achieve this goal.
 - (3) *Sampling techniques.* A State or Tribal lead-based paint compliance and enforcement program must have the technological capability to ensure compliance with the lead-based paint program requirements. A State or Tribal application for approval of a lead-based paint program must show that the State or Indian Tribe is technologically capable of conducting a lead-based paint compliance and enforcement program. The State or Tribal program must have access to the facilities and equipment necessary to perform sampling and laboratory analysis as needed. This laboratory facility must be a recognized laboratory as defined at §745.223, or the State or Tribal program must implement a quality assurance program that ensures appropriate quality of laboratory personnel and protects the integrity of analytical data.
 - (4) *Tracking tips and complaints.* A State or Tribal lead-based paint compliance and enforcement program must demonstrate the ability to process and react to tips and complaints or other information indicating a violation.
 - (5) *Targeting inspections.* A State or Tribal lead-based paint compliance and enforcement program must demonstrate the ability to target inspections to ensure compliance with the lead-based paint program requirements. Such targeting must include a method for obtaining and using notifications of commencement of abatement activities.
 - (6) *Follow up to inspection reports.* A State or Tribal lead-based paint compliance and enforcement program must demonstrate the ability to reasonably, and in a timely manner, process and follow-up on inspection reports and other information generated through enforcement-related activities associated with a lead-based paint program. The State or Tribal program must be in a position to ensure correction of violations and, as appropriate, effectively develop and issue enforcement remedies/responses to follow up on the identification of violations.
 - (7) *Compliance monitoring and enforcement.* A State or Tribal lead-based paint compliance and enforcement program must demonstrate, in its application for approval, that it is in a position to implement a compliance monitoring and enforcement program. Such a compliance monitoring and enforcement program must ensure correction of violations, and encompass either planned and/or responsive lead-based paint compliance inspections and development/issuance of State or Tribal enforcement responses which are appropriate to the violations.
- (d) *Summary on Progress and Performance.* The Summary on Progress and Performance described below is part of the required elements for the compliance and enforcement program portion of a State or Tribal lead-based paint program. A State or Tribal lead-based paint compliance and enforcement program must submit to the appropriate EPA Regional Administrator a report which summarizes the results of implementing the State or Tribal lead-based paint compliance and enforcement program, including a summary of the scope of the regulated community within the State or Indian Tribe (which would include the number of individuals and firms certified in lead-based paint activities and the number of training programs accredited), the inspections conducted, enforcement actions taken, compliance assistance

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provided, and the level of resources committed by the State or Indian Tribe to these activities. The report shall be submitted according to the requirements at §745.324(h).

- (e) *Memorandum of Agreement.* An Indian Tribe that obtains program approval must establish a Memorandum of Agreement with the Regional Administrator. The Memorandum of Agreement shall be executed by the Indian Tribe's counterpart to the State Director (e.g., the Director of Tribal Environmental Office, Program or Agency). The Memorandum of Agreement must include provisions for the timely and appropriate referral to the Regional Administrator for those criminal enforcement matters where that Indian Tribe does not have the authority (e.g., those addressing criminal violations by non-Indians or violations meriting penalties over \$5,000). The Agreement must also identify any enforcement agreements that may exist between the Indian Tribe and any State.
- (f) *Electronic reporting under State or Indian Tribe programs.* States and tribes that choose to receive electronic documents under the authorized state or Indian tribe lead-based paint program, must ensure that the requirements of 40 CFR part 3—(Electronic reporting) are satisfied in their lead-based paint program.

§ 745.339 Effective date.

States and Indian Tribes may seek authorization to administer and enforce subpart L of this part pursuant to this subpart at any time. States and Indian Tribes may seek authorization to administer and enforce the pre-renovation education provisions of subpart E of this part pursuant to this subpart at any time. States and Indian Tribes may seek authorization to administer and enforce all of subpart E of this part pursuant to this subpart effective June 6, 2008.

Go to <http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr;sid=aab1ce21b09216a9ba7b6e22382d5f9c;rgn=div5;view=text;node=40%3A30.0.1.1.13;idno=40;cc=ecfr> for full version of Part 745.

[TGN1]The information is focused on the likelihood not on the actual presence of lead-based paint hazards.

[TGN2]The rule does not call for the use of the pamphlets only their delivery to the owner and the occupant.

[TGN3]Without defining an integrated whole, this sentence is ambiguous. We are not sure our proposed change makes it unambiguous but it helps.

[TGN4]With 235,000 individuals and 210,000 firms certified, it should not be too tough to find someone who knows what they need to do to comply with the rule. And if they are not involved, then the emergency renovation can create serious problems. We think it makes sense to require training and certification for the renovator and the firm.

[TGN5]Unless EPA defines the term, we doubt that EPA will find it difficult to enforce the requirement. And without clarity, renovators will not pay sufficient attention to it. Our proposed definition is broader than others would want but it reflects what we think is reasonable. If someone advertises renovation services, they should be a certified renovation firm so they can be held accountable. Note that the firm will not be required to have a certified renovator on staff unless they are actually conducting a renovation covered by the rule.

[TGN6]We are addressing two issues with this definition. First, the compensation needs to flow to the renovator. Second, work done only by volunteers should not be covered by the rule.

[TGN7]A definition is essential since the rule eliminates the thresholds for this type of work. By definition, that means it involves disturbances less than 6ft² inside or 20 ft² outside. We think this is what EPA intended.

[TGN8]The entire scope of the rule depends on the meaning of this term. The rule needs to be as clear as possible on the meaning of disturb. We think this captures what EPA intended.

[TGN9]Design is important but the unit must be operated and maintained properly. As written, EPA may not be able to enforce the rule if the filter were plugged or, perhaps, if the filter were removed.

[TGN10]All and none are virtually impossible to achieve even in design almost by definition.

[TGN11]Using a vacuum with no suction or air movement adds little value. With the cleaning verification, they can simply fail twice and move on. The HEPA vacuums in the Dust Study surely had sufficient suction.

[TGN12]The Dust Study used a Euroclean GGD-930 HEPA vacuum. This model is much better than the typical HEPA vacuum sold at retail stores. It is better to refer to an ISO standard. Referencing the standards in this manner sets a realistic standard without mandating compliance with the specific ANSI standard. The ANSI standard should be final in December 2009. A Class 3 device is equivalent to a Minimum Efficiency Rating Value (MERV) 16 filter. A HEPA vacuum is MERV 17. Class 3 is designed for portable vacuums to clean up small, uncontained releases. Class 4 and 5 are more stringent standards.

[TGN13]This term is used in the prohibited and restricted practices section but is not defined. The term could be interpreted in many varied ways and needs to be defined.

[TGN14]Adding demolished makes it clearer.

[TGN15]We anticipate that renovators will begin to conduct paint disturbances in one group. When complete, they may have incidental paint disturbances such as removing staples or making new holes. If the original work was done consistent with the rule, they should get a fresh 6 ft² inside and fresh 20 ft² outside.

[TGN16]Since all demolition is covered by the rule, it should be specifically mentioned here.

[TGN17]This overlaps with the anticipated post-renovation notice.

[TGN18]This captures the post-renovation notice.

[TGN19]Referencing "certain situations" without defining them makes it virtually impossible for EPA to enforce the rule. We think this is what EPA intended and is reasonable to require.

[TGN20]In this subsection, we removed "lead-based" throughout. It does not belong here since paint is presumed to be lead-based paint and paint without the limitation is used elsewhere.

[TGN21]Power sanding may not remove all of the paint. The rule is triggered by disturbing the paint. So should this requirement.

[TGN22]See new definition used. Without a definition, this critical term could have widely different interpretations.

[TGN23]These changes remove the ambiguity in the current rule on this issue.

[TGN24]We think this change removes an ambiguity.

[TGN25]We need to include clearance reports.

[TGN26]EPA uses within instead of less than in other parts of the rule including the next section. Also, “will not be able to conduct” seems to passive. Also, the wording in the existing rule drops the essential limits on claiming to provide.

[TGN27]We need to recognize the state courses that started with the EPA /HUD model course but adopted variations to meet their needs and reflect their rules.

[TGN28]We need to avoid the duplication. A one-day abatement refresher should cover the RRP refresher as well. There is sufficient overlap.

[TGN29]“Work practices” is not defined in the rule. It is important to be clear.

[TGN30]We believe that this is EPA’s practice and that it makes sense.

[TGN31]EPA should revise its definition to be consistent with HUD. Chalking is an important part of the definition that is missing from EPA’s current definition.

[TGN32]This definition is ambiguous. Does the principal instructor need to be physically present at the training site. It appears that they do not.

[TGN33]

[TGN34]Six months is unreasonable. These changes will not go into effect until April 2010 so EPA will have already addressed the batch it initially received.

[TGN35]The rule does not address amendments. We think 30 days is reasonable for an amendment. EPA has the option to get more time to address ambiguities.

[TGN36]This split better captures how EPA is doing it on the form.

[TGN37]The trainer needs to see the delivery of the course the trainer is expected to teach. Since this rule change will go into effect on April 2010, there should be sufficient opportunities to get trained.

[TGN38]We think EPA should be explicit on the on-line training.

[TGN39]The interim certification does not apply to the new courses. This clarifies the requirement.

[TGN40]We think EPA should be explicit in allowing the on-line training option.

[TGN41]This avoids the duplication of courses and the unnecessary burden. There is plenty of time in a one-day refresher to cover both. Most abatement supervisors will also be certified renovators.

[TGN42]If a trainer only keeps the paperwork for three years, it could be gone when EPA needs to verify the refresher for a renovator.

[TGN43]Individuals are covered in the previous item.

[TGN44]This captures the anticipated post-renovation notification.

[TGN45]We think this adds clarity.

[TGN46]Contractors is a term that does not fit the RRP

[TGN47]Current occupants are not the only ones being protected. Occupants is unnecessary.

[TGN48]Contractors is a term that does not fit the RRP