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**40 CFR Part 745**

**Lead; Requirements for Lead-Based Paint  
Activities in Target Housing and Child-  
Occupied Facilities; Final Rule**

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 745**

[OPPTS-62128B; FRL-5389-9]

RIN 2070-AC64

**Lead; Requirements for Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

**SUMMARY:** EPA is finalizing a Federal regulation under section 402 of the Toxic Substance Control Act (TSCA) to ensure that individuals conducting lead-based paint activities in target housing and child-occupied facilities are properly trained and certified, that training programs providing instruction in such activities are accredited and that these activities are conducted according to reliable, effective and safe work practice standards. The Agency is also finalizing a Federal regulation under section 404 of TSCA that will allow States and Indian Tribes to seek authorization to administer and enforce the regulations developed under section 402. The goal of this regulation is to ensure the availability of a trained and qualified workforce to identify and address lead-based paint hazards, and to protect the general public from exposure to lead hazards.

**DATES:** This document is effective August 29, 1996. Specific applicability dates related to this final rule are as follows:

States and Indian Tribes seeking EPA authorization to administer and enforce their own lead-based paint activities programs may apply to the Agency starting October 28, 1996. Following EPA authorization, the requirements of the State or Tribal program will become effective as specified in such program.

For States and Indian Tribes that do not apply to EPA for and receive authorization, EPA will administer and enforce the regulations for lead-based paint activities contained in subpart L. The requirements of Subpart L will begin to apply in non-authorized States and Indian Country no later than August 31, 1998, as specified below.

In States and Indian Country where EPA will administer and enforce subpart L, training programs that seek to provide lead-based paint activities training courses or refresher courses pursuant to § 745.225 may first apply to EPA for accreditation on or after August 31, 1998. Such training programs cannot provide, offer, or claim to provide

training or refresher training for lead-based paint activities as defined in this subpart, without acquiring accreditation from EPA pursuant to § 745.225 on or after March 1, 1999.

In EPA-administered States and Indian Country, no individual or firm can perform, offer, or claim to perform lead-based paint activities as defined in this subpart, without certification from EPA to conduct such activities pursuant to § 745.226 on or after August 30, 1999. Such individuals or firms may first apply to EPA for certification pursuant to section 745.226 after March 1, 1999. In EPA-administered States and Indian Country, after August 30, 1999 all lead-based paint activities, as defined in this subpart, must be performed pursuant to the work practice standards contained in § 745.227.

**ADDRESSEES:** Copies of this rule, the public comments received on this rule, EPA's response to those comments and other relevant documents that support the rule are available for public inspection at EPA's headquarters office on weekdays, except legal holidays, between the hours of noon and 4 p.m. at the following location: Environmental Protection Agency, TSCA Public Docket Office (7407), 401 M St., SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:**

Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: 202-554-1404, TDD: 202-554-0551, e-mail: TSCA-Hotline@epamail.epa.gov.

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## I. Introduction

A. *Legal Authority*

The training, certification and accreditation requirements and work practice standards contained in this rule are being promulgated pursuant to section 402 of TSCA, 15 U.S.C. 2682, as amended on October 28, 1992. The Model State Program and regulations on the authorization of State and Tribal lead programs are being promulgated pursuant to section 404 of TSCA, 15 U.S.C. 2684.

B. *Summary*

Today's final rule is intended to ensure that individuals conducting lead-based paint inspections, risk assessments and abatements in target housing and child-occupied facilities are properly trained and certified, and that training programs providing instruction in such activities are accredited. Target housing is defined as any housing constructed prior to 1978, except housing for the elderly or persons with disabilities, or any 0-bedroom dwelling. A child-occupied facility is defined as a building, or portion of a building, constructed prior to 1978, visited by the same child, 6 years of age or under, on at least 2 different days within any week,

provided that each days visit lasts at least 3 hours, 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.

In addition, the regulations contain a Model State Program (MSP), which States and Indian Tribes are encouraged to reference and use as guidance to develop their own Federally authorized lead-based paint activities programs. The MSP identifies five key elements—training, accreditation, certification, work practice standards and enforcement—which EPA believes are needed to promote and develop a qualified and trained workforce able to conduct lead-based paint activities safely, effectively and reliably. The regulations also contain procedures for States and Indian Tribes to follow when applying to EPA for authorization to administer and enforce a State or Tribal lead-based paint activities programs.

The MSP will allow States and Indian tribes to manage and administer these training, accreditation and certification programs at the State or Tribal level. The Agency believes that programs such as this, which require among other things the certification of individuals, are best administered at the State or Tribal level allowing for individual State or Tribal-specific flexibility.

The purpose of these training, accreditation, and certification requirements and the work practice standards in today's final rule is to ensure that lead-based paint abatement professionals, including workers, supervisors, inspectors, risk assessors, and project designers, are well-trained in conducting lead-based paint activities in target housing and child occupied facilities. The rule will also ensure, through the certification of professionals, that inspections for the identification of lead-based paint, risk assessments for the evaluation of lead-based paint hazards, and abatements for the permanent elimination of lead-based paint hazards are conducted safely, effectively and reliably. In addition, training providers will be accredited to ensure that high quality training for these professionals is available. The Agency believes this certification and accreditation program will allow homeowners and others to hire a well-qualified work force that is adequately trained in the proper procedures for conducting lead-based paint activities.

The work practice standards in today's final rule are not intended to regulate all activities that involve or disturb lead-based paint, but only those that are described as an inspection, risk

assessment or abatement by an individual who offers these services. This rule would not regulate a renovation contractor that incidentally disturbs lead-based paint or an individual who samples paint on a kitchen cabinet to determine if the paint contains lead. Today's final rule would cover a contractor who offers to abate a home of lead-based paint hazards, or an inspector who offers to conduct a lead-based paint inspection in a residential dwelling.

*Regulated Entities.* Potentially regulated entities are those training providers that would be accredited and those professionals who would be trained and certified to conduct lead-based paint abatements.

Category	Examples of Regulated Entities
Lead abatement professionals	Workers, supervisors, inspectors, risk assessors and project designers engaged in lead-based paint activities
Training providers	Firms providing training services in lead-based paint activities

This table is not intended to be exhaustive, but rather provides a guide of the entities that are likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in this table could also be regulated. To determine whether you or your business is regulated by this action, you should carefully examine the provisions in part 745 of the regulatory text. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the FOR FURTHER INFORMATION CONTACT section.

*C. Background*

On October 28, 1992, the Residential Lead-Based Paint Hazard Reduction Act of 1992 (Title X) became law. As a result, the Toxic Substances Control Act (TSCA) was amended to include a new title, Title IV, 15 U.S.C. 2681–2692. TSCA Title IV directs EPA to promulgate several regulations, including the lead-based paint activities training, certification, and accreditation requirements, work practice standards and the MSP included in today's final rule.

The requirements in today's final rule were first proposed on September 2, 1994 (59 FR 45872) (FRL-4633-9). Several changes have been made to the proposed rule because of comments received by the Agency. Nonetheless, the primary objective of the proposed rule and today's final rule remains the same and is consistent with the goals stated in Title X and the mandates prescribed in TSCA Title IV.

The primary objective of today's final rule is to address the nation's need for a qualified and properly trained workforce to assist in the prevention, detection and elimination of hazards associated with lead-based paint. By promoting the establishment of this workforce through today's final rule, the Agency will help to ensure that individuals and firms conducting lead-based paint activities in target housing and child-occupied facilities will do so in a way that safeguards the health of the environment and protects the health of building occupants, especially children aged 6 years and under.

In addition to today's final rule under sections 402 and 404 of TSCA, EPA is developing other rules as mandated by other sections of TSCA Title IV. The relationship of today's final rule to these other rules is discussed in more detail in Unit IV. of this preamble.

II. Consultation with Stakeholders

Following the September 2, 1994 publication of the lead-based paint activities proposal, the Agency met at different times with representatives from various State environmental and public health agencies. At least three meetings were held with State and Tribal representatives under the auspices of the Forum on State and Tribal Toxics Action or FOSTTA. FOSTTA is an organization that serves as a forum for State and Tribal officials to jointly participate in addressing national toxics issues, including lead, and to improve communication and coordination among the States, Indian Tribes and EPA. Under FOSTTA, a lead project has been established to work with the States and Tribes on lead-related issues. Between 10 and 12 States participate on the lead project with EPA.

In addition to FOSTTA, the Agency met on December 5 and 6, 1994, with 93 representatives from 49 State health and environmental agencies and 12 representatives from 10 Indian Tribes. Minutes from the FOSTTA meetings, and the December 1994 meeting are in the docket for today's final rule (Ref. 1).

In addition to encouraging States and Indian Tribes to submit written comments on the September 2 proposal,

the Agency also held meetings with the States and Indian Tribes to discuss their current and future roles as co-regulators in the area of lead-based paint activities. These meetings, in combination with the written comments submitted by the States, helped shape today's final rule.

### III. Response to Comments on the Scope of the Rule

The comment period for the proposed rule extended from September 2, 1994 to December 15, 1994. The Agency received a total of 323 comments and has reviewed them all. These comments, along with a detailed summary (Ref. 2) and the Response to Public Comment Document (Ref. 3), a written response to the issues raised by commenters, can be found in the public docket for today's final rule.

Based on the public comments, the Agency has made several changes to the proposed rule. Two of these changes affect the scope of the final rule by modifying the definitions of the buildings and structures covered. Additionally, the Agency has amended the definition of abatement. These changes, and others, are summarized below. For a more detailed discussion of issues raised by commenters and changes made to the final rule, readers should refer to the Response to Public Comment Document.

#### A. Building Types

One principal change in the final rule is the Agency's decision to delay promulgation of training and certification requirements and work practice standards for individuals and firms conducting lead-based paint activities in public buildings (except child-occupied facilities), commercial buildings, superstructures and bridges. This decision was primarily based on the need to clarify the "deleading" definition contained in the September 2, 1994 proposal, and the Agency's desire to avoid conflict and overlap with the training requirements contained in the Occupational Safety and Health Administration's (OSHA) interim final lead standard (29 CFR 1926.62).

Under the September 2, 1994 proposal, individuals and firms conducting deleading activities in public and commercial buildings, superstructures and bridges would have been subject to EPA training and certification requirements and work practice standards and, possibly, the OSHA training requirements contained in OSHA's interim final lead standard. Under the proposed rule, EPA's intention was to include OSHA's training requirements in EPA's training and certification program. However,

commenters noted uncertainty as to whether EPA's proposed definition of "deleading" would have included precisely the same activities which would trigger the training requirements under OSHA's interim final lead standard.

Consequently, commenters believed that EPA's training and certification program would have imposed OSHA training when, in fact, OSHA may not require it. Other commenters also believed that OSHA's training requirements were adequate and that EPA's training and certification program was unnecessary for individuals and firms conducting "deleading" activities in public and commercial buildings, superstructures and bridges.

In its review of the comments received on the deleading definition, the Agency has determined that the definition of the term needs to be clarified. At this time, the Agency is continuing to review the public comments it received on its proposed definition, and is examining available data for the purposes of developing options to establish training and certification requirements and work practice standards for individuals and firms that conduct deleading activities in public and commercial buildings, superstructures and bridges. The Agency is also considering options that will eliminate the potential for overlap between any training requirements EPA may propose in the future and OSHA training requirements for such individuals and firms.

Another related change involves the Agency's decision to include requirements for lead-based paint activities conducted in public buildings (except child-occupied facilities) in the future action covering commercial buildings, superstructures and bridges. Accordingly, today's final rule does not cover public buildings constructed prior to 1978 (except child-occupied facilities).

The Agency is taking this action in response to numerous comments that urged the Agency to focus its efforts on lead-based paint activities conducted in housing and other facilities frequented by children. In the September 2, 1994 proposed rule, individuals and firms conducting lead-based paint activities in public buildings would have been required to adhere to the same regulations as in target housing, regardless of whether children frequented the buildings. In the September 2, 1994 proposal, the Agency specifically requested comment on whether all public buildings should be subject to the same regulations and

grouped together in this way with target housing.

A significant majority of commenters expressed concern that application of these requirements to all public buildings, as defined in the September 2, 1994 proposal, would have resulted in the expenditure of substantial resources without a comparable reduction in lead-based paint exposures among children aged 6 years and under. Under the September 2, 1994 proposal, the Agency broadly defined public buildings as "any building constructed prior to 1978, except target housing, which is generally open to the public or occupied or visited by children, including but not limited to stores, museums, airport terminals, convention centers, office buildings, restaurants, hospitals, and government buildings, as well as facilities such as schools and day-care centers."

In response to those comments that the Agency focus its requirements on individuals and firms conducting lead-based paint activities in buildings frequented by children, today's final rule establishes a sub-category of public buildings named "child-occupied facilities."

Today's final rule defines a child-occupied facility as "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 2 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."

Under today's final rule, individuals, firms and training providers that either offer training in the performance of lead-based paint activities in child-occupied facilities, or that perform or offer to perform such activities in child-occupied facilities are subject to the same requirements as individuals, firms and training providers involved in target housing.

The Agency's decision to define and establish child-occupied facilities as a sub-category of public buildings with requirements equivalent to those for target housing is based on one of the key objectives of today's final rule, which is to prevent and reduce lead exposures among young children.

The Agency believes that children face potentially equivalent (if not greater) risks from lead-based paint hazards in schools and day-care centers as they do at home. Indeed, some

children spend more time in a particular classroom or day-care room in a given day or week than they might spend in a single room in their homes. If that classroom contained a lead-based paint hazard, the children in it could be at risk.

The Agency believes section 402(b) provides it with the flexibility necessary to regulate lead-based paint activities in child-occupied facilities in the same manner it regulates those activities in target housing. Although section 402(b)(2) uses terms such as "identification" and "deleading" instead of "inspection," "risk assessment" and "abatement," EPA believes that, given the similarity of the population to be protected and the nature of the risk they face, the section 402(b)(2) terms can be understood to include the same types of lead-based paint activities as specified in section 402(b)(1). "Identification" of lead-based paint under section 402(b)(2) is analogous to "inspection" under section 402(b)(1). "Deleading" under section 402(b)(2) is equivalent to "abatement" under section 402(b)(1). While there is no direct analog in 402(b)(2) to "risk assessment," EPA believes such activity is fairly (and necessarily, from a logical perspective) included within the phrase "activities conducted by a person who conducts or plans to conduct an elimination of lead-based paint or lead-based paint hazards." (See definitions of "deleading" in section 402(b)(2)).

Commenters also supported the Agency's decision to focus on those buildings or portions of buildings where children spend a significant amount of time, or that children regularly or frequently use, rather than all public buildings. Commenters cited preschools and kindergarten classrooms as examples of the types of buildings that needed to be included, like target housing, in the regulatory program contained in today's final rule. By citing such facilities as examples, commenters appeared to indicate that the Agency should focus on facilities that a 6-year old child regularly attends, rather than facilities that children may visit intermittently or infrequently, such as museums, hospitals, grocery stores or airports.

In selecting the 3-hour, 2-day a week time requirement for its definition of a child-occupied facility, the Agency considered national survey data compiled by the U.S. Department of Education (Ref. 4) and the U.S. Bureau of the Census (Ref. 5). Data from the Department of Education and the Bureau of the Census indicate that children attending preschool between age 3 and age 6 or under will meet for

a minimum of 3 hours a day, 2 days a week.

Based on this data, the Agency chose to define "child-occupied" facilities as facilities where a child would spend a minimum of at least 3 hours a day, 2 days a week. Relying on the available data, the Agency believes its definition will cover the vast majority of preschools, kindergartens and day-care centers. Moreover, the decision to exclude child-occupied facilities constructed after 1978 is consistent with the statutory definition of both target housing and public buildings, which exclude both housing and public buildings constructed after 1978.

The Agency also sought to include only facilities where there is regular or recurring visitation, over time, by a child, by including a combined annual visitation minimum of 60 hours. The rationale for this choice was that a likely minimum recurring visitation schedule for a child would be a 10-week day-care session, 2 days per week, 3 hours per day that would be equal to 60 hours.

Today's final rule requires that individuals and firms conducting lead-based paint activities in child-occupied facilities meet the same training and certification requirements as individuals and firms working in target housing. The Agency designed the training and certification requirements for individuals and firms working in target housing primarily to ensure that abatement professionals are instructed on how to conduct lead-based paint activities to identify, reduce or eliminate lead-based paint hazards that may present risks to children. Consequently, the Agency believes these requirements are also appropriate for individuals working in child-occupied facilities.

Commenters did not support the development of a set of work practice standards for child-occupied facilities that would differ from the work practice standards in target housing. Nor does the Agency have any reason to conclude that a different set of work practice standards should be developed for child-occupied facilities. Consequently, the work practice standards for child-occupied facilities do not differ from those work practice standards established by this final rule for target housing.

The proposed rule specifically exempted from regulation individuals who perform lead-based paint activities within residences which they own, unless the residence is occupied by a person or persons other than the owner or the owner's immediate family while the activities are being conducted. The majority of public commenters

supported this exemption and it will remain in the final rule. However, some commenters expressed concern that homeowners should not perform abatements in their own home where there is a child with an elevated blood lead level. The Agency agrees with this comment and has changed the final rule accordingly.

#### *B. Definition of Lead-Based Paint Abatement in Target Housing and Child-Occupied Facilities*

The Agency received roughly 60 comments on its proposed definition of lead-based paint abatement. In developing the proposed rule, the Agency relied on the definition of abatement contained in section 401 of TSCA. Section 401(1) of TSCA defines abatement as:

... any set of measures designed to permanently eliminate lead-based paint hazards in accordance with standards established by the Administrator under this title. Such term includes:

- (A) the removal of lead-based paint and lead-contaminated dust, the permanent containment or encapsulation of lead-based paint, the replacement of lead-painted surfaces or fixtures, and the removal or covering of lead-contaminated soil; and
- (B) all preparation, cleanup, disposal, and post-abatement clearance testing activities associated with such measures.

In its September 2, 1994 proposal, the Agency defined "abatement" as follows:

*Abatement* means any set of measures designed to permanently eliminate lead-based paint hazards in accordance with standards established by the Administrator under Title IV of TSCA. Such term includes:

- (1) the removal of lead-based paint and lead-contaminated dust, the permanent containment or encapsulation of lead-based paint, the replacement of lead-painted surfaces or fixtures, and the removal or covering of lead-contaminated soil; and
- (2) all preparation, cleanup, disposal, and post-abatement clearance testing activities associated with such measures.

Abatement shall be presumed in the following circumstances:

(A) projects for which there is a written contract stating that an individual or firm will be conducting activities in or to a dwelling unit that will permanently eliminate lead-based paint hazards;

(B) projects involving the permanent elimination of lead-based paint or lead-contaminated soil and conducted by firms or individuals certified in accordance with this § 745.226 or this regulation; or

(C) projects involving the permanent elimination of lead-based paint or lead-contaminated soil and conducted by firms or individuals who, through their company name, promotional literature, or otherwise advertise or hold themselves out to be lead abatement professionals.

(3) Abatement does not include renovation and remodeling, or landscaping activities

whose primary intent is not to permanently eliminate lead-based paint hazards, but is instead to repair, restore or remodel a given structure or dwelling, even though these activities may incidentally result in a reduction in lead-based paint hazards.

In response to the proposal, commenters expressed concern that the phrase “. . .any set of measures. . .” implied that the Agency assumed that abatement will always occur throughout an entire residential dwelling, rather than to some subset of components. The Agency agrees with the commenters and has clarified its belief that abatements may be performed on components of buildings, as well as the whole building, by adding the following phrase: “any measure or set of measures designed to permanently eliminate lead-based paint” to its definition of abatement in today’s final rule.

In the proposed rule, by way of clarification, the Agency provided three circumstances (see (2)(A)(B) and (C) above) in which abatement shall be presumed. Commenters noted that, as proposed, these illustrative circumstances may have resulted in the imposition of today’s requirements upon individuals and firms conducting renovation and remodeling or other similar nonabatement activities.

For example, a renovation and remodeling contractor may also be certified as an abatement supervisor or worker, and may choose to advertise his/her lead-based paint abatement services as one specialty his/her business can provide. This should not mean that all renovation or remodeling projects this contractor works on should be considered abatement for the purposes of this rule. In response to these comments, § 745.223(3)(ii) and (3)(iii) of the abatement definition in today’s final rule identifies activities that are not considered abatements. These include renovation and remodeling activities covered by § 745.223(4) of the abatement definition which are not specifically designed to permanently eliminate lead-based paint hazards, but instead, are designed to repair or remodel a residential dwelling, and interim control activities.

Another issue raised by commenters was that the Agency’s abatement definition focused on the intent of the building owner and the individual or firm conducting an abatement. The commenters suggested that the Agency’s intent-based approach creates a loophole for building owners and contractors who will escape regulation by calling abatement something else, such as renovation and remodeling. A third concern was that the definition required abatement activities to result in

the permanent elimination of a lead-based paint hazard, as opposed to a temporary reduction of a hazard.

Although these comments are not without merit, EPA has decided to maintain its proposed abatement definition, with some minor adjustments. EPA believes that the clear intent of Congress was to focus the scope of this initial regulation on abatement activities, and to define abatements as those projects where there is a conscious effort on the part of the building owner and contractor (“measures designed to”) to permanently eliminate lead-based paint hazards.

In writing its definition of abatement, Congress did not say any set of measures “which permanently eliminate” lead-based paint hazards. Nor did it say any set of measures “which have the effect of permanently eliminating” lead-based paint hazards. Instead, Congress defined abatements as any set of measures “designed to permanently eliminate” lead-based paint hazards. Webster’s defines the term “design” as “to intend for a definite purpose.” By including the phrase “designed to” in its definition of abatement, EPA believes that Congress was specifically directing EPA to regulate as abatements only those activities which are undertaken with the definite purpose or intent of permanently eliminating lead-based paint hazards.

The reason for this focus can be found in the legislative history that accompanies Title X. Prior to the passage of Title X, and even today, abatements were being conducted to reduce or eliminate lead exposure to children when in fact they were, because of improper training or technique, increasing exposures. This situation, in part, prompted Congress to direct the Agency to develop today’s final rule regulating abatement activities.

Other commenters suggested that the Agency’s definition of abatement should specifically include renovation and remodeling, interim controls, operations and maintenance, and any other activity that may disturb lead-based paint and create a potential hazard.

The definition of abatement in section 401(1) of TSCA includes a list of specific activities (e.g., removal of lead-based paint, replacement of lead-painted surfaces or fixtures) which are included within the definition’s scope. This list is cited by some commenters as indicating that abatement should include activities, such as renovation, that are not necessarily intended to eliminate lead-based paint hazards.

However, in providing this list, Congress did not intend that it be read or applied in isolation from the preceding intent-based definitional language. The list provided in section 401(1)(A) and (B) merely identifies some of the “measures” that may be taken by a contractor to “permanently eliminate lead-based paint hazards.” EPA believes that, for any of the measures specified in section 401(1)(A) and (B) to be considered abatement, they must also be conducted with the intent or “definite purpose” of permanently eliminating lead-based paint hazards.

Clearly, Congress recognized that these other activities, such as renovation or remodeling, may disturb lead-based paint and may result in lead-based paint hazards. In response to this concern, Congress directed the Agency, under section 402(c), to conduct a study to determine the extent to which renovation and remodeling activities may create lead-based paint hazards. Based on the results of this study, section 402(c)(3) of TSCA directs EPA to revise today’s regulations to address the lead-based paint hazards associated with renovation and remodeling. Thus, rather than requiring regulations now for all non-abatement activities, section 402 of TSCA directs EPA to defer such regulation pending further study to determine which, if any, renovation and remodeling-type activities create a lead-based paint hazard.

#### IV. Relationship of Sections 402 and 404 to Section 403 of TSCA

Under section 403 of TSCA, EPA is developing a rule that will identify conditions of lead-based paint, and lead levels and conditions in residential dust and soil that would result in a hazard to building occupants, especially children age 6 and under. In combination with the work practice standards contained in § 745.227 of today’s final rule, the Agency expects that the levels and conditions identified in the TSCA section 403 rule will provide clear direction on how to identify, prioritize and respond to hazards from lead in and around target housing.

Promulgation of the TSCA section 403 rule, however, has been delayed until the Agency completes various information gathering and assessment activities. On January 3, 1996, the United States District Court for the Northern District of New York issued a decree, consented to by EPA and the Atlantic States Legal Foundation (ASLF), that requires EPA to propose the TSCA section 403 rule by November 30, 1996 and to issue a final rule by September 30, 1997 (Ref. 8).

In the interim, the Agency has published guidance to assist the public in identifying lead-based paint hazards, sources of lead exposure, and the need for control actions in environments where children may be present.

EPA originally issued this guidance on a July 14, 1994 memorandum from Lynn R. Goldman, Assistant Administrator for Prevention, Pesticides and Toxic Substances, to the Agency's Regional Division Directors, entitled "Guidance on Residential Lead-Based Paint, Lead-Contaminated Dust, and Lead-Contaminated Soil" (the "section 403 Guidance"). Subsequently, copies of the section 403 Guidance have been available from the Agency upon request. To further disseminate the section 403 Guidance, the Agency published the full text of that document in the Federal Register on September 11, 1995 (60 FR 47248) (FRL-4969-6).

In the September 2, 1994 preamble, the Agency provided a lengthy discussion of the relationship between the section 402/404 regulations and the forthcoming section 403 regulation. The Agency explained why it believed it was appropriate to offer the section 402/404 rule for public comment, in the absence of a section 403 regulation (See 59 FR 45875).

In response, the Agency received several public comments. None of the comments stated that the Agency should not promulgate a final regulation for lead-based paint activities in target housing without a final section 403 rule. Seven comments were received from parties with an interest in public and commercial buildings, superstructures and bridges, urging the Agency to delay promulgating a TSCA section 402/404 rule covering those types of structures until the section 403 rule has been promulgated. As discussed previously, today's final rule does not address these building types, and thus these comments are not applicable.

Lastly, one commenter stressed the importance of publishing the TSCA section 403 rule as quickly as possible, but did not suggest that delaying action on the TSCA section 402/404 rule was necessary.

The Agency understands that without a final section 403 rule identifying lead-based paint hazards, full implementation of today's final rule will be difficult. The Agency has addressed this problem in the ASLF consent decree, by committing to promulgate a final rule under section 403 by September 30, 1997, well before subpart L of this rule will become effective in EPA administered States and Indian Country.

#### V. Response to Comments on the Accreditation of Training Programs in Target Housing and Child-Occupied Facilities

Section 745.225 includes various requirements and the application procedures that training programs must follow to become accredited by EPA to provide instruction in the lead-based paint activities and work practice standards described in this rule. These procedures and requirements apply to training programs that will offer both basic and refresher training courses.

Training programs may offer courses for one or more of the following five work disciplines: (1) Inspector, (2) risk assessor, (3) supervisor, (4) abatement worker, and (5) project designer. Minimum curricula requirements for each of these courses can be found at § 745.225(d).

The Agency has already developed and released model course curricula materials for the inspector, risk assessor, supervisor and abatement worker disciplines. The Agency is currently modifying and updating these materials, and developing a new model course for project designers, to reflect the course curricula contained in § 745.225(d). EPA will make these materials available prior to August 31, 1998.

The Agency received a variety of comments on the work disciplines, training courses and accreditation procedures in the proposed rule. Among the key issues raised were: the number of work disciplines; the length of the courses; their traditional classroom approach; the course curricula; the course test and hands-on assessment; instructor qualifications; and the procedures for applying for accreditation.

In response to these comments, the Agency has adjusted the proposed rule in several ways. EPA believes these adjustments will result in a more flexible accreditation system for both training program providers and for individuals seeking training and certification through that system.

##### A. Framework for Training

Generally, most commenters agreed in principle with the tasks and responsibilities identified by the Agency under its five work disciplines: inspector, risk assessor, supervisor, worker, and project designer. On the other hand, commenters were divided on whether five separate work disciplines and training courses were needed to accomplish the tasks and objectives associated with inspection, risk assessment and abatement. In general, commenters were concerned

with the potential for redundancy and overlap among the proposed five training courses.

Although the final rule retains five distinct work disciplines, as originally proposed, the Agency has made several changes to make the courses more modular in their design, eliminate potential redundancies in the course curricula, and reduce course length. Because of these changes, the Agency believes that the market will be better able to manage and more efficiently provide training to individuals responsible for performing lead-based paint inspection, risk assessment and abatement activities.

The Agency has consulted with OSHA to eliminate any redundancies between the course curricula contained in § 745.225(d)(3) and (5) for the abatement supervisor and worker, and the training program OSHA has established under its interim final lead standard (29 CFR 1926.62). Based on discussions with OSHA and a review of public comments, the Agency has decided that the best way to eliminate any redundancies or confusion regarding OSHA training versus EPA training is to remove OSHA's training program elements from the course curricula contained in § 745.225(d)(3) and (5).

As a result, training programs have the option of offering courses in: (1) OSHA training; (2) EPA training; or (3) both OSHA and EPA training. Only those programs that wish to offer EPA training would need to apply for accreditation under this rule.

A key difference between OSHA and EPA training is that OSHA training is primarily designed to reduce the occupational exposure to lead for construction workers. The OSHA standard establishes maximum limits of exposure to lead for all workers covered, including an action level of 30 µg/m<sup>3</sup> calculated as an 8-hour time-weighted average (TWA). At or above this action level, workers are subject to OSHA's training requirements, which primarily involve instruction in respirator use, engineering and work practice controls for the containment of lead, and OSHA's medical surveillance program.

In contrast, the primary purpose of EPA training for abatement workers, supervisors and project designers is to protect building occupants, particularly children ages 6 years and younger, from potential lead-based paint hazards and exposures both during and after an abatement.

The deletion of OSHA's training program elements has helped reduce the length of the abatement worker course from a proposed 32-hour course

(including 10 hours of hands-on instruction) to 16 hours (including 8 hours of hands-on instruction). The Agency has also reduced the emphasis on providing instruction in basic construction techniques and focused instead on the practical application of abatement methods and practices. The Agency believes providing adequate instruction on both construction and abatement techniques, even in a 32-hour course, would have been very difficult, if not impossible.

Furthermore, the final rule has retained 8 of the 10 hours of hands-on instruction, as proposed. Commenters were extremely supportive of the hands-on requirements of the rule, and the Agency believes that hands-on training helps trainees to retain the knowledge they acquire. Incorporating, as it does, 8 hours of hands-on training, the Agency believes that the 16-hour requirement in the final rule will enable workers to conduct safe, reliable and effective abatements.

Another change designed to reduce course length and eliminate overlap in the rule is the decision to establish one 32-hour course requirement that both supervisors and project designers will take, and to establish an additional 8-hour course supplement that project designers are required to take.

Under the proposed rule, supervisors and project designers would have been required to take one 40-hour course, and project designers would have been required to take an additional 16-hour course supplement. Most of the comments on the proposal suggested that the Agency could combine some of the course topics from the two classes.

As in the proposed rule, the Agency's premise for developing one course for both supervisors and project designers is the similarity in the job responsibilities of these two work disciplines. Areas where the supervisor and project designer share similar learning needs are listed in the course curriculum at § 745.225(d)(3). Some of the course topics (e.g., risk assessment/inspection report interpretation) reflect the Agency's decision to insert topics from the proposed project designer course into that of the final joint supervisor/project designer course.

For example, the ability to interpret inspection and risk assessment reports is a skill that both supervisors and project designers must have, since they are both responsible for either the oversight of abatement activities or are responsible for designing abatement plans based on the results of inspections and risk assessments.

The course supplement for project designers is intended to provide specific

instruction in designing lead-based paint abatement activities in target housing and child-occupied facilities. Clearly, this 8-hour course cannot train an individual in all aspects of project design. However, the course will compliment the education and skills that project designers must have (e.g., a degree in engineering or 4 years experience in building construction and design) by providing lead-specific design instruction.

The Agency also received several comments regarding the training for inspectors and risk assessors. Many commenters requested clarification about whether an individual must take both the inspector and risk assessor course as a part of the process to become certified as a risk assessor. The simple answer is yes; however, the inspector and risk assessor courses do not necessarily have to be taken back-to-back. Training providers have the option of offering the inspector course separate from the risk assessor course, although the provider may choose to offer the two courses as one unit. More detail regarding the certification process for inspectors and risk assessors is provided in Unit VI. of this preamble.

An additional change to the rule is the allowance for alternative training methods, including supplemental at-home study programs. The Agency specifically requested comment on the use of at-home study materials and other alternative training methods in its September 2, 1994 proposal. Most of the comments received on this issue supported the use of alternative training methods in lieu of classroom instruction, with certain restrictions.

Commenters opposed to the use of alternative training methods generally expressed reservations regarding the quality of such methods and the need for the teacher/student interaction afforded in the classroom.

Based on a review of these comments, the final rule permits the use of alternative training techniques (e.g., video training, computer-based training) as a supplement to the hands-on skills assessment or as a substitute for the lecture portion of the training course requirements outlined in § 745.225(d). The Agency agrees with commenters who note that alternative training programs, such as at-home study, can result in the effective transfer of information, if certain restrictions are implemented to ensure the quality of these programs.

To ensure the quality of such alternative programs, the final rule requires training providers who opt to use alternative techniques to submit all materials as specified under

§ 745.225(b)(1) as a part of their application for accreditation. These materials include copies of the course agenda, and student and instructor manuals.

The accreditation of alternative training programs will be based on EPA's review of the training materials submitted under § 745.225(b)(1), including the course agenda and manuals. In its review, the Agency will consider on a case-by-case basis the provisions made by a training program to ensure the quality of its course materials. Based on that review, the Agency may accredit programs offering alternative training and instructional methods.

In addition, § 745.225(c)(6) of the final rule also requires all training programs, including those using alternative training methods, to meet the minimum hourly requirements for hands-on activities in their training courses. Under § 745.225(c)(7), all training programs are also required to administer a course test and conduct a hands-on skills assessment or a proficiency test as discussed below.

One specific example of alternative training/testing techniques that the rule mentions is the use of a proficiency test in lieu of a hands-on assessment and course test. A course that offers a proficiency test would consist primarily of an evaluation of the effectiveness and reliability of a student's ability to conduct a particular lead-based paint activity. The proficiency test must also cover all of the topics and skills addressed in a particular course. For instance, a proficiency-based course in inspection could involve a mix of lecture material with students conducting a mock inspection in a residential dwelling with known lead-based paint concentrations. The student would be evaluated on the accuracy of the results of their inspection.

One other issue raised by commenters was the lack of detail on specific activities for the "hands-on" component of a course. The Agency has not however, modified the final rule to specify activities that training programs must use for the hands-on component of their courses. The Agency still believes that qualified training programs should be able, without additional regulation, to develop specific hands-on activities based on their knowledge of lead-based paint activities and the industry. Furthermore, the Agency notes that, as the technologies for conducting lead-based paint activities develop, the focus of the elements of hands-on training will change. The course topics required to have a hands-on component are



marked with an asterisk in § 745.225(d) of the regulatory text.

### *B. Training Program Accreditation Requirements*

1. *General comments.* The Agency received a significant number of comments on the qualifications proposed for instructors. Additionally, commenters requested clarification on whether the Agency requires training providers to offer courses for individuals who do not speak English, or who have low reading comprehension. Other commenters asked the Agency to clarify or change specific aspects of the proposed accreditation process.

For example, several commenters requested clarification on the number of instructors that a training program must employ to become accredited. Some commenters thought that under the September 2, 1994 proposal, a training program would be required to employ a minimum of three individuals to obtain accreditation: a training manager, a principal instructor and a work practice instructor. Other commenters interpreted the proposed rule to mean that at a minimum only one individual—the training manager—was required to staff a training program.

On this same topic, some commenters criticized the proposal for setting up an “exclusive” training system. They believed that the proposed experience, education and other qualifications for the training manager, and principal and work practice instructors were excessive. These commenters stated that the proposed qualifications were unnecessary, and that they would prevent competent and talented instructors from offering training in lead-based paint activities. Under the final rule, one person may be employed as both the training manager and the principal instructor, if the individual possesses the qualifications listed at § 745.225(c)(1) and (2).

Furthermore, the Agency observes that the final rule no longer includes work experience or educational prerequisites for work practice instructors, but instead allows training programs to employ guest work practice instructors, who may provide either lecture or hands-on instruction in a course.

Some commenters urged the Agency to stipulate specific qualifications for guest instructors, or to limit the amount of time a guest instructor may be employed by a training program. The final rule does not, however, set such limits. The Agency believes that it would be too difficult to regulate the qualifications of the many kinds of

inter-disciplinary guest instructors that a training program might want to employ, given that their backgrounds and credentials will vary significantly. For example, physicians, certified abatement supervisors, lawyers, housing officials and other professionals could possibly be employed as guest instructors. Given the diversity in education, training and experience among these professionals, the Agency does not believe that establishing specific qualifications is either possible or useful and the final rule leaves that determination to the training manager.

In terms of setting a limit on the amount of time that a guest instructor may be used, the Agency has placed the responsibility for ensuring the quality of a training course on the training manager. The Agency believes that the decision for determining how much time a guest instructor should be used is a decision best made by the training manager, in consultation with the principal instructor.

Additionally, the Agency notes that the training manager ultimately is responsible for ensuring the quality of instruction, and that it is in the best interest of a training manager to account for the capabilities and experience of the principal instructors.

Lastly, the Agency notes that today’s final rule does not require training providers to offer courses for individuals who do not speak English or who have a low reading comprehension. The Agency believes that training providers should be given the flexibility to offer special courses for such individuals, depending on demand. However, the Agency does recommend that training providers make special provisions to accommodate the needs of individuals who cannot speak English, or who have a low reading comprehension.

2. *Prerequisites—training manager.* In addition to these changes, today’s final rule more clearly describes the prerequisites for the training manager.

For example, under the proposed rule the qualifications required for a training manager were flexible and intended to accommodate a broad range of work experience and educational backgrounds. Specifically, the proposal would have required that training managers, at a minimum, possess either some training or education in teaching adults. In addition, the proposal would have required that training managers possess experience or education in one of three additional areas, specifically: (1) A bachelor’s or graduate degree in building construction technology, engineering, industrial hygiene, safety, or public health, or (2) 4 years of

experience managing an occupational health and safety program, or (3) an additional 2 years of experience teaching adults.

The final rule has been revised, however, to require training managers to meet any one of the four prerequisites now listed at § 745.225(c)(1). As discussed later in this section of the preamble, the prerequisites contained in the final rule are different from those proposed and include the addition of a fourth alternative prerequisite under § 745.225(c)(1)(iv).

Additionally, the final rule no longer contains the requirement that all training managers possess either training or education in teaching adults. The Agency’s decision to eliminate the training or educational requirement in adult education was based on its review of several comments. These comments suggested that, although training or experience in adult education may be valuable, it should not be required of all training managers, given that the primary function of the training manager is to administer and manage a training program—not necessarily to instruct adults. The Agency agrees with these comments, but notes that the final rule maintains the 2 years of experience in adult education as one of the four prerequisites that can now be used to qualify an individual as a training manager.

The decision to retain the 2 years of experience in adult education as one of the four available prerequisites for qualifying training managers is based on several factors. The most important factor is the Agency’s desire to accommodate the broad range of work experience and educational backgrounds that training managers and instructors may bring to their work. This approach, which most commenters widely supported, has been retained and further extended under § 745.225(c)(1) of the final rule.

For instance, in addition to recognizing bachelor or graduate level degrees in building construction, engineering, industrial hygiene, safety or public health, the final rule also would permit individuals who possess a degree in business administration or education to assume the responsibilities of a training program manager.

Although these experiences may differ from one another, the Agency believes that an individual can effectively utilize them to ensure the development of a quality training program. Furthermore, the Agency’s role in the accreditation process also will contribute to the development and establishment of quality lead-based paint activities training programs.

3. *Prerequisites—principal instructors.* The final rule also provides a great deal of flexibility in recognizing the work experience and educational backgrounds of principal instructors. For example, instead of specifically listing the type of training, experience or education in teaching adults that a principal instructor must possess—as had been proposed—the final rule now requires only that a principal instructor possess demonstrated experience in teaching adults. This change is based on numerous comments that objected to the specificity in the proposed rule, particularly the requirement that principal instructors do one of the following: (1) Complete a 40-hour train-the-trainer course, or (2) obtain a degree in adult education, or (3) possess at least 2 years of experience in teaching workers/adults.

Most of the comments on this requirement stated that a 40-hour train-the-trainer course was too long and/or that the educational degree or 2-year work experience requirement was excessive. Other commenters requested clarification on what constituted 2 years of work experience, and noted that a 40-hour train-the-trainer course was not available for the purposes of qualifying principal instructors.

Based on its review of this proposed requirement and in response to these comments, the Agency revised the final rule to require that principal instructors possess demonstrated experience, education or training in teaching workers/adults, as well as a minimum of 16 hours in lead-specific training. Commenters on the proposal also stated that requiring principal instructors to have 2 years experience in the construction industry would limit the number of qualified instructors. In response, the Agency now requires that principal instructors possess demonstrated experience, education or training in lead or asbestos abatement, painting, carpentry, renovation, remodeling, occupational safety and health or industrial hygiene.

Although the term “demonstrated” is very broad, the Agency believes that the final rule should accommodate the wide range of experiences that principal instructors may have acquired in teaching adults. This requirement will allow an instructor to demonstrate, through a variety of materials—official academic transcripts, resumes, letters of reference, certificates from training courses—that they possess the skills or experience necessary to provide effective instruction. This approach is preferable to attempting to develop an exhaustive list of work experiences or academic degrees, that will invariably

omit an unthought-of, but relevant, job title.

### C. Accreditation Application Process

The Agency received a variety of comments on the process of applying for accreditation. Some commenters indicated that the Agency should have required more documentation as a part of the application process, while other commenters felt that fewer documents and less information were needed to complete an application package.

The information and materials to be submitted by training programs as a part of the application process are specified at § 745.225(b)(1) in today’s final rule. With some minor exceptions, as described below, EPA has retained most of the information and documentation requested from the proposed rule.

For example, the Agency will no longer require that training programs submit examples of course completion certificates, since it is unlikely that receipt of such copies will help prevent fraud or misrepresentation of such certificates.

As a matter of clarification, a few commenters thought that the proposed rule would have required that training programs submit to EPA the documentation listed at § 745.225(c)(4), as proof of the qualifications of its instructors. Under the final rule, the Agency has now clarified that it does not require these documents as part of the application process for accreditation. Rather, they are to be retained at the training site and must be made available to the Agency in the event of an inspection, audit or an enforcement action.

Comments also were received asking the Agency to specify the facilities and type of equipment needed to deliver quality training, and clarification on whether training programs should submit separate descriptions of facilities and equipment when conducting off-site training.

In its review of these requests, the Agency believes that some commenters felt EPA should assist the training community in establishing a floor for the type of equipment investments that a training facility should make. EPA disagrees that it should play a direct role as a part of the regulatory process in these matters. The Agency also believes it is not necessary to specify the facilities, type of equipment and other related details that training programs should employ as a part of their routine operations.

Rather, the Agency believes that training providers should review the course curriculum requirements contained in § 745.225(d) of the final

rule, and, if possible, obtain copies of or information on the model course curricula developed by the Agency. This type of information should assist in determining the type of equipment and other materials that will be needed to provide instruction in lead-based paint activities.

Other commenters asked the Agency to specify the content of a course test blueprint and the activities that should be included as a part of the hands-on assessment. The test blueprint should outline the training objectives of the course. Presumably, these objectives will be the basis for developing course test questions, and providers should indicate that. The Agency does not believe it needs to further clarify, for qualified training providers, what activities constitute hands-on training. Training providers should be able to develop suitable hands-on exercises to meet the accreditation requirements given the direction provided in the rule.

Several comments were received on the Agency’s requirement that, in order to provide refresher training courses in one or more disciplines, a training program must either simultaneously apply for accreditation to teach the corresponding full length course(s) or already be accredited to teach the corresponding course. Among the comments received on this requirement, a small majority favored it.

Despite this support, the Agency has eliminated this requirement for several reasons. One is that the Agency recognizes that under the grandfathering provisions contained in § 745.226(d) there is likely to be a high level of demand for refresher training, once § 745.225 becomes effective. Therefore, the Agency believes that maximizing the opportunities for providers to offer refresher training courses will be necessary to assist the training community in meeting the demand for these courses. Under § 745.225(e), training programs will be required to link the instruction and testing provided in a refresher training course with the course topics contained in § 745.225(d), as appropriate. This will help ensure consistency between EPA’s full-length and refresher training curricula. Furthermore, the policy of permitting training programs to offer refresher-only training—without a precondition of offering full-length courses—is consistent with other Agency directives and policies issued under the Asbestos Hazard Emergency Response Act of 1986.

#### *D. Re-accreditation of Training Programs and Quality of Instruction*

Section 745.225(f) contains requirements to ensure the continued availability of quality training by requiring training providers to apply for re-accreditation every 4 years. The re-accreditation process is very similar to the initial application process.

Commenters were generally supportive of the requirements for re-accrediting training providers, although a few commenters suggested that training providers should be re-accredited more frequently than every 3 years. They reasoned that re-accreditation is necessary more than once every 3 years because of rapid technological changes in the lead-based paint activities field and the need to ensure that training courses provide instruction in the most current technology.

The Agency disagrees with this comment. Under the accreditation program established by today's final rule, EPA will maintain a list of accredited training programs. When a technological advance or other significant information develops that EPA believes would benefit the lead-based paint activities training community, EPA will provide this information to the accredited training providers. The Agency believes that keeping training providers informed of recent advances in technology allows training providers to be re-accredited every 4 years.

Some commenters expressed concern that the rule would not ensure that a training program would continue to offer the same quality of instruction in the years after initial accreditation. Further, these commenters were concerned that the proposed re-accreditation requirements did not fully address this issue. In response, the Agency has changed the final rule to require that training providers include a description of changes to training facilities or equipment since their last application was approved. This description should only include changes that would adversely affect the ability of students to learn. An example of such a change would be the loss of facilities to be used for hands-on instruction.

In order to further improve the quality of instruction, the Agency is exploring the possibility of providing pass/fail data from the third-party certification exam to training providers for their students. This information can be used by the provider to adjust their curriculum or instruction over time to

maintain an acceptable (as determined by the provider) pass rate.

#### *VI. Response to Comments on the Training and Certification of Individuals*

Today's final rule recognizes five work disciplines: inspector, risk assessor, supervisor, abatement worker, and project designer. Training requirements and certification procedures for individuals working within these disciplines are established under § 745.226 of this rule. These include specific training, education and/or experience requirements and, for the inspector, risk assessor and supervisor disciplines, passage of a certification examination.

In response to comments, the Agency has simplified the titles for some of the work disciplines: the "inspector technician" is now called the "inspector"; the "inspector/risk assessor" is simply the "risk assessor"; and the "project designer/planner" is now the "project designer."

Under today's final rule, certified individuals may only perform lead-based paint activities in the following work disciplines:

Certified inspectors may perform inspection and abatement clearance activities as described in § 745.227(b) and (e)(8) and (e)(9);

Certified risk assessors may perform inspection, abatement clearance, lead-hazard screen or risk assessment activities, as described in § 745.227(b), (c), (d), and (e)(8) and (e)(9); and

Certified supervisors, abatement workers and project designers may perform abatement activities as described in § 745.227(e).

The final rule also does not limit or define the circumstances under which a project designer must be used. In the proposal, the Agency would have required the use of a project designer on all abatement projects of 10 residential dwellings or more. The Agency is concerned that such a requirement would be too inflexible and would not account for the varying complexity of abatement projects. The Agency did not find compelling support among commenters for this provision, and it has been eliminated. The Agency will provide training and certification for individuals who seek to offer abatement project design services, but it is the building owner who must decide if a project designer is needed on a particular project.

Another change to the final rule is the extension of the recertification interval from the 3 years proposed to 5 years, for individuals who have passed a proficiency test as part of their training.

(See the discussion of proficiency training in Unit V. of this preamble). The rationale for this change is that such an individual will have demonstrated a high level of proficiency in the field in which they are certified, and thus it is presumed that they would require less frequent re-training.

Comments on the training and certification requirements for individuals working in the lead-based paint activities field focused on two key areas: the applicability of specific education and experience prerequisites as a part of the certification process; and the use of an examination in the certification process.

#### *A. Training, Education and/or Experience Requirements*

In general, commenters agreed with the proposed rule's five designated work disciplines and the lead-based paint activities associated with each, with some minor exceptions. A key issue raised by commenters, however, was the Agency's establishment of specific education and/or experience requirements.

Although the Agency neither proposed nor requested comment specifically on the possibility of exempting any industry or group of professionals from either part or all of its proposed training and certification requirements, several requests were received for such exemptions. Commenters submitted requests for some type of exemption for the following professions, among others: certified industrial hygienists, professional engineers, licensed architects, toxicologists, code enforcement officials, safety professionals, nurses, social workers and environmental professionals, and "experienced" State and local health officials.

Among the comments in support of exemptions, proposals ranged from blanket exemptions to, more commonly, various forms of partial exemptions. At least one commenter provided an alternative training course deemed more suitable to its members than the course proposed by EPA. This commenter also requested that the Agency recognize various levels of competency among the members of its organization, and suggested a tiered approach for exempting individuals from particular training requirements to address those levels of competency.

Although most of the commenters were seeking an exemption from the training and certification requirements for the risk assessor discipline, other similar requests were sought for the

supervisor, project designer and inspector disciplines.

Commenters representing various trade organizations based their reasons for seeking a training exemption on the level of education and/or experience their professional members already possess. In some instances, commenters also referenced an existing certification process that their members must undergo and implied that this certification process equaled or exceeded the certification process proposed by the Agency for lead-based paint professionals.

In general, the Agency agrees that the basic work experience and/or educational requirements of many nationally recognized certification programs either meet or exceed the experience and/or educational prerequisites contained in today's final rule under § 745.226(b) and (c). Several of these certification programs are covered by § 745.226(b)(1)(iii)(B)(3) of the rule, including programs sponsored by the American Board of Industrial Hygiene, the National Society of Professional Engineers and the Board of Certified Safety Professionals. Additionally, members of other organizations who possess the minimum work experience and/or educational requirements contained in § 745.226(b) or (c) also may qualify to become certified under today's final rule.

However, the Agency disagrees that work experience and/or educational prerequisites alone ought to be sufficient for the purposes of certifying individuals to conduct lead-based paint activities. Further, the Agency does not believe that the certification programs identified by commenters adequately address and specifically provide training in the identification, evaluation and abatement of lead-based paint and its associated hazards. Notably, none of the commenters provided the Agency with evidence of a currently available training course and/or module that expressly addresses lead-based paint activities as part of their professional certification process. Furthermore, commenters did not present evidence that their certification programs included hands-on instruction in the conduct of lead-based paint activities, which is a critical element of the training courses in today's final rule.

Therefore, although the certification requirements contained in § 745.226(b) and (c) recognize a broad range of work experiences and educational backgrounds as the first step in qualifying to become an inspector, risk assessor, supervisor, project designer or abatement worker, the final rule does

not provide for any training exemptions. A primary reason is that the lead-based paint activities field is a new field, and that a majority of the individuals entering it—despite their expertise in similar fields—may not possess either direct experience, or an education that has focused on the identification and elimination of lead-based paint hazards. Consequently, the Agency believes that, in most cases, individuals entering the lead-based paint activities field will need specialized training. The Agency is willing to work with professional organizations and other groups that want to develop training courses for their members that meet EPA's accreditation requirements.

However, the Agency is aware that there are individuals and groups who have been working in the lead-based paint activities field prior to the promulgation of today's final rule. These individuals need to reference § 745.226(d) of the final rule which contains the Agency's criteria for recognizing the work experience, education and training, or on-the-job training that individuals may have received prior to the effective date of § 745.225.

If an individual determines that he or she meets the requirements contained in § 745.226(d), the individual may apply for certification under the reduced set of requirements and within the limitations contained in that section. Under these requirements, qualified individuals are required to successfully complete a refresher training course specific to the certification they are seeking, and if required under § 745.226(b), to pass a certification examination.

In addition to the broad issue of exemptions, comments also were received on various educational and experience requirements specific to the inspector, risk assessor and supervisor disciplines. Under the proposed rule, the Agency had opted not to impose educational and experience requirements for either the abatement worker or project designer. This was due primarily to language in Title X, section 1004(3)(B)'s definition of "certified contractor" as it pertains to these two disciplines.

However, based on overwhelming support among commenters, today's final rule adds educational and experience requirements for the project designers, though not for workers. These requirements are contained in § 745.226(c)(1)(ii)(B), and include either: (1) A bachelor's degree in engineering, architecture, or a related profession and 1 year of experience in building construction and design or a related field; or (2) 4 years of experience in

building construction and design or a related field.

The basis for this requirement is EPA's belief, as reflected by a majority of commenters, that a project designer should have significant work experience, or a professional degree and some experience, in building design, or a related field, such as architecture or civil engineering.

Although the support was not nearly as broad or consistent, commenters also asked for modifications to the education and experience requirements for the inspector and risk assessor disciplines. Specifically, some commenters suggested that the Agency require that an inspector possess at least a high school diploma or equivalent to obtain certification. The Agency declined to include this requirement as a part of the certification process for inspectors, in part, based on its desire to provide individuals with an entry level position into the lead-based paint activities field. In response to comments that a high school degree or equivalent is needed to ensure a minimum level of competency among inspectors, the Agency believes that its training requirements and the certification examination will ensure an acceptable level of competency.

In the case of education and/or experience requirements for risk assessors, the proposed rule has been modified at § 745.226(b)(1)(iii)(B) to clarify the various mixes of education and experience that are acceptable for certification as a risk assessor. As discussed in the proposed rule, the educational and experience requirements for risk assessors are extremely important, given the pivotal role of a risk assessor in evaluating and presenting options to reduce lead-based paint hazards. The certified risk assessor must be qualified to make a competent, and rational assessment of the location and severity of any lead-based paint hazards. Based on that role, the Agency has developed work experience and/or educational prerequisites, which in combination with the training contained in § 745.225(d)(1) and (2) and the work practice standards contained in § 745.227(b), (c), (d) and (e), will enable the risk assessor to identify risks associated with lead-based paint hazards and to develop options to eliminate those hazards.

These credentials are very similar to those contained in the proposed rule with the exception that certified industrial hygienists, professional engineers, registered architects and other professionals listed under § 745.226(b)(1)(iii)(B)(3) are not required to possess 1 year of experience before becoming trained as risk assessors. The

decision to eliminate the 1 year of experience was based on the Agency's review of comments and the fact that many professional certification programs already incorporate various work experience prerequisites, which in some cases are comparable to the prerequisites listed in the proposed rule.

For example, to register as a professional engineer, an individual is required to possess a 4-year degree, and 4 years of progressive experience on engineering projects. The program for certified safety professionals also includes a 4-year degree and the 4-year work experience requirement.

Furthermore, the Agency notes that the academic training of these professionals also may cover subjects relating to building design, construction, environmental remediation and other areas relevant to lead-based activities.

The Agency also notes that it does not necessarily view the alternative work experience and/or educational prerequisites listed under § 745.226(b)(1)(iii)(B) for risk assessors; § 745.226(b)(1)(iii)(C) for supervisors; and § 745.226(c)(1)(ii)(B) for project designers as necessarily equivalent. Rather, as was the case in establishing experience and/or educational prerequisites for training program managers and principal instructors, the Agency's intention is to recognize a broad range of relevant qualifications that individuals entering the lead-based paint activities field are likely to possess.

For example, the experience and education of a certified industrial hygienist who has worked in the chemical industry may be very different from that of a professional engineer who has worked in building construction. However, the Agency believes that both these individuals can be trained as risk assessors.

#### *B. Passage of the Certification Examination*

In addition to training requirements and educational and experience requirements, individuals seeking to become certified as inspectors, risk assessors and supervisors are required to pass a certification examination, in addition to a course examination. The purpose of the certification examination is twofold.

One reason for the examination is to ensure that each individual certified under today's regulations will possess a minimum, acceptable level of knowledge and understanding of the tasks and responsibilities associated with the relevant work discipline. Other major functions of the certification

examination are to provide a universal tool to measure an individual's knowledge, and to encourage States or Tribes to enter reciprocal certification arrangements with other States or Tribes.

Comments on the utility of a certification examination were generally supportive. Commenters understood the function of the examination and agreed to it in principle. Nonetheless, commenters, particularly State commenters, stressed that EPA incorporate security and quality control measures to ensure the integrity of the examination. Additionally, States indicated that they did not necessarily want to adopt EPA's certification examination, but might want to develop their own examination or use the EPA examination and add a State specific component.

In response, outside the regulatory framework of this rule, the Agency has been working closely with the States to develop a certification examination. In general, the goal of the certification examination process is to give each State the flexibility it desires to fashion its certification program, while at the same time ensure a consistent national level of competence in the lead-based paint activities workforce. As currently designed, the exam will include provisions to maintain the security of the item bank of questions.

#### **VII. Framework for Work Practice Standards for Conducting Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities**

##### *A. Introduction*

Section 745.227 establishes standards for conducting three lead-based paint activities: inspection, risk assessment and abatement. In addition, § 745.227 provides requirements for conducting three related tasks that may be performed as either single tasks or as a part of an inspection, risk assessment or abatement. These three tasks are: a lead hazard screen, laboratory analysis, and composite dust sampling. Section 745.227 also establishes certain recordkeeping requirements. This section of the rule also establishes the dates by which compliance with these standards and procedures is required.

The standards and procedures for conducting the lead-based paint activities contained in § 745.227 are being issued under authority of TSCA section 402(a), which directs EPA to issue such standards, taking into account reliability, effectiveness and safety.

##### *B. Scope and Applicability*

Under today's final rule, the standards for lead-based paint activities contained in § 745.227 apply only in target housing and child-occupied facilities. Standards for lead-based paint activities conducted in steel structures and public and commercial buildings, which had been proposed on September 2, 1994, will be addressed after further Agency review. A discussion of the Agency's decision to address steel structures and public and commercial buildings outside this rulemaking is presented in Unit II.A. of this preamble.

Another important feature of the standards contained in § 745.227 is that they do not mandate circumstances under which any particular lead-based paint activity must be performed. Instead the decision to, for example conduct an inspection, is left to the building owner.

Additionally, the Agency is preparing a rule under TSCA section 403 that will identify conditions of lead-based paint and lead levels and conditions in residential soil and dust that would result in a hazard to building occupants. Although the TSCA section 403 rule has not yet been proposed, Agency guidance on this subject was issued July 14, 1994, and is discussed in detail in Unit IV. of this preamble. The section 403 Guidance also includes recommendations on actions that can be taken in response to conditions of lead-based paint and lead levels and conditions in residential soil and dust.

Until the final section 403 rule is promulgated, the Agency recommends that individuals and firms refer to the section 403 Guidance for assistance in identifying the presence of a lead-based paint hazard and deciding whether to conduct lead-based paint activities.

The primary purpose of the standards in today's final rule is to provide certified individuals and firms with a set of minimum requirements to be followed when conducting inspection, risk assessment or abatement activities. These requirements are primarily procedural in nature: for inspection, risk assessment and abatement activities, the standards specify the steps that EPA believes must be taken to conduct those activities safely, effectively and reliably. For abatement activities, the standards also place restrictions on certain techniques used to eliminate lead-based paint.

##### *C. Use of Guidance and Recordkeeping Requirements*

Today's final rule does not prescribe detailed work practices that should be followed for each unique situation in

which lead-based paint activities may be conducted. For that level of detail, individuals should consult Federal and State guidance that provides specific instruction on how to conduct inspection, risk assessment and abatement activities. These guidance documents include: the U.S. Department of Housing and Urban Development's Guidelines for the Control of Lead-Based Paint Hazards in Housing (HUD Guidelines) (Ref. 6), the section 403 Guidance, EPA's *Residential Sampling for Lead: Protocols for Dust and Soil Sampling* (Ref. 7), and any additional guidance issued by States or Indian Tribes that have been authorized by EPA under § 745.324 of this rule. While not regulatory requirements, these documents are recommended by the Agency because they provide reliable and effective information on this subject. Additionally, training courses that have been accredited by EPA or an EPA-authorized State or Tribe will provide detailed instruction on inspection, risk assessment and abatement standards and methodologies.

To complement the existing guidance documents, the Agency is currently preparing a technical guidance document as a companion to this rule. The Agency will distribute this guidance document to accredited training providers, the lead-based paint activities contracting community, and State and local governments, prior to the date that compliance with § 745.225 of this rule is required.

In its decision to recommend guidance as an adjunct to the requirements at § 745.227, the Agency carefully considered several factors, including enforcement issues and comments received from the public on this approach.

With regard to enforcement, many of the work practice standards contained in § 745.227 of today's final rule, such as sampling methodologies and visual inspection techniques, refer to guidance. As a result, the Agency recognizes that there are questions about the extent to which it will be able to take an enforcement action against individuals who choose not to use the various guidance recommended by EPA. Nonetheless, the Agency has many reasons for deciding to reference and develop guidance as a supplement to this rule, rather than to promulgate rigid work practice standards.

The September 2, 1994 proposal specifically requested comments on the use of guidance as a supplement to the rule's basic regulatory requirements. In general, the majority of commenters support the use of guidance as a

supplement to the regulatory requirements contained in § 745.227. In some cases, commenters directly expressed their support, whereas in other cases, commenters expressed neither support nor opposition. Overall, the Agency believes that commenters accepted its proposed approach of referring to guidance.

The Agency believes there are several reasons to recommend guidance rather than to establish detailed national work practice standards for the purposes of providing instruction on how to conduct specific lead-based paint activities.

First, as discussed in the September 1994 proposed rule, the Agency drew from a large body of existing information and research, and the input from a broad range of individuals and groups, to develop its proposed regulatory standards for lead-based paint activities. Based on that information and input, the standards proposed in September included strict reporting requirements and documentation of the quality control measures and methodologies employed when conducting inspection, risk assessment and abatement activities. These reporting and documentation requirements remain a critical component of the standards established by today's final rule. In combination with the rule's basic work practice standards, training, certification and accreditation requirements, the reporting/documentation activities will help to ensure the effectiveness of the standards and facilitate the use of guidance.

A second reason for relying on non-regulatory guidance instead of rule-based standards is the number of differences that can be found in the structure, design and occupant use patterns of the residential dwellings and child-occupied facilities covered by this rule. For example, under the standards for conducting a risk assessment at § 745.227(d)(4), a risk assessor is required to collect dust samples in rooms where children aged 6 years and under are most likely to come into contact with dust. The rule does not prescribe precisely which rooms or how many samples to collect, because the risk assessor needs to consider site-specific variables to determine which rooms should be sampled and the number of samples that should be taken from each room. These variables include: the size and number of rooms in the building; interior design elements in a building and differences in designated play areas for a child; the location of windows and doors; the condition of door frames, window

troughs and stools; and occupant use patterns.

As a specific example, in a small residential dwelling, a child may not have a separate playroom, but may play in selected areas of one room or more, such as a corner in a living room or dining room, or may have a bedroom that doubles as a playroom. On the other hand, in a large residential dwelling, a child may have a separate playroom and bedroom, and certain areas in a living room or family room for play activity. Furthermore, a child's pattern of use in a residential dwelling can vary considerably, and that pattern may only be possible to determine through an interview with a guardian.

Based on these and other variables that may be encountered when conducting a risk assessment, inspection or abatement, the Agency believes that to try to anticipate and attempt to list all circumstances that may be encountered would make the regulation overly prescriptive and rigid. However, by establishing minimum requirements and basic procedures for conducting inspection, risk assessment and abatement activities, the Agency is setting a safe, reliable and effective baseline of steps for certified individuals and firms to follow to make sound decisions based on site-specific conditions.

A third reason for the Agency's decision to avoid being overly prescriptive is the state of technology within the lead-based paint activities field. Although there has been progress in the development of new technologies to support specific lead-based paint identification techniques and abatement methods, the Agency recognizes that the field is advancing and that the technologies and methods that will help define it are still evolving.

Consequently, the standards contained in today's final rule do not specify that certain technologies or methods be utilized for sampling and analysis. Additionally, the rule does not prescribe any specific methods or technologies for conducting an abatement, although it does restrict certain work practices known to pose risks to building occupants, workers and the environment.

As had been proposed, today's final rule relies on the use of documented methodologies that incorporate adequate quality control measures. These methodologies and measures are available in existing Federal and State guidance documents, and will be taught at accredited training programs.

Although not overly detailed or prescriptive, EPA believes that the work practice standards contained in today's

final rule under § 745.227 provide a baseline, which in combination with the training, certification and accreditation requirements contained in §§ 745.225 and 745.226, will ensure that lead-based paint activities are conducted reliably, safely and effectively.

#### VIII. Response to Comments on Work Practice Standards for Conducting Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities

##### A. Conflict of Interest

In its September 2, 1994 proposal, EPA requested comment on whether to preclude individuals or firms conducting abatement activities from performing inspection and risk assessment activities, and from performing clearance procedures following an abatement. Although many public commenters supported a requirement that inspection, risk assessment and clearance procedures be conducted by individuals and firms independent of the individuals and firms conducting abatements, today's final rule does not include such a requirement.

The Agency agrees with other commenters—those who did not support a conflict-of-interest requirement—that the potential convenience and cost savings of hiring one firm, as opposed to two or three firms, should not be denied to property owners. The Agency also notes that there may be instances in which, due to a regional scarcity of lead-based paint professionals, it may be cost prohibitive or logistically difficult for a building owner to hire two different companies.

Nonetheless, the Agency believes that parties involved in lead-based paint activities should avoid situations of potential conflict of interest. Through various public education and outreach programs, sponsored by both public and private organizations including EPA, the Agency believes that over time, the public's awareness and understanding of the options available for identifying and managing lead-based paint hazards will improve. With this knowledge, property owners and building occupants will be able to determine the value of hiring more than one firm to assist in evaluating, controlling or eliminating lead-based paint hazards.

Furthermore, to assist building owners and other individuals or firms that may contract for the services of a lead-based paint contractor, EPA recommends that inspectors, risk assessors and other lead-based paint activities contractors disclose any potential conflicting financial interest in

the reports that they prepare pursuant to § 745.227(h).

##### B. Inspection

The objective of an inspection is to determine, and then report on, the existence of lead-based paint through a surface-by-surface investigation of a residential dwelling or child-occupied facility. As such, an inspection involves identifying the presence of lead in paint. An inspection does not include taking dust or soil samples. An inspection must be conducted by either a certified inspector or a certified risk assessor, and must include the provision of a report explaining the results of the investigation.

The inspection standards contained in § 745.227(b) reflect the Agency's decision not to provide detailed regulatory requirements on how to perform specific lead-based paint identification tasks, such as taking a paint chip sample or using an X-ray fluorescence (XRF) device. In the final rule, the Agency also has removed specific requirements to use the HUD Guidelines when collecting paint chip samples or when using an XRF device to test for the presence of lead-based paint.

Instead, the Agency requires that a lead-based paint inspection be conducted using documented methodologies and adequate quality control measures. These documented methodologies are defined as methods or protocols used to sample for the presence of lead in paint, dust, and soil. Documented methodologies that are appropriate for the purposes of this section may be found in: (1) The HUD Guidelines; the EPA Guidance on Residential Lead-Based Paint, Lead-Contaminated Dust, and Lead-Contaminated Soil (60 FR 47248); the EPA's *Residential Sampling for Lead: Protocols for Dust and Soil Sampling* and other EPA sampling guidance; and (2) Regulations, guidance, methods or protocols issued by States and Indian Tribes that have been authorized under § 745.324. Additionally these methodologies will be included in EPA's technical guidance on lead-based paint activities.

Although commenters generally supported this approach, at least three responses suggested that the Agency provide detailed regulations for lead-based paint testing. However, one of these commenters indicated that guidance may be an acceptable approach for establishing testing protocols. These commenters were concerned about the enforcement issues associated with the rule's dependence on documented methodologies, which

to date have only been issued by HUD, EPA and various State agencies, primarily as guidance.

However, other commenters did not object to the Agency's use of documented methodologies, provided that records are kept as part of the inspection, and that such methodologies are acknowledged as documented methodologies by EPA through future guidance or regulations. As discussed, the Agency is currently preparing a technical guidance document for conducting lead-based paint activities. Additionally, it is possible that the Agency may amend the regulation with more detailed standards in the future, if there is a need to do so.

One reason commenters suggested that the Agency not require certain inspection techniques is that such requirements often have the effect of discouraging the development of emerging or new technologies. For example, the Agency currently does not recommend that chemical test kits be used for lead-based paint testing (Ref. 8). However, EPA recognizes that at some point in the future, test kit technology is likely to be improved so that the kits can provide reliable test results. At that time, the Agency will be able to recommend chemical test kits for testing for the presence of lead in paint.

Two other key issues raised by commenters were: (1) Potential limitations of the proposed procedures for conducting an inspection, assuming that an inspection involves the investigation for lead-based paint throughout an entire residential dwelling or child-occupied facility, rather than a "partial inspection" of just one or more rooms in a residential dwelling or child-occupied facility; and (2) the standard contained in § 745.227(b)(2), which requires the testing of all components of a residential dwelling or child-occupied facility with a "distinct painting history," yet allows inspectors not to test those components determined by the inspector or risk assessor as having been replaced after 1978.

1. *Partial inspections.* The Agency recognizes that there may be a demand for lead-based paint identification services that do not involve a surface-by-surface investigation for the presence of lead-based paint throughout an entire residential dwelling or child-occupied facility. For example, a homeowner may only be interested in determining if lead is present in the paint in a child's bedroom, not necessarily the entire residential dwelling. In this instance, it is unlikely that the homeowner will want to pay for an inspection, as defined under today's regulations.



Although not required, the Agency recommends that a certified inspector or risk assessor be used in cases, such as these, where an individual or firm believes it is only necessary to conduct a "partial inspection" of a property.

More specifically, in response to commenters on this issue, the Agency believes that the definition of an inspection, which under § 745.227(b) requires that testing for lead-based paint take place throughout an entire residential dwelling or child-occupied facility, is appropriate for several reasons.

One reason is that the statutory definition of an inspection in section 401(7) of TSCA calls for 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." As discussed in the September 2, 1994 proposal, the Agency believes that an inspection is intended to provide a comprehensive inventory of all lead-based paint in a residential dwelling or child-occupied facility. As such, the Agency acknowledges, that the value of a lead-based paint inspection may appeal only to those individuals interested in getting a complete report on painted components in a residential dwelling or child-occupied facility. Although it is difficult to predict, the Agency believes that such a report may be of value to property owners or managers of large multi-family dwellings and child-occupied facilities and home buyers.

Furthermore, the Agency notes that its inspection requirements are consistent with general trends in the housing market, particularly in federally-owned housing or housing receiving federal assistance. That is, inspections are being conducted to ensure that building owners are informed of the presence of lead-based paint throughout a residential dwelling or child-occupied facility, not just one or two rooms.

Lastly, the Agency believes that by establishing requirements only for "whole house" inspections it will help ensure that the information needed to determine whether lead-based paint is present in a residential dwelling or child-occupied facility is accurately presented. Again, the Agency recognizes that an inspection, as defined under today's final rule, may not provide a value to all persons. Nonetheless, the Agency believes that by requiring that an inspection be conducted throughout a residential dwelling or child-occupied facility it will ensure that a person contracting for the inspection will obtain accurate and reliable information regarding the presence of lead-based

paint throughout a residential dwelling and child-occupied facility.

2. *Distinct painting history.* On the issue of inspecting and sampling all components sharing a distinct painting history, except those components replaced after 1978, there are several points that commenters raised. First, some commenters suggested that the proposed requirement to take one sample per component in every room and one sample per exterior component with a distinct painting history was overly burdensome in that it required taking an excessive number of samples. The assumption of these commenters was that an inspection requires that each and every painted component throughout a residential dwelling had to be individually tested. The Agency would like to clarify that an inspection does not necessarily require that a large number of paint samples be taken.

To clarify this point, the Agency directs commenters to carefully review the definitions of "component" and "distinct painting history" as contained in § 745.223 of today's final rule. According to these definitions, in a room with four walls painted at the same time with the same paint, only one paint sample would need to be taken to characterize the lead content of the paint on the walls. This is because, although each wall can be considered a separate "component," the walls share the same distinct painting history. On the other hand, if there were window frames in the room that had been painted with a different paint than the walls (for example a semi-gloss instead of a flat), two samples would need to be taken, one from the walls and one from the windows. As this example demonstrates, the Agency does not believe that an inspection will involve excessive sampling.

In contrast, other commenters disagreed with these requirements for an inspection, suggesting that they would result in insufficient numbers of samples. Based on the definition of "distinct painting history," these commenters interpreted the proposal to mean that if all rooms in a residential dwelling had been painted recently with the same paint and in the same color (for example, a white latex paint), it would be possible for an inspector to take only one paint sample from the home.

In response, the Agency notes that in this case it would be clear to an inspector that trim, doors, and windows are usually painted with a different paint type. Determining the distinct paint history of such components involves not just an examination of the visible top coat, but the unique layers of

paint beneath the surface. A visible examination of these paint layers is easily accomplished by making a discrete incision into the painted surface.

### C. Risk Assessment Activities

TSCA section 401(16) provides that the objective of a risk assessment is to determine, and then report, the existence, nature, severity, and location of lead-based paint hazards in residential dwellings through an on-site investigation. The definition also identifies specific activities that will be employed when conducting a risk assessment, including: (1) The gathering of information regarding the age and history of the housing and occupancy by children aged 6 years and under, (2) visual inspection, (3) limited wipe sampling or other environmental sampling techniques, (4) other activity as may be appropriate, and (5) the provision of a report explaining the results of the investigation. This definition of risk assessment serves as the basis for the standards and procedures associated with a risk assessment contained in § 745.227(d).

The risk assessment procedures in today's final rule, as in the proposal, require the risk assessor to make a recommendation of lead hazard control strategies to address all lead-based paint hazards identified as a result of the risk assessment. This activity was not enumerated in the statutory definition, but was added pursuant to TSCA section 401(16), which stated that a risk assessment may include "other activities" as may be appropriate.

The Agency's reason for adding this requirement was to ensure that the individual or firm hiring or contracting for the services of a risk assessor was provided with some reliable guidance on how to respond to the results of a risk assessment.

1. *Lead hazard screen.* Pursuant to TSCA section 401(16), a risk assessment may include "other activities" as may be appropriate. Based on this language, today's final rule also includes the "lead hazard screen," as a risk assessment activity. The requirements for the screen are contained in § 745.227(c). The reason for including a lead hazard screen in the proposal and today's final rule is to, where appropriate, avoid the costs of conducting a comprehensive risk assessment, particularly in well-maintained housing and child-occupied facilities constructed after 1960, or in housing and child-occupied facilities considered unlikely to have significant lead paint, dust or soil hazards.

The Agency received two comments on the addition of a lead hazard screen



as a risk assessment activity; one commenter noted that the Agency needed to list more explicitly standards for conducting a lead hazard screen.

The commenters also agreed that the lead hazard screen should focus on determining the absence of a lead-based paint hazard, rather than the presence of such a hazard and the risks it may pose to building occupants. In response, today's final rule includes specific procedures and standards for conducting a lead hazard screen in § 745.227(c). Furthermore, because the lead hazard screen employs highly sensitive evaluation criteria and limited sampling, the Agency believes that these standards will provide the risk assessor with a basis for determining the absence of lead-based paint hazards.

If any one of the dust samples collected during a lead hazard screen contains a lead level greater than one-half of the applicable clearance level for the tested component, or if any sampled paint is found to be lead-based paint, that is an indication, but not a requirement, that the residential dwelling should undergo a full risk assessment. As discussed subsequently in this preamble, clearance levels for specific components can be found in the HUD Guidelines and in EPA's section 403 Guidance, as well as in several State guidance documents.

Clearance levels are used as the basis for determining whether a lead-based paint abatement has been successfully completed and that a residential dwelling or child-occupied facility may be re-occupied (if building occupants were relocated during an abatement). Currently, under the section 403 Guidance, clearance levels for dust also serve as the levels for determining the presence of lead-contaminated dust, which may pose a lead-based paint hazard. A standard for the lead hazard screen of one-half of the applicable clearance levels is extremely stringent. As such, the Agency believes that a dust sample containing less than that level is a reliable indicator that there are no lead-based paint hazards. The work practice standards and evaluation criteria for a lead hazard screen contained in § 745.227(c) are modeled after the HUD Guidelines recommendations for conducting a lead hazard screen.

As discussed previously in the preamble, the Agency recommends that the lead hazard screen be used primarily in well-maintained homes constructed after 1960. According to HUD, it is estimated that approximately 37 million privately owned homes and 428,000 public housing units, or roughly 90 percent of the nation's housing stock

built prior to 1960, contain lead-based paint. Generally, if maintenance has been deferred on these homes, there is a high probability for the presence of some deteriorated lead-based paint and/or lead-contaminated dust.

Consequently, the value and any cost savings that may be achieved by conducting a lead hazard screen in poorly maintained, pre-1960 homes, rather than a full risk assessment, may not be realized. For instance, in a pre-1960 home with several components that have deteriorated paint, in practice, just as many deteriorated paint surfaces will be tested for a lead hazard screen as for a risk assessment. However, when conducting the lead hazard screen, a risk assessor is not required to attempt to determine whether those surfaces pose a lead-based paint hazard.

In fact, homeowners and building owners may decide that a lead hazard screen would merely add time and cost to the evaluation process in properties that would more likely benefit from a risk assessment. These benefits include a comprehensive report, not only on the existence of lead-based paint hazards, but also on the nature, severity, and location of those hazards. Furthermore, the risk assessment also would provide options on how to reduce or eliminate the lead-based paint hazards.

Other standards and activities required as a part of the lead hazard screen in § 745.227(c) include: (1) The collection of background information regarding the physical characteristics of the residential dwelling or child-occupied facility and occupant use patterns that may cause lead-based paint exposure to one or more children age 6 years and under, (2) a visual inspection, (3) the sampling of components with deteriorated paint with a distinct painting history in poor condition, (4) the collection of a minimum of two composite dust samples (one for floors and one for windows), and (5) the preparation of a report on the results of the screen. Specifically, § 745.227(c) requires that in a residential dwelling two composite samples be taken—one from the floors and one from the windows in rooms where one or more children, age 6 and under, are most likely to come into contact with dust. Additionally, in multi-family dwellings and child-occupied facilities, composite dust samples are to be taken from any common areas where one or more children age 6 years and under are likely to come into contact with dust.

2. *Risk assessment.* In addition to the requirements of a lead hazard screen, the standards for a risk assessment contained in § 745.227(d)(3) also involve the collection and review of

background information regarding the physical characteristics of a building, and the occupant use patterns that may pose a lead-based paint hazard to children aged 6 years and under. More than two dust samples and soil samples also may be required under § 745.227(d)(4), (5), (6) and (7), respectively. Lastly, the risk assessment report must include options for reducing and/or eliminating lead-based paint hazards.

The requirements contained in § 745.227(d) of today's final rule differ from those proposed in September 1994 in that they reflect the Agency's decision to reduce the detail and specificity of the rule. However, based on the documentation and recordkeeping requirements for a risk assessment, and the rule's training, certification and accreditation requirements, the Agency believes that the standards contained in today's final rule will promote reliable, safe and effective risk assessments.

For example, the proposed rule specified several items of information to be collected as background information during a risk assessment, including the age of the building and any additions being evaluated, copies of any previous inspection reports, and a schematic site plan of the building. In its review of the comments on the proposed rule, the Agency noted that many of these requirements would be met during the preparation of a risk assessment report. For instance, among the items to be presented in a risk assessment report, as contained in § 745.227(d)(10) are: the date of construction of the building, data collected as a result of any previous inspection or other analyses available to the risk assessor, and the specific locations of any identified lead-based paint hazards or potential hazards.

In eliminating specific instructions regarding the background information to be collected, the Agency believes that the standards for conducting a risk assessment have been simplified without diminishing the reliability, safety, and effectiveness of those standards. This is because today's final rule has eliminated the duplicative reporting requirements included in the September 2, 1994 proposal by requiring that the information only be contained in the risk assessment report.

In addition to these changes, the Agency has slightly modified § 745.227(d)(10)(xviii), which requires a risk assessor to provide options for eliminating and/or reducing lead-based paint hazards in the risk assessment report. Under the proposed rule, the risk assessor would have been required to provide not only options, but to

recommend one option over another and to include a rationale or justification for his or her selected option. The final rule no longer requires the risk assessor to recommend one option over another, provided the recommended options are all presented in the risk assessment report.

These changes were largely based on comments urging the Agency to allow the individual or firm contracting for the risk assessment to select from the options presented in the report. Although the Agency does not necessarily believe that the proposed requirements would have forced a building owner to select the option recommended by a risk assessor, the Agency is willing to provide building owners with more flexibility in reviewing risk assessment reports and selecting among remediation options.

In response to comments on the latitude a risk assessor is given in determining dust sampling locations and the extent of paint deterioration, the Agency believes, as discussed in Unit VI.A. of this preamble, that because the risk assessor will be a trained specialist equipped with the requisite professional judgement needed to evaluate lead-based paint hazards, added specificity is unnecessary in the rule. The Agency also stresses that due to major differences in the structure, design and condition, and occupant use patterns of various buildings, it is best not to identify specific room locations, e.g., kitchen, playroom, bedroom, for the purposes of sampling dust. Instead, the regulations in § 745.227(d)(4), (d)(5), and (d)(6) require that dust samples be collected in rooms and areas where young children are most likely to come into contact with dust.

Similarly, the final rule clarifies that only deteriorated paint with a distinct paint history found to be in poor condition shall be sampled for the presence of lead. "Paint in poor condition" is defined in today's final rule as 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 interior or exterior components with small surface areas (window sills, baseboards, soffits, trim) on which more than 10 percent of the total surface area of the component is deteriorated. This determination is to be made by the risk assessor based on a documented methodology such as the HUD Guidelines.

As discussed earlier in Unit VII.C. of this preamble, such locations include the playrooms and bedrooms of

children, kitchens, and living rooms, as well as common areas associated with a residential dwelling or child-occupied facility.

The Agency also reiterates that detailed instruction on where and how to sample dust is included in the HUD Guidelines, existing EPA guidance and various State regulations and guidance documents, and that these instructions will be taught in accredited training programs and included in future Agency guidance.

Lastly, the Agency has clarified the standards for collecting soil samples contained in § 745.227(d)(7) such that samples need only to be taken from exterior play areas and dripline/foundation areas where bare soil is present. This requirement is in keeping with the statutory definition of lead-contaminated soil, which basically is the same definition used in today's final rule. As defined in § 745.223, lead-contaminated soil means bare soil on residential real property and on the property of a child-occupied facility that contains lead at or in excess of levels determined to be hazardous as identified by the EPA Administrator pursuant to TSCA section 403. Guidance on how to collect bare soil samples is provided in EPA's *Residential Sampling for Lead: Protocols for Dust and Soil Sampling* document and the HUD Guidelines.

#### *D. Composite Sampling*

Under today's final rule, composite dust and soil sampling is expressly permitted for the purposes of conducting a lead hazard screen, risk assessment, or clearance following an abatement.

This change from the September 2, 1994 proposal is based on comments the Agency received in support of composite sampling for dust and soil, as well as limited evidence supporting the use of composite dust and soil sampling to determine the presence of lead in dust and soil. The Agency also believes that composite sampling is useful because it provides a means for "averaging" the potential for exposure to lead-based paint hazards in a residential dwelling or child-occupied facility. Furthermore, the Agency is permitting use of the technique due to laboratory cost savings generated by sampling analysis.

However, it is important that the individual who is receiving the results of a composite understand their limitations and can correctly interpret the results of a composite sample. A brief discussion of this subject can be found in this section, and a thorough discussion of this issue is contained in

the HUD guidelines, and will be presented in the risk assessor and supervisor course.

Specific instruction on the taking of composite dust and soil samples is provided in the HUD Guidelines. The technique essentially involves combining several subsamples from the same types of components into one sample for analysis. A composite dust sample is different from a single-surface sample because it combines at least two dust samples from more than one sampling area into one sample.

Pursuant to § 745.227(g) of today's final rule, composite dust samples must consist of at least two subsamples. At this time the Agency recommends that a composite sample consist of no more than four subsamples, unless the laboratory contracted to analyze the composite sample agrees to accept a sample consisting of more than four subsamples. This recommendation is based on current limitations in the laboratory analysis of composite samples consisting of more than four subsamples (i.e., using available technology, composite samples that combine more than four subsamples are difficult to properly analyze). However, because some EPA-recognized laboratories are acquiring the ability to analyze composite samples consisting of more than four subsamples, the final rule does not explicitly restrict a composite sample from containing more than four subsamples.

Pursuant to § 745.227(g) of today's final rule, composite dust samples shall not consist of subsamples from more than one type of component. For example, subsamples from four uncarpeted floors from four rooms may be combined into one composite sample. However, in these same four rooms, the rule prohibits two subsamples from windows in two of the rooms from being composited with two subsamples from floors in the other two rooms.

This restriction is due to the varying levels of lead that may be present on different components, and the potential hazard that a component may present. For example, dust samples from floors generally tend to indicate a lower level of contamination, while the frequency of contamination is generally higher in windows. Consequently, the interpretation of the results from a composite sample consisting of subsamples from different components would not adequately characterize the location of the hazard.

One of the primary benefits derived from composite sampling is lower sampling costs due to fewer laboratory analyses. Lead levels generally vary

significantly from one component to another, and a single surface sample from one component alone (i.e. from one area of a floor in a room to another of the same floor) may not represent the potential for exposure. Composite sampling provides a means to determine potential exposures to lead-based paint hazards by obtaining a wide cross-section of possible exposure pathways.

However, composite sampling may yield laboratory results that are not as informative as single-surface sampling. For example, dust samples from the floors of three rooms might be composited where only one of the floors contains lead-contaminated dust higher than the clearance level contained in the section 403 Guidance for uncarpeted floors of 100 µg/ft<sup>2</sup>. This might cause the composited sample to fail clearance. On the other hand, if three single-surface floor dust samples were taken for clearance testing, the laboratory analyses would have precisely indicated which one of the three rooms exceeded the clearance level, and the inspector or risk assessor would know exactly which room needed to be recleaned and retested.

Because of these limitations, it is imperative that a risk assessor, inspector, or supervisor understands and correctly interprets composite samples.

#### E. Abatement

As discussed in Unit III.B. of this preamble, the issue that received the most comment associated with abatement was the proposed definition of abatement. The Agency's response to those comments is discussed in that unit of the preamble.

In addition to these comments, other comments on a number of the work practice standards, procedures and restrictions proposed for various abatement activities were received. These comments principally addressed the following issues: (1) "Prohibited" or restricted abatement work practices; (2) encapsulation; (3) the development of a pre-abatement plan; (4) clearance requirements following both interior and exterior abatements; (5) soil abatement; and (6) management of waste from lead abatement activities.

The Agency's response to these comments and changes that have been made to the corresponding standards for abatement are discussed below.

1. "Prohibited practices." In the preamble of the proposed rule, the Agency indicated that it was considering banning certain abatement work practices in target housing, due to the potential risk of lead contamination posed to workers and/or the

environment. The practices singled out by the Agency included:

- i. Open-flame burning of painted surfaces.
- ii. Dry scraping or sanding of painted surfaces.
- iii. The use of heat guns on painted surfaces for abatement without proper protection.

Additionally, the Agency specifically requested comments and/or data related to exposure to lead-contaminated dust and fumes from these and other abatement work practices.

In response, an overwhelming majority of commenters on this issue urged the Agency to expressly ban the use of open-flame burning or torching on painted surfaces in target housing and child-occupied facilities, and to specifically restrict—not necessarily to ban—the other practices listed above, to reduce the risks they pose. Furthermore, commenters also requested that the Agency set restrictions on the use of machine sanding or grinding, abrasive blasting or sandblasting, and hydroblasting and high-pressure washing techniques in target housing and child-occupied facilities.

Commenters also provided a number of references to studies to document their recommendations to the Agency.

The restrictions proposed by commenters generally were consistent with the HUD Guidelines, and have been the subject of several studies which support the restrictions in today's final rule. A review of these studies has been prepared by EPA titled *A Review of Studies Addressing Lead Abatement Effectiveness* (Ref. 9).

An important point related to restricting the abatement practices contained in § 745.227(e)(6) is that the public comments supporting such restrictions were expressly directed at target housing and other buildings, such as child-occupied facilities, where young children routinely and frequently spend time. In response, the Agency stresses that the restrictions on abatement practices contained in today's final rule apply only to target housing and child-occupied facilities.

In contrast, other commenters were opposed to prohibiting or restricting similar "deleading" activities, in public and commercial buildings, superstructures and bridges.

In public and commercial buildings, superstructures and bridges, most commenters were generally satisfied with existing OSHA regulations for the purposes of protecting the health and safety of workers. Concerns were, however, voiced over the lack of cost-effective work practice alternatives to open-flame burning, machine sanding or

grinding, and abrasive blasting for removing lead-based paint from public and commercial buildings, superstructures and bridges. In response to these comments, the Agency will further review options for addressing lead-based paint activities conducted in public and commercial buildings, and superstructures and bridges.

On the other hand, commenters who favored restricting certain work practices in target housing and child-occupied facilities indicated that although OSHA regulations may protect workers, they are not designed to protect building occupants, especially children aged 6 years and under, from lead-based paint hazards that may be generated during an abatement. As discussed previously, these commenters also indicated that by restricting certain work practices, rather than banning them altogether, lead-contaminated dust and fumes could be effectively controlled. Furthermore, these commenters suggested that in some instances safer work practice alternatives are available.

Based on these comments and a review of studies referenced above, today's final rule in § 745.227(e)(6) imposes certain restrictions on selected work practices when conducted during an abatement in target housing and child-occupied facilities. Today's final rule also bans the use of open flame burning and torching when conducting abatements in target housing and child-occupied facilities.

These restrictions include the operation of a heat gun at a temperature above 1100 degrees Fahrenheit, due to the release of lead dust and fumes and the potential hazards posed to building occupants, particularly children aged 6 years and under. This restriction is supported by two studies that found significant problems with lead-based paint when volatilized by heat guns and propane torches operating above this temperature. These problems included large increases in the blood lead levels of children in homes where heat guns and torches were used at temperatures in excess of 1100 degrees Fahrenheit during abatement (Refs. 11 and 12).

The rule also restricts the use of machine sanding or grinding, abrasive blasting and sandblasting as abatement work practices, unless they are conducted using a High-Efficiency Particulate Air (HEPA) exhaust control which removes particles of 0.3 microns or larger from air at 99.97 percent or greater efficiency. Although studies indicate that the effectiveness of HEPA attachments has been limited in containing dust releases in the past, commenters indicate that recent

technology has improved performance. Consequently, if HEPA attachments meet or exceed the performance standard above, the Agency believes they can serve as a tool for ensuring that abatement activities involving the use of machine sanding or grinding, abrasive blasting and sandblasting are conducted safely, reliably and effectively.

Dry scraping and sanding are permitted under today's final rule only around electrical outlets, or when treating defective paint spots totaling no more than 2 square feet in any one interior room, or totaling no more than 20 square feet on exterior surfaces. These restrictions are based on high levels of dust generated by dry scraping and sanding, and the availability of techniques, such as wet spraying or the use of a heat gun below 1100 degrees Fahrenheit, to control dust generation. Additionally the restrictions placed on dry scraping provide allowances for convenience and safety when abating relatively small defective paint spots and areas around electrical outlets.

In regard to the establishment of restrictions for hydroblasting and high-pressure washing, the Agency does not have enough data to demonstrate that these practices may pose a lead-based paint hazard in target housing or child-occupied facilities. Nor is there sufficient data to support specific restrictions on how to effectively control or limit these practices to reduce any hazards they might pose. Consequently, the rule does not establish restrictions for hydroblasting and high-pressure washing. However, the Agency recommends that controls be used to contain any debris or wastewater that may be generated when hydroblasting and high-pressure washing are employed as abatement techniques.

**2. Encapsulation.** As discussed in the September 2, 1994 proposed rule, the definition of abatement includes the phrase "permanent containment or encapsulation." This phrase is part of the statutory definition of abatement under Title IV section 401, and it has been retained as part of the abatement definition in § 745.223 of today's final rule.

In the preamble of the proposed rule, however, the Agency also pointed out that all encapsulant will degrade over time, so therefore, no encapsulant is truly permanent. Consequently, the Agency requested comment on whether to include a periodic monitoring requirement when an encapsulant is used to abate lead-based paint.

The majority of commenters generally supported some kind of monitoring requirement, but were divided as to whether EPA should regulate such a

requirement given that encapsulation technologies are still evolving. Although some commenters encouraged the Agency to include specific monitoring requirements (e.g., once every 6 months, 1 year, 3 years, etc.), others suggested that the Agency develop standards for encapsulant products and/or require that manufacturers provide guarantees regarding the durability and longevity of an encapsulant product. Other commenters requested that the Agency specify who is responsible for monitoring an encapsulant—either the building owner or a third party.

In response to these and other related issues raised by commenters, today's final rule does not specify a particular monitoring requirement, nor does it establish any other specific standards for the use of encapsulants. This decision is based primarily on the development of existing encapsulant technologies and ongoing voluntary efforts within the encapsulant industry to develop performance-based standards for encapsulants.

Three American Society of Testing and Materials (ASTM) standards, E 1795 ("Standard Specification for Non-Reinforced Liquid Coating Encapsulation Products for Leaded Paint in Buildings"), E 1797 ("Standard Specification for Reinforced Liquid Coating Encapsulation Products for Leaded Paint in Buildings"), and E 1796 ("Standard Guide for Selection and Use of Liquid Coating Encapsulation Products for Leaded Paint in Buildings") were approved in March 1996. The three standards were developed by a voluntary consensus-building process that included representatives from EPA, other Federal agencies, and a wide range of interests across the lead abatement industry. The standards cover what is considered by ASTM to be the minimum set of material performance requirements for these products, as well as guidance on how to select, apply, evaluate, and maintain the products under normal use conditions. The standards acknowledge that users (e.g., risk assessors, abatement supervisors) should evaluate their individual situation to assess whether additional requirements are needed to adequately protect the surface.

EPA endorses these standards and recommends their use, but has chosen not to require them as part of the work practice standards in this rule. EPA is confident that most States and local jurisdictions will evaluate these standards for their appropriateness for the conditions under which they will be expected to perform and specify additional performance requirements as needed. The standards will also be

discussed in training course materials for risk assessors and abatement workers and supervisors.

**3. Pre-abatement plan.** In the proposed rule, the standards for conducting an abatement would have required the development of a "pre-abatement plan" for all abatement projects. Under the proposed rule the pre-abatement plan would have included the following: (1) Information regarding measures taken to protect workers; (2) measures taken to comply with existing Federal, State and local environmental regulations; and (3) an occupant protection plan. In its review of the comments on the pre-abatement plan, and of the occupant protection plan itself, the Agency has decided that the primary purpose of the occupant protection plan is to help ensure that *building occupants* are protected from potential lead-based paint exposures during an abatement.

This determination is based on comments that suggested the Agency minimize any overlap with existing Federal regulations. For example, if an abatement project resulted in the generation of a hazardous waste, commenters noted that the contractor and/or building owner may already be subject to certain reporting requirements under the Resource Conservation and Recovery Act (RCRA). These commenters argued that it would be duplicative and burdensome to resubmit its RCRA reports to EPA under a TSCA law. A similar rationale applies to the proposed provision of information regarding measures taken to protect workers. This proposed requirement would be duplicative of OSHA provisions to protect workers.

The Agency agrees with commenters on this point, and has removed parts 1 and 2 of the pre-abatement plan from today's rulemaking. Consequently, the only remaining part of the pre-abatement plan is the "occupant protection plan," which in today's final rule replaces the proposed pre-abatement plan.

**4. Clearance procedures.** Comments received on the clearance procedures contained in the proposed rule indicated a need to clarify the dust sampling requirements associated with clearance. Commenters were confused regarding the number of dust samples that needed to be collected and the locations within a residential dwelling or child-occupied facility that needed to be sampled as a part of the clearance procedures contained in the September 2, 1994 proposal.

Several commenters also suggested that the proposed rule required too many samples, which they believed

would add to the costs of an abatement without necessarily providing better information regarding the efficacy of an abatement. They urged the Agency to reduce the number of samples to be taken for the purposes of clearance following an abatement; some commenters suggested that composite sampling be employed to reduce the required number of clearance samples. And virtually all commenters agreed that the proposed 24-hour waiting period was too long to wait to conduct clearance sampling following an abatement.

In response to these comments, the clearance procedures contained in today's final rule have been presented more clearly and concisely. For example, commenters indicated that in the proposed rule it was not clear whether additional dust clearance samples were required following an abatement project that used containment, as opposed to an abatement that did not use containment. In today's final rule, § 745.227(e)(8)(v)(A) clearly indicates the number of dust samples that are to be taken following an abatement that employs containment. These include one sample from the floor, and one from the window (if available) in the rooms within the containment area. Additionally, the rule requires that one sample will be taken from the floor outside the containment area.

On the other hand, § 745.227(e)(8)(v)(B) clarifies that, if containment was not employed as a part of the abatement, two dust samples will be taken from rooms in the residential dwelling or child-occupied facility where the abatement was conducted.

The final rule also limits the number of rooms that are required to be sampled as part of clearance to four. Clearance inspectors are free to sample more than four rooms, but today's rule establishes a minimum of four rooms that must be sampled. The rooms shall be selected according to documented methodologies. The current HUD guidelines, one such documented methodology, recommend that the rooms be selected based on where most of the dust-generating work was done.

The rationale for this change is that given similar abatement techniques, and more importantly, similar post-abatement cleanup, if the four selected rooms pass clearance, then the other rooms will also likely pass.

Based on comments, the final rule, under § 745.227(e)(8)(iii), now requires a minimum 1-hour waiting period following the completion of post-abatement clean-up activities prior to the collection of dust samples for the

purposes of clearance. The 1-hour waiting period is consistent with the HUD Guidelines and other State regulations and guidance on the appropriate amount of time needed prior to conducting clearance following an abatement. Supporting rationale in the HUD Guidelines have shown that 1-hour is sufficient time for airborne lead particles to fall on to horizontal surfaces and be collected (Ref. 12).

In regard to a reduction in the number of samples that will be taken as a part of clearance following an abatement, the final rule permits the use of composite sampling. Composite sampling should assist in reducing the number of samples that need to be taken as a part of clearance. As discussed in this Unit of the preamble in paragraph D, the Agency believes that composite sampling can be a reliable, safe and effective alternative to single surface sampling.

Sampling requirements also have been reduced when clearance is conducted following an exterior abatement. Again, several comments were received on clearance requirements following an exterior abatement suggesting that the proposed rule required too many samples. For example, the proposed rule would have required soil samples to be taken prior to an exterior abatement project, so that any lead levels found in the pre-abatement samples could be compared with post-abatement soil samples to determine if there was any contamination resulting from the exterior abatement.

The Agency agrees with commenters on this point, and has removed the requirement to take pre-abatement soil samples and the requirement to take soil samples following an exterior abatement. Rather, the final rule requires a visual inspection to determine the presence of any paint chips along the dripline or next to the foundation below any exterior surface abated. If paint chips are present, they must be removed and properly disposed. The Agency is allowing the individual or firm conducting the exterior abatement to determine the need to conduct any soil sampling, based on liability concerns the individual or firm may have based on potential claims that the actions of the abatement workers/supervisors caused soil contamination.

In general, the Agency believes that today's final rule more clearly articulates the number of samples that must be taken as a part of clearance testing following either an interior or exterior abatement. Through composite sampling, the rule also permits a

reduction in the number of analyses to be done. In addition, § 745.227(f) of today's final rule requires that all samples must be sent to EPA-recognized laboratories, which will help ensure the reliability of sampling results.

Notably, under § 745.223 the final rule provides a definition for clearance levels and includes references to the section 403 Guidance, the HUD Guidelines and other guidance for specific numeric values. As discussed in the September 2, 1994 proposed rule, it is possible that numeric values for clearance will be a part of the final section 403 rulemaking, depending on the comments received on this matter under the section 403 proposal. Until numeric values are established for clearance through the regulatory process, certified individuals and firms, training providers and other persons should reference the guidance documents listed in the definition of clearance levels (contained in § 745.223) for numeric limits for clearance.

5. *Soil abatement.* Commenters requested clarification on various procedures proposed for soil abatement. Included among the items raised by commenters were: clarification as to whether the proposed soil abatement procedures applied only to target housing and child-occupied facilities, or to public and commercial buildings, superstructures and bridges, as well; requests that the Agency stipulate a lead level in soil to be used to determine when soil abatement must occur; and clarification as to whether both bare and covered soil should be abated.

In response, it should be clear under today's final rule that the procedures put forward for soil abatement under § 745.227(e)(7) apply only to target housing and child-occupied facilities. Regulations for the management of lead-contaminated soil at industrial sites currently are provided under RCRA and Superfund.

On the need for a specific lead level to determine when soil abatement is needed, the Agency refers commenters to its section 403 Guidance document. In the section 403 Guidance, Agency recommendations are provided for response activities to lead-contaminated soil based on a range of lead levels. These response actions also take into account whether the contaminated area under consideration is used by children.

For example, in the section 403 Guidance, interim control activities are recommended as a means to reduce possible lead exposures if lead levels in bare soil range between 400 and 5,000 parts per million (ppm) and if the area of concern is expected to be used by children. Such areas could include

residential backyards, and day-care and school yards. Appropriate interim control activities could include planting ground cover or shrubbery to reduce exposure to bare soil, moving play equipment away from contaminated bare soil, or restricting access through posting, fencing or other actions.

As discussed in the section 403 Guidance, however, the decision on whether interim controls or an abatement action is appropriate depends on several variables. For example, although the section 403 Guidance does not recommend soil abatement until lead levels in soil exceed 5,000 ppm, it is possible that a risk assessor may recommend abatement at a lower level. For instance, in a situation in which the blood lead levels of children that use an area under consideration for abatement are high and the risk assessor has determined that the soil may be the primary source of exposure, the risk assessor would consider presenting options that include soil abatement.

As discussed throughout this preamble, the Agency does not believe it is able, at this time, to effectively identify, list and regulate all the variables that may influence decisions on how to respond to lead-based paint hazards. Furthermore, today's final rule does not provide a specific lead level in soil for use as an abatement trigger. Rather, the Agency refers decision makers in this arena to the section 403 Guidance, which also shall be taught in accredited training courses.

In terms of conducting soil abatement, comments were received that requested clarification of the definition of permanent covering. In the proposed rule, the permanent covering of contaminated soil was listed as a soil abatement option. In today's final rule, soil abatements must be conducted in one of two ways: If soil is removed, the lead-contaminated soil shall be replaced with soil that is not lead-contaminated; or if soil is not removed, the lead-contaminated soil shall be permanently covered. In response to commenters, the final rule also defines permanently covered soil as 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.

Commenters also requested clarification as to whether any amount of newly added soil could represent a permanent covering. In response, the Agency has concluded that at this time, there is insufficient information to determine the amount or type of soil covering that would protect human

health from the risk of exposure to lead contaminated soil. However, but the Agency believes that some depth of soil of a given type may provide adequate protection. The Agency is seeking information on this subject and will address this in the section 403 regulation as part of the discussion on lead-contaminated soil.

6. *Management of waste from lead abatement activity.* Lead-based paint abatement generates different types of solid waste, including paint chips, architectural components, and contaminated clothing, which may be subject to hazardous waste treatment, storage, and disposal regulations under RCRA Subtitle C (40 CFR part 261). RCRA establishes a comprehensive Federal program for the management of solid and hazardous wastes.

The training requirements in today's final rule for workers, supervisors and project planners include training in the proper management of wastes generated during abatement activity. These requirements will encourage compliance with RCRA during the conduct of such activities.

Management of architectural component debris waste was a particular concern of some commenters on the proposed rule. Comments indicated that RCRA Subtitle C waste sampling and testing requirements are impractical for debris, and that the costs associated with managing debris as hazardous waste are impeding progress in reducing lead-based paint hazards. The Agency wishes to minimize potential regulatory impediments to conducting and financing lead-based paint abatements. Thus, EPA intends to issue a separate rulemaking specifically addressing the disposal of architectural debris waste from lead-based paint abatements. Until the Agency promulgates such a rule, the requirements of RCRA continue to apply to lead abatement waste.

One important RCRA issue is the identification of the party deemed the generator of a waste, particularly in the context of contractual relationships such as those for lead-based paint activities. RCRA defines a generator in 40 CFR 260.10 as "any person, by site, whose act or process produces hazardous waste identified or listed in [40 CFR part 261] or whose act first causes a hazardous waste to become subject to regulation." In the proposal (59 FR 45890), EPA stated that contractors for lead-based paint activities (as opposed to building owners) are the generators of abatement waste and are therefore the parties responsible for RCRA compliance. EPA received a number of comments

requesting a clarification and reconsideration of this issue.

EPA wishes to clarify that the property owner and the abatement contractor are co-generators of waste from lead-based paint activities, as both parties contribute to its generation. Under co-generator status, one party might manage the disposal of the waste (for example, the building owner might request that a contractor handle this task), but both parties remain legally responsible for proper disposal of the waste and for RCRA compliance. The Agency discussed cogenerator status in more detail in an FR notice issued on October 30, 1980 (45 FR 72026).

## IX. State Programs

### A. Introduction

This unit contains two parts: (1) A discussion of procedures for States and eligible Indian Tribes, including eligible Alaskan Native Villages, to obtain authorization from EPA to administer and enforce (a) a lead-based paint activities program and/or (b) a pre-renovation notification program; and (2) a description of a model program that will serve as a blueprint for these State and Tribal programs.

Section 404(a) of TSCA provides that any State that seeks to administer and enforce the standards, regulations, or other requirements established under sections 402 (lead-based paint activities) or 406 (pre-renovation notification) may submit an application to the Administrator for approval of such a program. As discussed, today's final rule contains the regulations established pursuant to section 402(a). The Agency has not, at this time, promulgated final regulations under section 406. States may begin to apply for program authorization of a pre-renovation once the final section 406 regulation is promulgated.

Section 404(b) states that the Administrator may approve such an application only after finding that the State Program is at least as protective of human health and the environment as the Federal program established according to the mandates of TSCA section 402 or 406 and that it provides adequate enforcement. The procedures for submitting an application are found in § 745.324 of this regulation and are discussed in more detail below. The Agency is developing an Application Guidance Document that it will distribute, to give additional guidance on how to develop and submit an application for program authorization.

Section 404(d) directs the Agency to promulgate a model State program, which any State that seeks approval to

administer and enforce may adopt. In response to this mandate, the Agency has promulgated, at §§ 745.325, 745.326, and 745.327 minimum requirements and enforcement provisions that a State or Tribal program must have to receive authorization from the Agency to administer a lead-based paint activities program (§ 745.325) and/or a pre-renovation notification program (§ 745.326). These requirements are discussed in more detail in Unit IX.E. of this preamble.

No political subdivisions (e.g., cities, towns, counties, etc.) other than States, as defined by TSCA section 3, and Indian Tribes (see discussion in Unit IX.F. of this preamble), are eligible for authorization under this program.

#### B. Submission of an Application

Before developing an application for authorization, a State or Indian Tribe must publicly distribute a notice of intent to seek such authorization and provide an opportunity for a public hearing. The State or Indian Tribe is free to conduct this hearing and provide an opportunity for comment in any manner it chooses. Upon completion of the final application that reflects this public participation, the State or Indian Tribe shall submit the application to the appropriate EPA Regional Office.

As described at § 745.324(a), an application for program authorization must include the following elements: a transmittal letter from the Governor or Tribal Chairperson (or equivalent official); a summary of the State or Tribal program; a description and analysis of the program; an Attorney General's or Tribal equivalent's statement attesting to the adequacy of the State's or Indian Tribe's program authority; and 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.

1. *Program description.* A program application must contain information, specified in § 745.324(b), that describes the program. The program description is the portion of the application that the State or Indian Tribe will use to characterize the elements of their program. The Agency will use this information to make an approval or disapproval decision on a State or Indian Tribe's application. The program description contains five distinct sections. In the first (§ 745.324(b)(1)), the State or Indian Tribe must list the name of the State or Tribal agency that will administer and enforce the program, and if there will be more than one agency administering or enforcing

the program, describe the relationship between or among these agencies.

Second, the State or Indian Tribe must, in the application, demonstrate that the program meets the requirements of § 745.325 or 745.326 or both. These elements represent the minimum authorities that a State or Tribal program must have to be considered for program authorization. These elements are discussed in greater detail in Unit IX.E.1. and IX.E.2. of this preamble.

Third, the application must provide an analysis of the entire State or Tribal program that describes any dissimilarity from the Federal program in subpart L "Requirements for Lead-Based Paint Activities," or regulations developed pursuant to TSCA section 406. The analysis should address each element of a State or Tribal program: for a lead-based paint activities training and certification program, those elements found at § 745.325(a) (i.e., accreditation of training programs, certification of individuals, and work practice standards for the conduct of lead-based paint activities); and for a pre-renovation notification program, those elements found at § 745.326(a) (i.e., distribution of lead hazard information and a lead hazard information pamphlet).

The analysis must then explain why, considering these differences, the State or Tribal program is at least as protective as the respective Federal program. The Agency is inclined to give deference to a State or Indian Tribes determination that its program is sufficiently protective and appropriate for their State or Indian Tribe. The Agency will use this analysis, along with its own comparison, to evaluate the protectiveness of the State or Tribal program. This issue is discussed in more detail in Unit IX.E. of this preamble discussion.

Fourth, the State's or Indian Tribe's application must demonstrate that the program meets the requirements of § 745.327. These elements represent the enforcement elements that a program must have to receive authorization. This section of the application is discussed in more detail in Unit IX.E.3. of this preamble.

In addition to the above, the program description for an Indian Tribe must also include a map, legal description, or other information that will identify the geographical extent of the territory over which the Indian Tribe exercises its jurisdiction. The Indian Tribe shall also include a demonstration that it is: (1) Recognized by the Secretary of the Interior; (2) has an existing government exercising substantial governmental duties and powers; (3) has adequate

civil regulatory jurisdiction over the subject matter and entities regulated; and (4) is reasonably expected to be capable of administering the Federal program for which it is seeking authorization.

If the Administrator has previously determined that an Indian Tribe has met these prerequisites for another EPA program authorization, then the Indian Tribe need provide only that additional information unique to its lead-based paint program. The rationale for requiring the tribe to provide this information is discussed in detail in Unit IX.F. of this preamble.

2. *Attorney General's statement.* The State or Indian Tribe must provide an assurance that the State or Indian Tribe has the legal authority necessary to administer and enforce the program. The State or Tribal Attorney General (or equivalent Tribal official) must sign this statement. (See discussion in Unit IX.F. of this preamble for specific Tribal program requirements).

3. *Public availability of application.* Section 404(b) of TSCA requires the Agency to provide notice and an opportunity for public hearing on a State or Tribal application for authorization. Accordingly, the Agency will publish in the Federal Register, a notice announcing the receipt of a State's or Tribe's application, a summary of the State or Tribal program, the location of copies of the application available for public review, and the dates and times that the application will be available for public review. Individuals may at that time submit a request to the Agency for a public hearing on the State or Tribal application. It should be noted that this opportunity for public hearing is separate and distinct from the public comment, discussed in part B. of this unit of the preamble, that the State or Indian Tribe must seek before preparing an application for program approval (§ 745.324(a)(2)).

#### C. State Certification

Pursuant to section 404(a), at the time of submitting an application for program authorization, a State may also certify to the Administrator that the State program meets the requirements of TSCA section 404(b)(1) and 404(b)(2).

If this certification is contained in a State application, the program is deemed authorized, until the Administrator disapproves the program's application or withdraws the program's authorization. This certification must be contained in a letter from the Governor or the Attorney General, to the Administrator, and must reference the program analysis



contained in the program description portion of the application as the basis for concluding that the State program is at least as protective as the Federal program and provides for adequate enforcement.

This provision is not available to Indian Tribes because Indian Tribes must first demonstrate to the Agency that they meet the criteria at § 745.324(b)(4) for Treatment as a State ("TAS"). Although Indian Tribes may be able to demonstrate that they have been approved for "Treatment as a State" for any other environmental program (satisfying two of the four TAS criteria), the Agency must make a separate determination that an Indian Tribe has adequate jurisdictional authority and administrative and programmatic capability regarding its lead program before it can determine that the Tribe should be treated as a State. These criteria are discussed in greater detail in Unit IX.F. of this preamble.

As stated at § 745.324(d)(3), if the application does not contain such certification, the State's program will be considered authorized only after the Administrator approves the State application.

EPA encourages both States and Indian Tribes to submit their authorization applications as soon as possible after October 28, 1996. Because the Agency anticipates needing the full 180 days to properly review and act on an application, States and Indian Tribes are strongly encouraged to submit a completed application before March 2, 1998.

#### D. EPA Approval

Within 180 days following receipt of a complete State or Tribal application, the Administrator will approve or disapprove the application. The Administrator will approve a program only if, after notice and opportunity for public hearing, the Administrator finds that:

(1) The program is at least as protective of human health and the environment as the Federal program contained in subpart L or in regulations developed pursuant to TSCA section 406; and

(2) The program provides adequate enforcement of the appropriate State or Tribal regulations.

The Agency will notify the State or Indian Tribe in writing of the Administrator's decision. As described in § 745.324(c), upon authorization of a State or Tribal program, it will be unlawful under TSCA section 15 and section 409, for any person to violate,

fail or refuse to comply with any requirements of such a program.

The Agency believes that section 404 and the decision criteria above give it reasonably broad latitude in approving or disapproving State and Tribal programs. EPA interprets the section 404(b) standard "... at least as protective as ..." to mean that a program need not be identical to, or administered in a manner identical to, the Federal program for that program to be authorized. Indeed, the Agency expects to receive applications for State and Tribal programs that will differ in some respects from the Federal program established in this rulemaking. This is unavoidable (and even desirable) given the differences that undoubtedly exist between lead-based paint problems and approaches to dealing with them at the State and Tribal level. The Agency will make every attempt to accommodate these differences while following the statutory requirement of ensuring that every State or Tribal program is at least as protective as the Federal program.

1. *Establishment of the Federal program.* If a State or Indian Tribe does not have a program authorized under this rule and in effect by the August 31, 1998, the Administrator will, by such date, establish the Federal program under subpart L, or regulations developed pursuant to TSCA section 406, as appropriate in that State or Indian Country.

2. *Withdrawal of authorization.* As required by section 404(c) of TSCA, if a State or Indian Tribe is not administering and enforcing its authorized program according to the standards, regulations, and other requirements of TSCA Title IV, including section 404(b)(1) and (b)(2), the Agency will so notify the State or Indian Tribe. If corrective action is not completed within a reasonable time, not to exceed 180 days, the Administrator shall withdraw authorization of such program and establish a Federal program pursuant to TSCA Title IV in that State or Tribal land. Procedures for withdrawal of authorization can be found in § 745.324(i).

#### E. Model State Program—Guidance to States and Indian Tribes; EPA Approval Criteria

TSCA section 404(d) directs the Agency to promulgate a MSP that may be adopted by any State or Indian Tribe that seeks to administer and enforce a lead-based paint activities program. As interpreted by EPA, this model is intended to serve two purposes. First, the model is intended to give States and Tribes guidance as to the contents of a program that they could develop to

receive program authorization from EPA. Second, the model is also intended to provide overall guidance to States that have not, until this point, developed legislation or regulations for a training and certification or a pre-renovation notification program.

In the proposed rule, the Agency offered the entire Federal program as a model. The Agency stated that, because section 404(a) requires that an authorized State or Tribal program be at least as protective as the Federal program, a State or Tribal program seeking authorization should resemble, in significant respects, the Federal program. Therefore, the entire Federal program for lead-based paint activities was offered as a model for States and Indian Tribes to use in developing their own programs.

Many commenters, however, stated that the proposal did not articulate in sufficient detail the specific elements a program must have to be authorized by EPA. Some commenters also believed that, as written, the proposal implied that a State or Tribal program must be identical to the Federal program. The Agency did not intend to give this impression, and in developing a separate model program has attempted to clarify what is expected of a State or Tribal program applying for authorization.

Other commenters stated that the Agency should develop a model program that would dictate all requirements that must be in a State or Tribal program. These commenters expressed the belief that, because the Agency is required to evaluate the protectiveness of a State or Tribal program compared to the Federal program, the Agency should specify all elements of a State or Tribal program or require that a State or Tribe adopt the entire Federal program. Commenters believed this approach would alleviate any uncertainty regarding the interpretation of the statutory phrase "... at least as protective as ..." The Agency has rejected this approach because it would not allow the flexibility that EPA believes is necessary for the effective administration of this program at the State or Tribal level.

In response to comments the Agency has modified the final rule in two significant ways. First, the Agency has developed a set of minimum programmatic elements (§§ 745.325 and 745.326 and discussed in sections 1 and 2 of this Unit of the Preamble) that a State or Tribal program must have to receive authorization from the Agency. This section was developed in response to commenters who requested specific direction from the Agency on the



elements that must be contained in a State or Tribal program seeking authorization. The requirements at §§ 745.325 and 745.326 represent the elements EPA believes a State or Tribal program must have to successfully administer a lead-based paint training and certification or a pre-renovation notification program. These elements are discussed in more detail later in this Unit of the preamble.

Second, as required by Title X, a State or Tribal program must also be found, by the Agency, to be at least as protective as the Federal program. In today's final rule a State or Indian Tribe is required to develop and submit an analysis of their entire program that describes the program in comparison to the Federal program. This analysis should highlight the differences between the two programs and should provide an explanation why the State or Indian Tribe believes that these differences do not make their program any less protective than the Federal program. The analysis can focus on each of the program elements (e.g., procedures for the accreditation of training providers) and explain why the program element, as a whole, is at least as protective (or not) as the equivalent element in the Federal program.

Alternatively, the analysis can focus on the State or Tribal program as a whole, explaining why the entire State or Tribal program is at least as protective as the Federal program. This approach allows a State or Tribe to design a program that may fall short of the Federal program in one element, but would exceed it for another element.

Either approach allows a State or Indian Tribe to diverge as necessary and appropriate from the specific elements of the Federal program. The critical factor is that, on balance, a State or Tribal program element will be as protective as the corresponding Federal element. For example, a State training program may require fewer initial training hours for a particular discipline than the Federal program, but it would surpass the Federal program in requiring annual refresher training for certification. The State could argue that, on balance, this system is as protective as the Federal program. In this example, the specific State requirements diverge from the Federal program, but the State has concluded that it achieves the same result—properly trained lead-based paint professionals.

In reviewing State or Tribal applications, the Agency will employ this method of analysis as it examines the entire State or Tribal program and compares it with the entire Federal program. The State's or Tribe's own

analysis will facilitate EPA review of a State or Tribal program, but more importantly it will allow each State and Indian Tribe to fully describe and explain to EPA their program and the success they believe it will have in meeting the goals of Title X.

The Agency anticipates that each State or Indian Tribe will develop a program that will best serve the needs of both consumers and lead-based paint professionals in that State or Indian Tribe. The Federal program should serve as a model for States or Indian Tribes as they develop or refine their own programs.

1. *Program elements: lead-based paint activities requirements.* At § 745.325, the Agency has promulgated specific program elements representing the minimum programmatic requirements that a State or Tribal program must contain to receive authorization from the Agency to administer and enforce this program.

Section 745.325(a) requires that a State or Indian Tribe seeking authorization must have the regulatory authority to require the training and certification of individuals engaged in lead-based paint activities. The State or Tribal regulations must also establish work practice standards for the conduct of these activities.

As discussed previously in Unit IV. of this preamble, the Agency has not, at this time, promulgated a regulation pursuant to section 403 of TSCA. When final, that rule will identify hazardous conditions of lead-based paint and levels of lead and conditions in soil and dust that would result in a hazard to building occupants. Accordingly, the Agency has not established specific lead-based paint hazard values or standards (or post-abatement clearance levels) that a State or Indian Tribe must have in order to receive program authorization. However, a State or Indian Tribe is required to develop and implement its own post-abatement clearance requirements.

The Agency believes the lack of section 403 standards will not adversely affect its ability to evaluate the protectiveness of State or Tribal programs. Hazard levels are only one component of an overall lead-based paint activities program, and the presence of a State or Tribal hazard level for lead in dust or soil will not, by itself, guarantee the effective detection and remediation of lead-based paint hazards. Other factors such as quality of training and competency of the workforce are of equal or greater importance to the overall success of a State or Tribal program.

Thus, the Agency believes that it can adequately evaluate the protectiveness of State or Tribal programs without Federal standards identifying hazardous levels of lead in paint, soil and dust.

The remainder of § 745.325 describes requirements that a State or Tribal certification and accreditation program must also contain. Incorporation of these elements into a State or Tribal program will be a significant factor in the Agency's evaluation of the protectiveness of a State or Tribal program.

The Agency has included, in the next two sections of this preamble, a discussion of the goals and objectives that the Agency considered when developing its requirements for the Federal program. The Agency believes that each State and Indian Tribe should also consider these goals and objectives as it develops or refines its own program in response to this regulation. While not regulatory requirements, they should provide States and Indian Tribes an insight into the factors that the Agency will consider when it evaluates their programs.

a. *Accreditation of training programs.* Pursuant to § 745.325(b), the State or Tribal program must contain either regulations or procedures for the accreditation of training programs, or procedures or regulations, for the acceptance of training offered by an accredited training provider in a State or Tribe authorized by EPA.

If the State or Tribe chooses to develop an accreditation program, the regulations or procedures must contain the following: (1) Training curriculum requirements, (2) training hour requirements, (3) hands-on training requirements, (4) trainee competency and proficiency requirements, and (5) requirements for training program quality control. The State or Tribal regulations must also establish procedures for the re-accreditation of training programs, and procedures for the oversight and control of training program activities.

A State or Tribal program for training program accreditation should achieve three objectives: (1) Establish common elements in which certified contractors must be trained, (2) provide training that enhances the knowledge and expertise of contractors, and (3) allow the State or Indian Tribe to suspend, revoke or modify the accreditation of training providers who offer substandard training or who violate the requirements of the State or Tribal accreditation program.

Alternatively, the State or Tribe can, for the purposes of certification, accept training offered by an accredited

training provider in a State or Tribe authorized by EPA. This approach may appeal to a smaller State or Tribe that would like to have a certification program that would oversee the conduct of lead-based paint activities, but, because of low demand, are unwilling to establish an accreditation program for training providers. Under this approach, the State's or Tribe's certification program would accept training offered at an accredited training provider in any State or Tribe authorized by EPA.

b. *Certification of individuals.* Section 745.325(c) describes the requirements for the certification of individuals that a State or Tribal program must have to be considered at least as protective as the Federal program. The State or Tribal program must require that certified contractors are properly trained and are conducting lead-based paint activities in a way that meets the work practice standards established by the State or Indian Tribe. The State or Tribal regulations or procedures must also establish procedures for the re-certification and the possible suspension, revocation or modification of certificates. In general, the State's or Indian Tribe's certification program should be designed so that a State or Indian Tribe can oversee the conduct of contractors engaged in lead-based paint activities to ensure that they are conducting their activities according to all applicable regulations.

The State or Tribal program must also establish requirements for the administration of a third-party certification exam. The exam should serve as a confirmation of the individual's retention and understanding of the information taught in an accredited training course. (The exam may also provide insight into the relative quality of accredited training providers.) Such an exam should be administered to applicants after completion of an accredited training program. The exam should be tailored to a particular work discipline and must not be offered by an accredited training provider. The Agency is currently developing an item bank of test questions that EPA will make available to States and Indian Tribes to use, if they choose, as their third-party exam.

c. *Work practice standards for lead-based paint activities.* The State or Tribal agency must establish work practice standards for performing lead-based paint activities, taking into account reliability, effectiveness, and safety. In § 745.325(d), the Agency has established minimum requirements for three lead-based paint activities: inspection, risk assessment, and abatement. In a future rulemaking, the

Agency will address the need for work practice standards for the remaining lead-based paint activities, e.g., deleading, identification of lead-based paint and demolition in public buildings, commercial buildings, bridges and superstructures.

All of the work practice standards or regulations that a State or Indian Tribe develops for the conduct of lead-based paint activities must require that these activities, if conducted, be conducted by certified individuals. The work practice standards and regulations that a State or Indian Tribe adopts for the conduct of inspections must ensure that an inspection accurately identifies and reports the presence or absence of lead-based paint within the interior or on the exterior of a residential dwelling. A State's or Indian Tribe's work practice standards or regulations for the conduct of risk assessments must ensure that a risk assessment accurately identifies and reports on the existence, nature, severity and location of lead-based paint hazards, as defined by the State or Indian Tribe, within a residential dwelling or on the dwelling's property.

A State's or Indian Tribe's work practice standards or regulations for the conduct of abatement must ensure that abatements are conducted in a way that permanently eliminates lead-based paint hazards, and does not increase the hazards of lead-based paint to building occupants. The State or Tribal work practice standards or regulations must also include requirements for post-abatement clearance sampling. Additionally, the State or Indian Tribe must adopt or develop a lead-in-dust post-abatement clearance standard.

As described at § 745.325(a)(6), a State or Indian Tribe must develop the appropriate infrastructure to administer and enforce such a program successfully. A State or Indian Tribe must establish a State or Tribal agency or agencies (or designate an existing agency or agencies) to implement, administer, and enforce the program. Given the scope of the program, it is likely that more than one State or Tribal agency will be involved in the implementation and enforcement of this program. States and Indian Tribes are required to identify one agency or organization within a State or Indian Tribe (the primary agency) that will serve to coordinate the activities of these agencies. States and Indian Tribes are also encouraged to, whenever possible, utilize existing certification and accreditation programs and procedures.

2. *Program elements—pre-renovation notification.* At § 745.326, the Agency has promulgated specific program

elements that specify minimum procedures and elements that a State or Tribal program must contain to receive authorization from the Agency to administer and enforce this program. Section 406(a) directs the Agency to develop and publish a lead hazard information pamphlet. Section 406(b) directs the Agency to develop a regulation to ensure that individuals engaged in performing renovation activities for compensation in target housing provide a lead hazard information pamphlet to the owner and occupant of such housing prior to commencing the renovation activity. These Federal regulations will be promulgated as final at 40 CFR part 745.

Section 745.326 requires that a State or Indian Tribe seeking authorization must, at a minimum, promulgate regulations that will achieve the objectives of the statutory mandate. The State or Tribal program must contain regulations or procedures that require the following: (1) Procedures and requirements for distribution of a lead hazard information pamphlet before the renovations (for compensation in target housing) commence; (2) an approved lead hazard information pamphlet meeting the requirements of TSCA section 406 as approved by EPA; and (3) provisions for the adequate enforcement of compliance with the above program.

Section 745.326(b) describes the requirements for distribution of the lead information that a State or Indian Tribe must have to be considered at least as protective as the Federal program. EPA believes State or Tribal programs should contain clear standards for identifying home improvement activities that trigger the pamphlet distribution requirements. It should also contain acceptable procedures for distributing the lead hazard information to the owners and the occupants of such housing before the actual renovation activity begins.

At § 745.326(c), the Agency has established minimum requirements for the distribution of lead hazard information. The State or Indian Tribe may either: (1) Distribute the lead hazard information pamphlet developed by EPA (under section 406(a) of TSCA) titled, "Protect Your Family From Lead in Your Home," or (2) distribute an alternative pamphlet or package of lead hazard information that has been submitted by the State or Tribe and approved by EPA for use in that State or Tribe. Any pamphlet or package of information submitted for approval must contain the content and design elements as Congressionally mandated by TSCA section 406(a).

In addition to the content requirements laid out in section 406(a), EPA believes that some additional discussion of Federal priority information may help States who seek to develop alternate pamphlets. In order to educate the public about lead-based paint hazards in the home, the pamphlet should provide citizens with clear and understandable information regarding the health risks associated with exposure to lead hazards, especially the risks to children less than 6 years of age, pregnant women, and women of childbearing age. In light of the exposure prevention goals of the overall Federal lead hazard reduction program, EPA believes that State pamphlets should also include a thorough discussion regarding measures that can be taken to reduce or avoid exposure to lead hazards from paint, dust, and soil in residential areas.

Since renovations may disturb lead and create hazards, it is essential that renovators and occupants of these homes be encouraged to take special precautions to reduce or avoid exposure during renovations. By providing a reference section including Federal, State, and local sources of assistance, citizens will be able to find certified contractors and information about inspections, risk assessments, interim controls, and abatement procedures available in their areas.

Nevertheless, the Agency recognizes the need for flexibility in the amount of detail to be included in a State's or Indian Tribe's information pamphlet, due to specific needs of each State or Indian Tribe. In covering all of the elements, States or Indian Tribes may determine the breadth of coverage of each element as they deem necessary. For example, the Agency recognizes that it may be infeasible to list all Federal, State, and local agencies in a reference section. Rather, States and Indian Tribes should focus on providing the main sources of access to that information. In general, more emphasis should be placed on the risks and exposure prevention recommendations. Furthermore, the Agency recommends that: (1) The information be written at no higher than a ninth-grade reading level; and (2) appropriate layout and type size be used to maximize readability and ensure that the information can be utilized by as wide an audience as possible.

**3. Program elements—enforcement provisions.** As previously discussed, the Agency is required to determine if a State or Tribal program will provide for the adequate enforcement of its regulations. Many commenters expressed concern that the proposed

rule did not provide clear guidance as to how the Agency would interpret this phrase. Further, the Agency realizes that it has not provided a benchmark or model for States and Indian Tribes to follow as they develop the compliance and enforcement portions of their lead-based paint programs. As discussed previously, the proposed and final Federal regulations developed pursuant to sections 402(a) and 406 will serve as an example that States and Indian Tribes can use as they develop their own programs. These regulations also help in defining the scope of the terms "... at least as protective as. . . ."

Because there is not a comparable Federal enforcement program to emulate, and in response to the concerns of the commenters seeking more guidance on this issue, the Agency has developed, at § 745.327(b), (c) and (d), requirements that a State or Tribal lead-based paint compliance and enforcement program must meet in order to receive authorization. The Agency believes that a State or Indian Tribe that develops an enforcement program based on these requirements would provide adequate enforcement as that term is used in TSCA section 404(b)(2).

These requirements were developed based on the Agency's experience evaluating and approving other State and Tribal compliance and enforcement programs, as well as the Agency's experience in enforcing its own regulations. Further, the Agency's own compliance and enforcement program for these lead-based paint regulations will contain the elements described at § 745.327.

Section 745.327(b) describes the required standards, regulations and authorities that a State or Tribal program must have. Section 745.327(c) describes specific performance elements that a State or Tribal program must have. Section 745.327(d) describes the required summary of progress and performance that a State or Indian Tribe must agree to submit.

Because these elements are required of a State or Indian Tribe and will require some time to fully implement and develop, the Agency is providing for a phase-in of a State or Tribal lead-based compliance and enforcement program.

This phase-in is achieved by allowing States or Indian Tribes to seek either interim or final approval of the enforcement and compliance portion of their lead-based paint program. Either type of approval is sufficient for a State or Tribal program to receive authorization, provided the other portions of its program are judged at

least as protective as the Federal program. A State or Indian Tribe that receives interim approval for its lead-based paint compliance and enforcement program must seek and receive final approval within 3 years of the date of receiving EPA's interim approval. One hundred and eighty days prior to that date, a State or Indian Tribe must apply to EPA for final approval of the compliance and enforcement program portion of a State or Tribal lead-based paint program. Final approval will be given to any State or Indian Tribe which has in place all of the elements of § 745.327(b), (c), and (d). If final approval is not received within 3 years, the Agency will initiate the process to withdraw the State's or Indian Tribe's authorization.

Interim approval of the compliance and enforcement program portion of the State or Tribal lead-based paint program can be granted by EPA once only, and will expire no later than 3 years from the date of EPA's interim approval. In order 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 include the following elements in its application for program authorization. The State or Indian Tribe must certify it has the legal authority and ability to immediately implement the elements at § 745.327(b). This certification shall include a statement that the State or Indian Tribe, during the interim approval period, will 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 requirements.

The State or Indian Tribe must also present a plan with time frames identified for implementing in the field all of the elements described at § 745.327(c) within 3 years from the date of interim approval. A statement of resources must be included in the State or Tribal plan, which identifies the resources the State or Indian Tribe intends to devote to the administration of its lead-based paint compliance and enforcement program.

Finally, the State or Indian Tribe must agree to submit to EPA the Summary on Progress and Performance of lead-based paint compliance and enforcement activities as described at § 745.327(d) and discussed below. This report must be submitted by the primary agency for each State or Indian Tribe that has an authorized program to EPA beginning 12 months after the date of program authorization. Each authorized program

shall submit the report to the EPA Regional Administrator for the Region in which the State or Indian Tribe is located. The report shall be submitted at least once every 12 months for the first 3 years after program approval. As long as these reports indicate that the authorized program is successful, the reporting interval will automatically be extended to every 2 years. If the subsequent reports demonstrate problems with implementation, EPA will require a return to annual reporting in order to assist the State or Indian Tribe in resolving the problems. These programs will return to biannual reporting after demonstration of successful program implementation.

Final approval of the compliance and enforcement program portion of a State or Tribal lead-based paint program can be granted by EPA either as part of a State's or Indian Tribe's initial application (described at § 745.324(a)) or, for States or Indian Tribes which previously received interim approval as discussed above (described at § 745.327(a)(1)), through a separate application.

In order for the compliance and enforcement program to be considered adequate for final approval as a result of the State's or Indian Tribe's initial application, the State or Indian Tribe must certify it has the legal authority and ability to immediately implement both the elements at § 745.327(b) and 745.327(c).

The State or Indian Tribe must also submit a statement of resources which identifies the resources the State or Indian Tribe intends to devote to the administration of its lead-based paint compliance and enforcement program. Finally, the State or Indian Tribe must agree to submit to EPA the Summary on Progress and Performance of lead-based paint compliance and enforcement activities as described at § 745.327(d).

States or Indian Tribes with interim approval must submit to the Agency 180 days before their interim approval expires, a separate application addressing only the compliance and enforcement program portion of their program. The State or Indian Tribe must in this application certify that it has the legal authority and ability to immediately implement the elements at § 745.327(b) and (c).

The application must include a statement of resources which identifies the resources a State or Indian Tribe intends to devote to the administration of its lead-based paint compliance and enforcement program. The State or Indian Tribe must also agree to submit to EPA the Summary on Progress and Performance of lead-based paint

compliance and enforcement activities as described at § 745.327(d). To the extent not previously submitted through the initial application described at § 745.324(a), States or Indian Tribes must 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 at § 745.327.

The remainder of this preamble section describes in more detail the elements at § 745.327(b), (c) and (d). Section 745.327(b) "Adequate Standards, Regulations, and Authority" requires that a State or Tribal program must have the elements discussed below.

1. *Lead-based paint activities and requirements.* Lead-based paint programs must demonstrate establishment of lead-based paint requirements for those acts described under TSCA sections 402(a) and/or 406 and regulations developed pursuant to those regulations.

2. *Authority to enter.* Officials must be able to enter, through consent, warrant, or other authority, premises or facilities where violations may occur for purposes of conducting inspections.

3. *Flexible remedies.* Lead-based paint programs must provide for a diverse and flexible array of enforcement remedies, which must be reflected in an enforcement response policy. The lead-based paint program should be able to select from among the available alternatives, an enforcement remedy that is particularly suited to the gravity of the violation, taking into account potential or actual risk, including:

(1) Warning letters, or notices of noncompliance, or notices of violation, or the equivalent;

(2) Administrative or civil actions (e.g., accreditation or certification suspension, revocation or modification, and/or administrative or civil penalty assessment); and

(3) Authority to apply criminal sanctions or other criminal authority using existing State or Tribal laws, as applicable.

The Agency understands that Indian Tribes may have certain restrictions on their ability to levy criminal sanctions. This limitation will not necessarily have a negative impact on an Indian Tribe's ability to receive program authorization. The Indian Tribe should, however, explain in its application the nature and

extent of any limitation on its ability to levy criminal sanctions.

Federal law bars Indian Tribes from trying criminally or punishing non-Indians in the absence of express authority in a treaty or statute to the contrary. *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978). In addition, the Indian Civil Rights Act prohibits any Indian court or Tribunal from imposing for any one offense a criminal penalty greater than \$5,000 on Indians within its jurisdiction (25 U.S.C. section 1302(7)).

The Agency realizes that requiring Indian Tribes to demonstrate the same criminal authority as States would affectively prohibit any Indian Tribe from obtaining program authorization. The Agency, in part F of this unit of the preamble, provides that Indian Tribes are not required to exercise comprehensive criminal enforcement jurisdiction as a condition for lead-based paint activities program authorization. Under this rule, Indian Tribes are required to provide for the timely and appropriate referral of criminal enforcement matters to the EPA Regional Administrator when Tribal enforcement authority does not exist or is not sufficient (e.g., those concerning non-Indians or violations meriting penalties over \$5,000). This section also requires that such procedures be established in a formal Memorandum of Agreement with the Regional Administrator. This approach is the same that the Agency has taken in the context of Tribal programs under the Safe Drinking Water Act and the Clean Water Act.

It should be noted that, as in authorized States, EPA has the authority to take enforcement action if an authorized Indian Tribe did not (or could not) take such action or did not enforce adequately (e.g., did not or could not impose a sufficient penalty). EPA emphasizes that this referral mechanism is available only in those cases where the limitations on Tribal enforcement arises under Federal law.

The Memorandum of Agreement will 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 a provision 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-Indian 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.

Section 745.327(c) "Performance Elements" for a lead-based paint compliance and enforcement program requires that a State or Tribal program include the following elements:

a. *Training.* Lead-based paint compliance and enforcement programs must, at a minimum, implement a process for training inspection personnel and ensuring that they have well-trained enforcement inspectors. 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 planner) for which they have compliance monitoring or enforcement responsibilities. For example, for State compliance/enforcement inspectors, completion of the applicable accredited training course would successfully demonstrate knowledge of these requirements. Instruction should take the form of both hands-on or on-the-job training and the use of prepared training materials.

b. *Compliance assistance.* Lead-based paint compliance and enforcement programs must provide compliance assistance to the public and the regulated community to facilitate awareness and understanding of and compliance with the State or Indian Tribes lead-based paint program(s).

c. *Sampling techniques.* Lead-based paint compliance and enforcement programs must have in place the technological capability to ensure compliance with the lead-based paint program requirements.

d. *Tracking tips and complaints.* The 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. EPA expects that the ability to process and react to tips and complaints would, as appropriate, include:

- (1) A method for funneling complaints to a central organizational unit for review;
- (2) A logging system to record the receipt of the complaint and to track the stages of the follow-up investigation;
- (3) A mechanism for referring the complaint to the appropriate investigative personnel;
- (4) A system for allowing a determination of the status of the case and ensuring correction of any violations; and
- (5) A procedure for notifying citizens of the ultimate disposition of their complaints.

e. *Targeting inspections.* Lead-based paint compliance and enforcement

programs must demonstrate the ability to target inspections to ensure compliance with the lead-based paint program requirements.

f. *Follow-up to inspection reports.* Lead-based paint compliance and enforcement programs 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 Indian Tribe must be in a position to ensure correction of violations, and, as appropriate, effectively develop and issue enforcement remedies/responses in follow-up to the identification of violations.

g. *Compliance monitoring and enforcement.* A lead-based paint compliance and enforcement program must demonstrate that it is in a position to implement a compliance and enforcement program. Such a compliance monitoring and enforcement program must ensure correction of violations, and encompass either planned and/or responsive lead hazard reduction inspections and development/issuance of State or Tribal enforcement responses which are appropriate to the violations.

Section 745.327(d) "Summary on Progress and Performance" requires the State or Indian Tribe to submit a report which summarizes the results of implementing the State's or Indian Tribe's 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 activities and the number of training programs accredited), the inspections conducted, enforcement actions taken, compliance assistance provided, and the level of resources committed by the State or Indian Tribe to these activities and any other lead-based paint administrative and compliance/enforcement activities.

The report should describe any significant changes in the enforcement of the State or Tribal lead hazard reduction program implemented during the last reporting period. The report should also summarize the results of the State's or Indian Tribe's implementation activities and what the State or Indian Tribe discovered, in general, with regard to lead-based paint compliance and enforcement in the State or Indian Tribe as a result of these activities during the period covered by the report. The report should also describe how any measures of success were achieved, and directly

assess the impact of compliance/enforcement activities on reducing threats to public health.

4. *Reciprocity.* EPA strongly encourages each State or Indian Tribe to establish reciprocal arrangements with other States and/or Indian Tribes with authorized programs. Such arrangements might address cooperation in certification determinations, the review and accreditation of training programs, candidate testing and examination administration, curriculum development, policy formulation, compliance monitoring, or the exchange of information and data. The benefits to be derived from these arrangements include a potential cost-saving from the reduction of duplicative activity and attainment of a more professional workforce as States and Tribes can refine and improve the effectiveness of their programs based upon the experience and methods of other States and Tribes.

Several elements of the EPA accreditation and certification programs in § 745.225 through 745.226 are intended to facilitate reciprocity. One of the most critical elements is the certification examination. The examination will serve to ensure that each individual certified under this program has a minimum level of knowledge in his or her particular discipline. At the same time, the certification examination development procedures (previously outlined in this preamble), will allow a State or Indian Tribe the flexibility to either adopt a "standardized" examination, or develop its own examination according to "standardized" guidelines. A second element is the inclusion of a refresher training course in the Federal program. Successful completion of a State or Tribal accredited refresher course may serve as an ideal requirement for individuals seeking a reciprocal certification in another State or Tribe.

#### F. *Treatment of Tribes as a State*

Today, EPA is also providing Federally recognized Indian Tribes the opportunity to apply for and receive lead-based paint program authorization similar to that available to States. Providing Indian Tribes with this opportunity is consistent with EPA's Policy for the Administration of Environmental Programs on Indian Reservations. This policy, formally adopted in 1984 and reaffirmed on March 14, 1994 by the Administrator, ". . . views Tribal Governments as the appropriate non-Federal parties for making decisions and carrying out program responsibilities affecting Indian reservations, their environments, and

the health and welfare of the reservation populace.”

A major goal of EPA's Indian Policy is to eliminate all statutory and regulatory barriers to Tribal administration of Federal environmental programs. Today's final rule represents another step in the Agency's continuing commitment toward achieving this goal. However, EPA recognizes, that some eligible Indian Tribes may choose not to apply for program authorization. Despite the choice made, the Agency remains committed to providing technical assistance and training when possible to Tribal entities as they work to resolve their lead-based paint management concerns.

EPA believes that adequate authority exists under TSCA to allow Indian Tribes to seek lead-based paint program authorization. EPA's interpretation of TSCA is governed by the principles of *Chevron, U.S.A., Inc. v. Natural Resources Defense Council*, 467 U.S. 837 (1984). Where Congress has not explicitly stated its intent in adopting a statutory provision, the Agency charged with implementing that statute may adopt any interpretation which, in the Agency's expert judgment, is reasonable in light of the goals and purposes of the statute as a whole. *Id.* 844. Interpreting TSCA to allow Indian Tribes to apply for program authorization satisfies the *Chevron* test.

TSCA does not explicitly define a role for Indian Tribes under Sections 402 or 404 and reflects an undeniable ambiguity in Congressional intent. Indian Tribes are not subject to State law except in very limited circumstances. See, *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987). Indian Tribes are sovereign governments. See *Worcester v. Georgia*, 31 U.S. (10 Pet.) 515 (1832); and *United States v. Mazurie*, 419 U.S. 544, 557-58 (1975). There is no indication in the legislative history that Congress intended to abrogate any sovereign Tribal authority by denying Indian Tribes the opportunity to apply for authorization to run lead-based paint programs on Tribal lands or subjecting Indian Tribes to State law for TSCA purposes. Moreover, it is a well-established principle of statutory construction that Federal statutes which are ambiguous as to whether they abridge Tribal powers of self-government must generally be construed in favor of retaining Tribal rights. F. Cohen, *Handbook of Federal Indian Law*, 224 (1982); See, e.g., *Ramah Navajo School Board v. Bureau of Revenue*, 458 U.S. 832, 846 (1982).

Failure to authorize Tribal lead-based paint programs would deny Indian

Tribes the option currently available to States to administer their programs in lieu of the Federal program. With this rule, however, regulated lead-based paint activities in Indian country could be under the jurisdiction of the closest sovereign with program and enforcement authority, the Indian Tribe, rather than the Federal government. Extending the ability to receive program authorization to Indian Tribes is consistent with the general principles of Federal Indian law and the Agency's Indian Policy, which states that environmental programs (e.g., TSCA Section 402/404) in Indian country will be implemented to the maximum extent possible by Tribal governments. Thus, EPA believes that allowing Indian Tribes to apply for program authorization reflects the sovereign authority of Indian Tribes under Federal law.

In the case of other environmental statutes (e.g., the Clean Water Act), EPA has worked to revise them to define explicitly the role for Indian Tribes under these programs. Yet, EPA also has stepped in on at least two occasions to allow Indian Tribes to seek program approval despite the lack of an explicit Congressional mandate. Most recently, EPA recognized Indian Tribes as the appropriate authority under the Emergency Planning and Community Right-to-Know Act (EPCRA), despite silence on the Tribal role under EPCRA (55 FR 30632; July 26, 1990). EPA reasoned that since EPCRA has no Federal role to back-up State planning activities, failure to recognize Indian Tribes as the authority under EPCRA would leave gaps in emergency planning on Indian lands. (54 FR 13000; March 29, 1989).

EPA filled a similar statutory gap much earlier as well, even before development of its formal Indian Policy. In 1974, EPA promulgated regulations which authorized Indian Tribes to redesignate the level of air quality applicable to Indian Lands under the Prevention of Significant Deterioration (PSD) program of the Clean Air Act in the same manner that States could redesignate for other lands. See *Nance v. EPA* (upholding regulations). EPA promulgated this regulation despite the fact that the Clean Air Act at that time made no reference whatsoever to Indian Tribes or their status under the Act.

One court already has recognized the reasonableness of EPA's actions in filling such regulatory gaps on Indian lands. In *Nance*, the U.S. Court of Appeals for the Ninth Circuit affirmed EPA's PSD redesignation regulations described in the previous paragraph. The Court found that EPA could

reasonably interpret the Clean Air Act to allow for Tribal redesignation, rather than allowing the States to exercise that authority or exempting Indian lands from the redesignation process. 745 F.2d 713. The Court noted that EPA's rule was reasonable in light of the general existence of Tribal sovereignty over activities on Indian Lands. *Id.* 714.

Today's final rule is analogous to the rule upheld in *Nance*. EPA is proposing to fill a gap in jurisdiction on Indian lands. As with the redesignation program, approving Tribal lead-based paint activities programs ensures that the Federal government is not the entity exercising authority that Congress intended to be exercised at a more local level. Furthermore, the case law supporting EPA's interpretation is even stronger today than at the time of the *Nance* decision. First, the Supreme Court has reaffirmed EPA's authority to develop reasonable controlling interpretations of environmental statutes. *Chevron, supra*. Second, the Supreme Court has emphasized since *Nance* that Indian Tribes may regulate activities on Indian Lands, including those of non-Indians, where the conduct directly threatens the health and safety of the Indian Tribe or its members. *Montana v. United States*, 450 U.S. 544, 565 (1981).

In the case of lead-based paint, EPA believes that improperly conducted activities could directly threaten human health (including that of Tribal members) and the environment (including Indian lands). Indian Tribes are likely to be able to assert regulatory authority over activities conducted on Indian lands to protect these interests. Thus, as in *Nance*, EPA believes that allowing Indian Tribes to apply for program authorization reflects the sovereign authority of Indian Tribes under Federal law.

To have its lead-based paint program authorized by EPA under today's final rule, an Indian Tribe would have to have adequate authority over the regulated activities. The jurisdiction of Indian Tribes clearly extends "over both their members and their territory." *United States v. Mazurie*, 419 U.S. 544, 557 (1975). However, Indian reservations may include lands owned in fee by nonmembers. "Fee lands" are privately owned by non-members and title to the lands can be transferred without restriction. The extent of Tribal authority to regulate activities by non-Tribal members on fee lands depends on whether those activities threaten or have a direct effect on the political integrity, the economic security, or the health or welfare of the Indian Tribe. *Montana v. U.S.*, 450 U.S. 544. 565-66 (1981).

The Supreme Court in several post-*Montana* cases has explored several criteria to assure that the impacts upon Indian Tribes of the activities of non-Indians on fee land, under the *Montana* test, are more than *de minimis*. To date, however, the Court has not agreed in a case on point on any one reformulation of the test. In response to this uncertainty, the Agency will apply, as an operating rule, a formulation of the *Montana* standard that will expect a showing that the potential impacts of regulated activities of non-members on the Indian Tribe are serious and substantial. See 56 FR 64876, 64878; December, 12, 1991.

EPA will, thus, require that an Indian Tribe seeking lead-based paint program authorization over activities of non-members on fee lands demonstrate jurisdiction, i.e., make a showing that the potential impacts on Indian Tribes from lead-based paint activities of non-members on fee lands are serious and substantial. The choice of an Agency operating rule containing this standard is taken solely as a matter of prudence in light of judicial uncertainty and does not reflect an Agency endorsement of that standard *per se*. See 56 FR 64878. Whether an Indian Tribe has jurisdiction over activities by non-members on fee lands, will be determined case-by-case, based on factual findings. The determination as to whether the required effect is present in a particular case depends on the circumstances and will likely vary from Indian Tribe to Indian Tribe. The Agency believes, however, that the activities regulated under the various environmental statutes, including TSCA, generally have the potential for direct impacts on human health and welfare that are serious and substantial. See 56 FR 64878.

The process that the Agency will use for Indian Tribes to demonstrate their authority over non-members on fee lands includes a submission of a statement pursuant to § 745.324(c) explaining the legal basis for the Indian Tribes' regulatory authority. However, EPA will also rely on its generalized findings regarding the relationship of lead-based paint activities and related hazards to Tribal health and welfare. Thus, the Tribal submission will need to make a showing of facts that there are or may be activities regulated under TSCA Title IV by non-members on fee lands within the territory for which the Indian Tribe is seeking authorization, and that the Indian Tribe or Tribal members could be subject to exposure to lead-based paint hazards from such activities through, e.g., dust, soil, air, and/or direct contact. The Indian Tribe

must explicitly assert and demonstrate jurisdiction, i.e., it should make a showing that lead-based paint activities conducted by non-members on fee lands could have direct impacts on the health and welfare of the Indian Tribe and its members that are serious and substantial. Appropriate governmental entities (e.g., an adjacent Indian Tribe or State) will have an opportunity to comment on the Indian Tribe's jurisdictional assertions during the public comment period prior to EPA's action on the Indian Tribe's application.

The Agency recognizes that jurisdictional disputes between Indian Tribes and States can be complex and difficult and that it will, in some circumstances, be forced to address such disputes by attempting to work with the parties in a mediative fashion. However, EPA's ultimate responsibility is protection of human health and the environment. In view of the mobility of environmental problems, and the interdependence of various jurisdictions, it is imperative that all affected sovereigns work cooperatively for environmental protection.

Under the Clean Water Act (CWA), the Safe Drinking Water Act (SDWA), the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and the Clean Air Act (CAA), Congress has specified certain criteria by which EPA is to determine whether an Indian Tribe may be treated in the same manner as a State. These criteria generally require that the Indian Tribe (1) Be recognized by the Secretary of the Interior; (2) have an existing government exercising substantial governmental duties and powers; (3) have adequate civil regulatory jurisdiction over the subject matter and entities to be regulated; and (4) be reasonably expected to be capable of administering the Federal environmental program for which it is seeking approval.

As discussed below, EPA is requiring Indian Tribes seeking program authorization and grants under TSCA section 404 to demonstrate in the Program Description that they meet the four criteria listed above. The process EPA is proposing for Indian Tribes to make this showing, however, generally is not an onerous one. The Agency has simplified its process for determining Tribal eligibility to administer environmental programs under several other environmental statutes. See 59 FR 64339 (December 14, 1994) ("Treatment as a State (TAS) Simplification Rule"). The proposed process for determining eligibility for TSCA Section 404 programs parallels the simplification rule. Generally, the fact that an Indian

Tribe has met the recognition or governmental function requirement under another environmental statute allowing for Tribal assumption of environmental programs (e.g., the Clean Water Act, Safe Drinking Water Act, Clean Air Act) will establish that it meets those particular requirements for purposes of TSCA Section 404 authorization. To facilitate review of Tribal applications, EPA requests that the Indian Tribe demonstrate that it has been approved for "TAS" (under the old "TAS" process) or been deemed eligible to receive authorization (under the simplified process) for any other program.

If an Indian Tribe has not received "TAS" approval or been deemed eligible to receive authorization, the Indian Tribe must demonstrate, pursuant to § 745.324(b)(5)(ii), that it meets the recognition and governmental function criteria described above. A discussion on how to make these showings can be found at 59 FR 64339 (December 14, 1994).

EPA believes, on the other hand, that the Agency must make a separate determination that an Indian Tribe has adequate jurisdictional authority and administrative and programmatic capability before it approves each Tribal lead-based paint program.

In particular, if the Indian Tribe is asserting jurisdiction over lead-based paint activities conducted by non-members on fee lands, it must explicitly show, in its submission, that the activities of non-members on fee lands regarding lead-based paint could have serious and substantial effects on the health and welfare of the Indian Tribe. Copies of all documents, such as treaties, constitutions, bylaws, charters, executive orders, codes, ordinances, and/or resolutions which support the Indian Tribe's assertions of jurisdiction must also be included. EPA will review this documentation and any comments given during the public comment period, and then will make a determination whether there has been an adequate demonstration of Tribal jurisdiction over Tribal, and if asserted, non-member activities on fee lands within the boundaries of the reservations.

Finally, capability is a determination that will be made on a case-by-case basis. Ordinarily, the information provided in the application for program approval submitted by an Indian Tribe or State, will be sufficient. Nevertheless, EPA may request, in individual cases, that the Indian Tribe provide a narrative statement or other documents showing that the Indian Tribe is capable of



administering the program for which it is seeking approval. See 59 FR 64341.

Consistent with the simplification rule, no prequalification process will be required for Indian Tribes to obtain program approval for the lead-based paint program. EPA will evaluate whether Indian Tribes have met the four eligibility criteria listed above during the program approval process.

Today's final rule also authorizes grants to eligible tribes as well as States under TSCA section 404(g). Under the statutory scheme, section 404(g) grants are specifically designed to aid in developing and implementing authorized TSCA lead-based paint activities programs. Given the Agency's interpretation that TSCA section 404 is properly read to allow EPA to authorize qualifying Tribes to administer a lead-based paint program in lieu of the Federal program, it follows that these Tribes should also be eligible to receive grant funding under TSCA section 404(g) to "develop and carry out authorized programs . . . ." The Agency's interpretation is consistent with well established statutory construction that ambiguous statutes should be construed in favor of Tribes. See, e.g., *Ramah Navajo School Board v. Bureau of Revenue*, 458 U.S. 832, 846 (1982); see also, *F. Cohen, Handbook of Federal Indian Law*, 224-225 (1982).

## X. Regulatory Assessment Requirements

### A. Executive Order 12866

Pursuant to Executive Order 12866 (58 FR 51735, October 4, 1993), it has been determined that this is a "significant regulatory action" because this regulation may raise novel legal or policy issues arising out of the initial implementation of the new legal mandates. As such, this action was submitted to the Office of Management and Budget (OMB) for review. Any comments or changes made during that review have been documented in the public record.

In addition, as specified by the Executive Order, the Agency has prepared a regulatory impact analysis (RIA) of the economic impacts associated with this regulation. The complete RIA document, titled *TSCA Title IV Sections 402(a) and 404: Target Housing and Child-Occupied Facilities Final Rule Regulatory Impact Analysis*, has been included in the public record for this regulation and is available for inspection in the TSCA public docket office. The central issue in the analysis is to identify, quantify and value the private and social benefits and costs of requiring that all lead-based paint

abatement activities be performed by certified personnel trained by an accredited program, and that all lead-based paint activities meet certain minimum work practice standards. In attempting to conduct such an analysis, EPA encountered several difficulties related to the availability of data associated with the activity-specific costs and the benefits attributable to having trained and accredited personnel conduct the activities in accordance with specific standards. Using available information, the resulting analysis was issued with the proposed rule and any comments received were considered in the development of the final rule, as well as in the development of the corresponding final RIA. The following is a brief summary of the final RIA:

1. *Costs of regulatory action.* Cost estimates for performing lead-based paint activities pursuant to today's final rule are based on the number of inspections, lead hazard screens, risk assessments, and abatement activities and the unit costs associated with performing such activities. The first-year costs are estimated to be \$31 million. Since the benefits and costs of this regulation occur at different times during the 50-year analysis period, EPA estimated their present value by discounting them. The selection of a discount rate has a direct bearing on the analysis, because cost and benefit estimates are sensitive to variations in the discount rate. As such, learned opinions vary on which discount rate should be used in certain circumstances. In this analysis, EPA uses a 3% discount rate for the core analysis and a 7% discount rate in the sensitivity analysis. Using a 3% discount rate, the present value of the costs over the 50-year time period total \$1.114 billion. At a 7% discount rate, total costs fall to \$530 million.

Total costs of compliance with work practice standards are estimated at \$637 million and account for 57% of the discounted costs. The work practice standard costs are the main source of costs, due primarily to the cost of following these standards when conducting risk assessments and abatements in target housing and child-occupied facilities.

Certain assumptions that are a result of data limitations affect the estimates of the incremental costs of the rule. The analysis assumes current practices and training rates make up the baseline to be compared to the changes that will result from the rule provisions. This analysis accounts for the fact that lead-based paint activities are presently occurring, but does not account for the potential increase in such activities over time as

a result of EPA regulations implementing other portions of Title X, resulting in greater costs. However, under these circumstances the attendant benefits would also be greater. Also, current training rate estimates assume that on average, lead-based paint activities do not provide full-time employment. If lead-based paint activities do constitute full-time employment, then fewer people will require training.

2. *Benefits of regulatory action.* The objective of the benefit analysis is to identify the benefits attributable to the regulation, which in this case are the incremental benefits associated with sections 402(a) and 404 or the value of any incremental risk reduction brought about by performing these activities using trained labor that complies with the work practice standards, which are also contained in the rule. These benefits consist of the value to consumers of being able to purchase lead-based paint activities services of more reliable quality. As a result of the reduced uncertainty about the quality of such services, more inspections, lead hazard screens, risk assessments, and abatements will be performed. In addition, the average quality of the services that are performed will rise as the low-quality lead-based paint activities are curtailed or eliminated by the accreditation, training, certification and work-practice standard requirements. The quantification and valuation of these benefits—the ability to purchase a service of more reliable quality and the improvement in quality—would require information about the distribution of quality of lead-based paint activities that building owners may purchase if this rule were promulgated, and in its absence. Due to data limitations, it was not possible to estimate the benefits of the rule. Total benefits of abatement, however, were estimated. The number of quantifiable and monetizable benefit categories in the analysis of abatement benefits is limited because dose-response functions necessary to assess the potential impacts of lead-based paint hazard reductions on human health and the environment are not available, and knowledge of national blood-lead levels pre- and post-implementation of sections 402(a) and 404 is also unavailable.

The second-year total measurable benefits of abatement are estimated at \$625 million. Total measurable benefits of abatement, discounted over a 50-year period at 3% percent are estimated at \$16.1 billion, and discounted at 7% over the same time period are estimated at \$1.55 billion. These benefits accrue from reductions of negative impacts on



children's intelligence, with an estimated present value of total measured benefits of abatement equal to \$16.1 billion (\$13.1 billion in target housing and \$3 billion in child-occupied facilities).

In addition to the measured benefits of abatement in the base analysis, which focuses on protection of children age 6 years or younger, other qualitative benefit categories exist. These categories include:

- (1) Neonatal mortality;
- (2) Adult resident health effects such as hypertension, coronary heart disease and stroke;
- (3) Infant/child neurological effects;
- (4) Occupational health effects such as hypertension, coronary heart disease, and stroke; and
- (5) Environmental risk reductions.

With the exception of (1) and (2), it is not possible to value these benefits due to data limitations. The contributions of these two benefit categories are estimated and included in the sensitivity analysis below. Were the values of these additional benefit categories included in the primary analysis, the measured benefits of the rule could be as much as \$54 billion when discounted at 3% over 50 years.

**3. Benefit-cost comparison.** The purpose of this Regulatory Impact Analysis (RIA) was to analyze the benefits, costs, and economic impacts of the final rule implementing sections 402(a)/404. As discussed in the RIA, there are benefits to society associated with the reduction of lead-based paint hazards in general and there are also benefits associated with the establishment of certification programs for ensuring that only trained individuals perform the lead-based paint activities. Although there is insufficient data to allow for a quantification of those benefits, EPA believes that the analysis it conducted with regard to the benefits from reducing lead-based paint hazards indicates that sections 402(a)/404 provide a vehicle that will aid in the realization of those benefits and that the costs of this rule are reasonable in light of the potential magnitude of those benefits, quantified or not.

It is important to point out that while the total costs of the rule are comprehensively quantified, benefits of abatement are only partially quantified. If benefits to adult residents of target housing, lead-based paint abatement workers, individuals who live, work, or travel near abatement activities, and the environment were included, the benefits of the rule would be increased substantially. Estimates for possible benefits to two groups of potential

beneficiaries (workers and adult residents of target housing) are provided in the sensitivity analysis discussion below.

**4. Sensitivity analysis.** Six sets of sensitivity analyses examine the effects on key categories of the benefits of abatements and cost categories. Two sets affected the costs: alternative work practice standard costs (resulting from alternative estimates of likely soil abatement practices) and alternative training costs (resulting from alternative assumptions of likely workload). In addition, varying assumptions of changes in blood-lead levels attributable to the rule provide estimated potential benefits for neonatal mortality, adult residents of abated units and workers. Finally, an alternative discount rate of 7%, which affects both the estimated costs and benefits of the rule, is applied.

Use of an alternate discount rate and inclusion of adult resident benefits had the greatest impact on benefits and costs. Simply discounting the stream of costs by 7% decreases the present value of the 50-year incremental cost estimate by 52%. Correspondingly, the use of the 7% discount rate decreases the present value of the 50-year benefit stream by 90%. Incorporation of adult resident benefits increases total benefits by \$17.9 billion per 0.1 µg/dL change in blood lead when discounted at 3% over 50 years, without impacting the costs.

**5. Response to comments on the RIA.** The Agency received comments on the RIA from 16 parties. The comments are in five major categories: types of structures covered by the rule, estimation of benefits, estimation of costs, analytic assumptions, and factors left out of the analysis. In several cases, the rule and/or the analysis were revised to respond to these comments. In other cases, the Agency determined that the rule and analysis were appropriate. The comments and responses are summarized here.

Comments on the types of structures covered address the impacts of the rule on public and commercial buildings and steel structures. The Agency plans to develop separate regulations affecting public and commercial buildings and steel structures, and comments will be addressed at that time.

Several commenters stated that EPA had overestimated the benefits of the rule. While it is not possible to isolate the incremental benefits resulting from the rule, estimating the total value of certain categories of benefits due to properly performed abatements provides a useful benchmark against which to compare the incremental costs of the rule. This is especially true since poorly performed activities can result in

further exposures and thus negative benefits. The RIA benefit estimates rely on IQ-related benefits to children age 6 years and younger; neonatal and adult hypertension benefits which are also assumed to result from the proposed rule are presented in the sensitivity analysis. The benefit estimates include the benefits derived from the reductions in lead-contaminated dust that occur with a lead-based paint abatement.

On the cost side of the analysis, some commenters argued that the costs were overestimated, while others that costs were underestimated. In response to comments that costs were overestimated, the Agency notes that the estimates were conservative. In response to the comments, the costs were underestimated; the Agency notes that the estimated costs are incremental not total. The per unit costs are estimated by comparing current industry practices to those required under the rule, identifying the additional actions the rule would impose, and calculating the costs of these actions. The current analysis accounts for the fact that some households will choose to skip the inspection step and start the process with a lead hazard screen or risk assessment. Changes were also made in the regulations governing soil abatements and the analysis of these costs. The Agency has reviewed the analysis and determined that costs are not underestimated.

A few of the comments challenged various analytic assumptions or approaches. Some argued that EPA's Integrated Exposure Uptake Biokinetic (IEUBK) Model should not be used in estimating the benefits. The Agency believes the use of this model to be appropriate; the Agency currently uses it for risk assessments at sites covered under the Superfund program and the Resource Conservation and Recovery Act. Other comments challenged the discount rate used in the analysis and the handling of productivity growth. The analysis is performed in real, as opposed to nominal, terms and thus it is not necessary to adjust for inflation. The 3% discount rate is consistent with other environmental regulations; the effects of using a higher rate are presented in the sensitivity analysis.

Several comments asserted that the analysis had not accounted for important factors. This is not the case. The final RIA includes the effect of OSHA rules, which was one factor noted by commenters. The impact of the rule on the demand for lead-based paint activities is modeled using data from Massachusetts, where similar regulations have been in effect for a few years. Attempts to uncover other

sources of data have been unsuccessful. In addition, the analysis now uses a single definition of lead-based paint hazards (paint with lead content of 1 mg/cm<sup>2</sup> and in deteriorated condition or good condition on friction surfaces).

#### B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agency considered whether today's regulatory action will have a significant economic impact on a substantial number of small entities. Based on the Agency's analysis, EPA determined that this action is likely to have a modest adverse economic impact on a substantial number of small entities. EPA conducted a regulatory flexibility analysis for the rule, the results of which are summarized in today's preamble and discussed in detail in supporting documents in the rulemaking record. In light of that analysis and public comments received, the Agency took numerous steps to minimize any adverse impact associated with the final rule, with particular emphasis on reducing any potential adverse impact on small entities. For example, in the final rule, the Agency reduced the recordkeeping requirements associated with the work practice standards, and reduced the length of the abatement worker course.

Previous sections of the preamble to this final rule include discussions summarizing the need for and objective of this rule, responses to the significant comments received on the proposed rule, and a summary of the analysis of small entity impacts. In addition, a Response to Public Comment Document presents EPA's detailed response to all the significant comments received on the proposal (including the initial regulatory flexibility analysis prepared for the proposed rule); and a Regulatory Impact Analysis (RIA) includes a complete description of the small entities potentially impacted, the projected requirements that small entities might be subject to, a summary of the changes made to the proposed rule which minimize the burden in the final rule, and an analysis of the projected impacts on small entities. These documents are available in the public docket supporting this rulemaking.

The following is a brief summary of EPA's analysis of the potential economic impacts on small entities. Basically, section 402(a) does not require or mandate the abatement of lead-based paint, nor require that any particular enterprise participate in the abatement of lead-based paint. However, section 402(a) does require that if an abatement is voluntarily conducted,

certain training requirements and work practices must be followed. The costs of required training, certification, and work practice standards may create competitive differences that could result in unfair burdening of small firms. This analysis estimates both the absolute and the relative burden on small and large businesses.

The section 402(a) compliance costs consist of two components that may impact small businesses: (1) Accreditation and training costs for workers and supervisors, as well as certification costs for firms, and (2) incremental costs of work practice standards for abatement procedures. These two components coincide with the two decision points faced by firms interested in performing lead-based paint abatement work (including soil abatement). In order to participate in this industry, a firm must be certified and its employees must be trained and certified. Firms incur these expenses in anticipation of work, based on its assessment of the future demand for such services, its competition, and the price it will be able to charge. If the market demand does not meet these expectations, the firm may not recoup these costs, thus decreasing its profits.

The costs resulting from work practice standards are of a different nature. Firms that perform lead-based paint activities often perform similar work in settings that do not involve lead and are not affected by this rule. Occurring at the second decision point, work practice standards costs will be incurred by a firm only if it chooses to undertake a given lead-based paint job. In each situation, the firm can assess the impact of the work practice standards on its sales and profit levels. If the impact is adverse (i.e., results in profit levels below those available for other work), the firm has the option to decline the work. Most firms that perform lead-based paint activities are also active in the non-lead-based paint markets. In this voluntary setting, the work practice standards will not have an adverse impact on the profits of businesses because these firms can focus, instead, on the non-lead-based paint business. Therefore, no estimates of work practice standards burden were made. Likewise, owners of property will incur the work practice standards costs only if they determine that an abatement is to their benefit.

To determine the impact of the training and certification requirements on large and small businesses, the ratios of compliance costs to annual sales were calculated. By using first-year training costs, the largest impacts were estimated (a worst-case scenario). Impacts on firms

in subsequent years would be significantly smaller because the demand for training in later years would decrease from the first year "start up" levels. Incremental certification and training costs per establishment were calculated by multiplying the average number of workers per establishment by the per person certification and training costs. Training costs vary by discipline and certification fees of \$60 per individual and \$350 per firm were estimated. While it is likely that firms will be able to pass some or all of the training and certification costs on to their customers in the form of higher prices, this analysis investigates the worst case in which the firm must absorb all the costs.

Assuming that none of the training and certification costs are shifted forward in the form of higher prices, the ratios of compliance costs to annual sales for small establishments range between 0.6 and 3.2%. For large firms, the ratios tend to be slightly lower, ranging from 0.6 and 1%. In the case of both large and small establishments, the largest cost ratio occurs for Standard Industrial Code 8743, testing laboratories.

As discussed above, firms are likely to pass these costs on to their customers in the form of higher prices because the regulations apply to all firms involved in lead-based paint activities. Therefore, the ratios tend to overestimate the impacts. Since training and licensing costs are a small percent of annual sales, and these percentages are only slightly higher for small businesses than for large ones, the impact of this regulation on small businesses will be small, as is the differential between impacts on large and small businesses.

While this shifting of costs will alleviate the burden on abatement firms, the incremental costs of the regulations may affect building owners. Consistent with the arguments presented above, under this rule abatement is a voluntary action. As such, property owners are unlikely to undertake an abatement unless they are able to pass the cost on to tenants or otherwise recoup the costs in terms of higher property values. Where abatements are mandated under a State law or local ordinance, however, the costs of this rule may have an adverse impact on landlords. While abandonment could possibly be the result, existing information indicates that this is unlikely. Therefore, analyses of potential impacts on property owners or tenants were not performed.

The comparison of impacts on small and large training providers was not performed for two reasons. First, except for the Regional Lead Training Centers

(RLTCs), most training providers are small, so there would be no differential effect based on size of the firm. In addition, it is likely that training providers will pass the additional costs on to their trainees. This impact is analyzed above under the assumption that firms undertaking lead-based paint activities will bear these costs. Since the changes will be required by Federal regulations, they will apply to all training providers. Second, there will be heightened concern about lead-based paint hazards and thus a greater willingness to pay for trained personnel who will presumably provide higher quality services. In fact, these regulations are likely to create a market for training services and thus may be beneficial to small businesses.

### C. Paperwork Reduction Act

The information collection requirements in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (EPA ICR No. 1715.02) and a copy may be obtained from Sandy Farmer, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2136); 401 M St., SW.; Washington, DC 20460; by calling (202) 260-2740; or by e-mail from "farmer.sandy@epamail.epa.gov." The information requirements are not effective until OMB approves them.

Under today's final rule, four entities may be affected by new information collection and reporting requirements. These entities are: (1) States and Indian Tribes; (2) training program providers; (3) individuals engaged in lead-based paint activities; and (4) firms engaged in lead-based paint activities.

Importantly, States and Indian Tribes have the option of choosing to seek authorization to administer lead-based paint activities programs under TSCA section 404; thus the information collection and recordkeeping requirements are voluntary activities for these entities. In those States and Indian Tribes that do not seek program authorization, however, it is assumed that EPA will administer a lead-based paint activities program.

Likewise, individuals and firms that engage in lead-based paint activities, as well as training providers delivering training in such activities also have the option of providing these services. Thus, for those individuals and firms that choose to provide instruction or to contract their services for the purposes of conducting lead-based paint activities, the information collection

and recordkeeping requirements also are voluntary.

Nonetheless, it must be noted that the information collection and recordkeeping requirements contained in the rule become mandatory once an entity chooses to administer a program; provide instruction; or contract its services in the lead-based paint activities field. The Agency notes that the rule's information collection and recordkeeping requirements have been designed so as to assist the Agency in meeting the core objectives of section 402(a) and section 404 of TSCA Title IV. These objectives are to ensure the integrity of an accreditation program for training providers; enable individuals and firms to become certified; and substantiate that programs administered by States and Indian Tribes are as protective as EPA's federal program. The Agency believes that the information collection and recordkeeping requirements generated by the rule are balanced in that they will permit the Agency to achieve the statutory objectives of TSCA Title IV without imposing an undue burden on those entities that choose to become involved in the lead-based paint activities field. The projected burden for these entities is summarized below.

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

The average burden per training provider for the first effective year of the rule is estimated to be 28.3 hours with a cost per training provider of \$681.40, and lesser burden in subsequent years. The estimated burden for the first effective year of the rule for the total number of training providers is 5,667 hours at a cost of \$136,279.

The estimated, average burden per firm or contractor (individuals may be employed as firms or contractors) engaging in lead-based paint activities is 115.7 hours with a cost of \$2,473, with lesser burden in subsequent years. For

the total number of firms performing lead-based paint activities the burden is estimated to be 326,724 hours at a cost of \$6,985,059.

The estimated, average burden per individual seeking certification to engage in lead-based paint activities depends on the length of the required training, plus 1 additional hour. For the total of individuals, the first effective year burden is 407,448 hours at a cost of \$16,092,230 with lesser burden in subsequent years.

The first effective year burden per State or Indian Tribe depends on whether the entity must put legislation into place before implementing a regulatory program. For States or Indian Tribes that assume legislative and regulatory development the burden is 1,715 hours; for those States or Indian Tribes that need only to acquire program authorization the burden is 138 hours. The total burden for States and Indian Tribes in the first effective year is 48,713 hours at a cost of \$959,534, with lesser burden in subsequent years. For EPA the estimated burden in the first effective year of the rule is 5,940 hours at a cost of \$197,285.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

Send comments on the burden estimates and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2136); 401 M St., SW.; Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW., Washington, DC 20503, marked "Attention: Desk Officer for EPA." Include the ICR number in any correspondence.

### D. Unfunded Mandates Reform Act

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), EPA has determined that this regulatory action does not contain any "Federal mandates," as described in the Act, for the States, local, or Tribal governments or the private sector because the rule implements mandates specifically and explicitly set forth by the Congress in TSCA section 402(a) and section 404 without the exercise of any political discretion by EPA.

In any event, EPA has determined that this action does not result in the expenditure of \$100 million or more by

any State, local or tribal governments, or by anyone in the private sector. The costs associated with this action are described as required by Executive Order 12866 in section A of this Unit in the preamble.

As specified by Executive Order 12875 (58 FR 58093, October 28, 1993), titled *Enhancing the Intergovernmental Partnership*, the Agency has sought input from State, local and tribal government representatives throughout the development of this rule. EPA anticipates that these governments will play a critical role in the implementation of a national lead-based paint activities training and certification program. Consequently, the Agency felt that their input and participation were needed to ensure the success of the program.

Specifically, before it began the development of today's final rule, EPA informally met with a broad range of interested parties, including State, local and tribal governments to solicit information on the subject of lead-based paint activities training, accreditation, certification and standards. Communication and input from the States also was actively sought as the Agency developed a proposed rule, and after the proposed rule was published for public comment on September 2, 1994.

During the public comment period, at least three meetings were held with State representatives under the auspices of the "Forum on State and Tribal Toxics Action" or "FOSTTA." FOSTTA is an organization that serves as a forum for State and Tribal officials to jointly participate in addressing national toxics issues, including lead. Under FOSTTA, a "lead project" has been formed to work with the States and tribes on lead-related issues. In addition to meetings with FOSTTA representatives, the Agency met on December 5 and 6, 1994, with 93 State representatives from 49 State health and environmental agencies. Twelve representatives from 10 tribes also participated in the December meeting. Furthermore, the Agency received written comments from 83 State and local agencies representing 49 States.

The input received from State, Tribal and local agencies has been very useful in the final development of today's final rule. The Agency believes that this input has helped produce an efficient rule that will support the development of a workforce qualified to reduce and eliminate lead-based paint and its associated hazards. By working with the States, Tribes and local agencies, EPA also has initiated preliminary

discussions intended to facilitate cooperation and program reciprocity.

#### *E. Executive Order 12898— Environmental Justice Considerations*

Pursuant to Executive Order 12898 (59 FR 7629, February 16, 1994), the Agency has considered environmental justice related issues with regard to the potential impacts of this action on the environmental and health conditions in low-income and minority communities. This examination shows that existing lead-based paint hazards are a risk to all segments of the population living in pre-1978 housing. However, literature indicates that some segments of our society are at relatively greater risk than others.

Although the baseline risks from lead-based paint fall disproportionately on poorer sub-populations, it may be more likely that abatements will take place in residential dwellings occupied by mid-to upper-level income households. Abatements will be voluntary, and wealthier households are more likely to have the financial resources to abate an existing problem in their home, or to avoid lead-based paint hazards by not moving into a residential dwelling with lead-based paint. Even though a national strategy of eliminating lead-based paint hazards targets a problem affecting a greater share of poor households and minorities, the impact of income on the ability to undertake voluntary abatements may result in a more inequitable distribution of the risks in the future.

In response to this situation, several Federal agencies have established grant programs that will provide financial support to reduce the prevalence of lead poisoning among disadvantaged children. The EPA also has several information initiatives designed to educate the public, with a particular emphasis on this socio-economic group, of the dangers of lead.

#### XI. Submission to Congress and the General Accounting Office

This action is not a "major rule" as defined by 5 U.S.C. 804(2) of the Administrative Procedure Act. Pursuant to 5 U.S.C. 801 (a)(1)(A), EPA submitted this action to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to its publication in today's Federal Register.

#### XII. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPPTS-62128B). A public version of the record, without any information claimed as confidential business

information, is available in the TSCA Public Docket Office, from 12 noon to 4 p.m., Monday through Friday, except legal holidays. The TSCA Public Docket Office is located at EPA headquarters, in Rm. G102, 401 M St., SW., Washington, DC. 20460.

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

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

#### XIII. References

(1) Minutes from the December 5 and 6, 1994 National Lead Conference; and minutes from Forum on State and Tribal Toxics Action (FOSTTA) meetings from 1994 and 1995.

(2) Lead; Requirements for Lead-Based Paint Activities; Proposed Rule; Summary of Public Comments; prepared by the Office of Pollution Prevention and Toxics, (January 31, 1995).

(3) Lead; Requirements for Lead-Based Paint Activities; Proposed Rule; Response to Public Comment Document; prepared by the Office of Pollution Prevention and Toxics, (August 1, 1996).

(4) Mathematica Policy Research, Inc. 1990. *Profile of Child care Settings*; and U.S. Department of Education, National Center for Education Statistics. 1993. *Fast Response Survey, Kindergarten Teacher Survey on Student Readiness*.

(5) U. S. Census Bureau, School Enrollment Supplement. 1994. *Current Population Survey*. (October 1994).

(6) U.S. Department of Housing and Urban Development (HUD), Office of Lead-Based Paint Abatement and Poisoning Prevention. 1995. *Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing*. (June 1995).

(7) USEPA. 1995. *Residential Sampling for Lead: Protocols for Dust and Soil Sampling*. (EPA 747-R-95-001, March 1995).

(8) USEPA. 1995. *A Field Test of Lead-Based Paint Testing Technologies: Summary Report*. (EPA 747-R-95-002a, May 1995).

(9) USEPA. 1995. *A Review of Studies Addressing Lead Abatement Effectiveness*. (EPA 747-R-95-006, June 1995).

(10) Amitai, Y. Brown, M.J., Graef, J.W., and Cosgrove, E. 1991.

"Residential Deleading: Effects on the Blood Lead Levels of Lead-Poisoned Children." *Pediatrics*. 88(5):893-897.

(11) Farfel, M.R. and Chisolm, J.J. Jr. 1990. "Health and Environmental Outcomes of Traditional and Modified Practices for Abatement of Residential Lead-Based Paint." *American Journal of Public Health*. 80(10):1240-1245.

(12) HUD, Office of Lead-Based Paint Abatement and Poisoning Prevention. 1995. HUD Guidelines Appendix 11-1 "One-Hour Waiting Period Rationale for Clearance Sampling." (June 1995).

#### List of Subjects in 40 CFR Part 745

Environmental protection, Hazardous substances, Lead, Recordkeeping and reporting requirements.

Dated: August 21, 1996.

Carol M. Browner,  
*Administrator*.

Therefore, 40 CFR part 745 is amended as follows:

#### **PART 745—[AMENDED]**

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

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

2. By adding new subparts L and Q and reserving subparts G-K and M-P to read as follows:

#### **Subparts G-K [Reserved]**

#### **Subpart L—Lead-Based Paint Activities**

**Sec.**  
745.220 Scope and applicability.  
745.223 Definitions.  
745.225 Accreditation of training programs: target housing and child-occupied facilities.  
745.226 Certification of individuals and firms engaged in lead-based paint activities: target housing and child-occupied facilities.  
745.227 Work practice standards for conducting lead-based paint activities: target housing and child-occupied facilities.  
745.228 Accreditation of training programs: public and commercial buildings, bridges and superstructures [Reserved].  
745.229 Certification of individuals and firms engaged in lead-based paint activities: public and commercial buildings, bridges and superstructures [Reserved].  
745.230 Work practice standards for conducting lead-based paint activities: public and commercial buildings, bridges and superstructures [Reserved].

745.233 Lead-based paint activities requirements.  
745.235 Enforcement.  
745.237 Inspections.  
745.239 Effective dates.

#### **Subparts M-P [Reserved]**

#### **Subpart Q—State and Indian Tribal Programs**

**Sec.**  
745.320 Scope and purpose.  
745.323 Definitions.  
745.324 Authorization of State and Indian Tribal programs.  
745.325 Lead-based paint activities: State and Indian Tribal program requirements.  
745.326 Pre-renovation notification: State and Indian Tribal program requirements.  
745.327 State or Indian Tribal lead-based paint compliance and enforcement programs.  
745.328 Authorization of Indian Tribal programs.  
745.330 Grants.  
745.339 Effective dates.

#### **Subparts G-K [Reserved]**

#### **Subpart L—Lead-Based Paint Activities**

##### **§ 745.220 Scope and applicability.**

(a) This subpart contains procedures and requirements for the accreditation of lead-based paint activities training programs, 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 lead-based paint and lead-contaminated dust, the permanent enclosure or encapsulation of lead-based paint, the replacement of lead-painted surfaces or fixtures, and the removal or covering of lead-contaminated 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;

(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.

*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.

*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 paint that is cracking, flaking, chipping, peeling, or otherwise separating from the substrate of a building component.

*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.

*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 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-contaminated dust* means surface dust in residential dwellings, or child-occupied facilities that contains an area or mass concentration of lead at or in excess of levels identified by the Administrator pursuant to TSCA section 403.

*Lead-contaminated soil* means bare soil on residential real property and on the property of a child-occupied facility that contains lead at or in excess of levels 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.

*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.

*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.

*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.

*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.

*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.

*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 lead-based paint activities courses in any of the following disciplines: inspector, risk assessor, supervisor, project designer, and abatement worker. 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.

(3) A training program shall 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.

(b) *Application process.* The following are procedures a training program shall follow to receive EPA



accreditation to offer lead-based paint activities 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.

(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.

(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 180 days after receiving a complete application from the 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 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.

(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.

(c) *Requirements for the accreditation of training programs.* For a training program to obtain accreditation from EPA to offer lead-based paint activities courses, the program shall 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

(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) 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 at least 16 hours of any EPA-accredited or EPA-authorized State or Tribal-accredited lead-specific training; and

(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:

(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.

(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.

(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, which shall be 6 months from the date of course completion.

(v) The name, address, and telephone number of the training program.

(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) The training program shall offer courses which teach the work practice standards for conducting lead-based paint activities contained in § 745.227, and other standards developed by EPA pursuant to Title IV of TSCA. These standards shall be taught in the appropriate courses to provide trainees with the knowledge needed to perform the lead-based paint activities they are 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.

(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.

(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.\*

(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, and abatement worker. 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) Each refresher course, except for the project designer course, shall last a minimum of 8 training hours. The project designer refresher course shall last a minimum of 4 training hours.

(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 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)(12) 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.

(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.

(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.

(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.

(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 years and 6 months.

(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.

**§ 745.226 Certification of individuals and firms engaged in lead-based paint activities: target housing and child-occupied facilities.**

(a) *Certification of individuals.* (1) Individuals seeking certification by EPA to engage in lead-based paint activities must either:

(i) Submit to EPA an application demonstrating that they meet the requirements established in paragraphs (b) or (c) of this section for the particular discipline for which certification is sought; or

(ii) Submit to EPA an application with a copy of a valid lead-based paint activities certification (or equivalent) from a State or Tribal program that has been authorized by EPA pursuant to subpart Q of this part.

(2) Individuals may first apply to EPA for certification to engage in lead-based paint activities pursuant to this section on or after March 1, 1999.

(3) Following the submission of an application demonstrating that all the requirements of this section have been met, EPA shall certify an applicant as an inspector, risk assessor, supervisor, project designer, or abatement worker, as appropriate.

(4) Upon receiving EPA certification, individuals conducting lead-based paint activities shall comply with the work practice standards for performing the appropriate lead-based paint activities as established in § 745.227.

(5) It shall be a violation of TSCA for an individual to conduct any of the lead-based paint activities described in § 745.227 after August 30, 1999, if that individual has not been certified by EPA pursuant to this section to do so.

(b) *Inspector, risk assessor or supervisor.* (1) To become certified by EPA as an inspector, risk assessor, or

supervisor, pursuant to paragraph (a)(1)(i) of this section, an individual must:

(i) Successfully complete an accredited course in the appropriate discipline and receive a course completion certificate from an accredited training program.

(ii) Pass the certification exam in the appropriate discipline offered by EPA; and,

(iii) Meet or exceed the following experience and/or education requirements:

(A) Inspectors. (1) No additional experience and/or education requirements.

(2) [Reserved]

(B) Risk assessors. (1) Successful completion of an accredited training course for inspectors; and

(2) Bachelor's degree and 1 year of experience in a related field (e.g., lead, asbestos, environmental remediation work, or construction), or an Associates degree and 2 years experience in a related field (e.g., lead, asbestos, environmental remediation work, or construction); or

(3) Certification as an industrial hygienist, professional engineer, registered architect and/or certification in a related engineering/health/environmental field (e.g., safety professional, environmental scientist); or

(4) A high school diploma (or equivalent), and at least 3 years of experience in a related field (e.g., lead, asbestos, environmental remediation work or construction).

(C) Supervisor: (1) One year of experience as a certified lead-based paint abatement worker; or

(2) At least 2 years of experience in a related field (e.g., lead, asbestos, or environmental remediation work) or in the building trades.

(2) The following documents shall be recognized by EPA as evidence of meeting the requirements listed in (b)(2)(iii) of this paragraph:

(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) Course completion certificates from lead-specific or other related training courses, issued by accredited training programs, as evidence of meeting the training requirements.

(3) In order to take the certification examination for a particular discipline an individual must:

(i) Successfully complete an accredited course in the appropriate

discipline and receive a course completion certificate from an accredited training program.

(ii) Meet or exceed the education and/or experience requirements in paragraph (b)(1)(iii) of this section.

(4) The course completion certificate shall serve as interim certification for an individual until the next available opportunity to take the certification exam. Such interim certification shall expire 6 months after issuance.

(5) After passing the appropriate certification exam and submitting an application demonstrating that he/she meets the appropriate training, education, and/or experience prerequisites described in paragraph (b)(1) of this section, an individual shall be issued a certificate by EPA. To maintain certification, an individual must be re-certified as described in paragraph (e) of this section.

(6) An individual may take the certification exam no more than three times within 6 months of receiving a course completion certificate.

(7) If an individual does not pass the certification exam and receive a certificate within 6 months of receiving his/her course completion certificate, the individual must retake the appropriate course from an accredited training program before reapplying for certification from EPA.

(c) *Abatement worker and project designer.* (1) To become certified by EPA as an abatement worker or project designer, pursuant to paragraph (a)(1)(i) of this section, an individual must:

(i) Successfully complete an accredited course in the appropriate discipline and receive a course completion certificate from an accredited training program.

(ii) Meet or exceed the following additional experience and/or education requirements:

(A) Abatement workers. (1) No additional experience and/or education requirements.

(2) [Reserved]

(B) Project designers. (1) Successful completion of an accredited training course for supervisors.

(2) Bachelor's degree in engineering, architecture, or a related profession, and 1 year of experience in building construction and design or a related field; or

(3) Four years of experience in building construction and design or a related field.

(2) The following documents shall be recognized by EPA as evidence of meeting the requirements listed in this paragraph:

(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) Course completion certificates from lead-specific or other related training courses, issued by accredited training programs, as evidence of meeting the training requirements.

(3) The course completion certificate shall serve as an interim certification until certification from EPA is received, but shall be valid for no more than 6 months from the date of completion.

(4) After successfully completing the appropriate training courses and meeting any other qualifications described in paragraph (c)(1) of this section, an individual shall be issued a certificate from EPA. To maintain certification, an individual must be re-certified as described in paragraph (e) of this section.

(d) *Certification based on prior training.* (1) Any individual who received training in a lead-based paint activity between October 1, 1990, and March 1, 1999 shall be eligible for certification by EPA under the alternative procedures contained in this paragraph. Individuals who have received lead-based paint activities training at an EPA-authorized State or Tribal accredited training program shall also be eligible for certification by EPA under the following alternative procedures:

(i) Applicants for certification as an inspector, risk assessor, or supervisor shall:

(A) Demonstrate that the applicant has successfully completed training or on-the-job training in the conduct of a lead-based paint activity.

(B) Demonstrate that the applicant meets or exceeds the education and/or experience requirements in paragraph (b)(1)(iii) of this section.

(C) Successfully complete an accredited refresher training course for the appropriate discipline.

(D) Pass a certification exam administered by EPA for the appropriate discipline.

(ii) Applicants for certification as an abatement worker or project designer shall:

(A) Demonstrate that the applicant has successfully completed training or on-the-job training in the conduct of a lead-based paint activity.

(B) Demonstrate that the applicant meets the education and/or experience requirements in paragraphs (c)(1) of this section; and

(C) Successfully complete an accredited refresher training course for the appropriate discipline.

(2) Individuals shall have until August 30, 1999 to apply to EPA for certification under the above procedures. After that date, all individuals wishing to obtain certification must do so through the procedures described in paragraph (a), and paragraph (b) or (c) of this section, according to the discipline for which certification is sought.

(e) *Re-certification.* (1) To maintain certification in a particular discipline, a certified individual shall apply to and be re-certified by EPA in that discipline by EPA either:

(i) Every 3 years if the individual completed a training course with a course test and hands-on assessment; or

(ii) every 5 years if the individual completed a training course with a proficiency test.

(2) An individual shall be re-certified if the individual successfully completes the appropriate accredited refresher training course and submits a valid copy of the appropriate refresher course completion certificate.

(f) *Certification of firms.* (1) All firms which perform or offer to perform any of the lead-based paint activities described in § 745.227 after August 30, 1999 shall be certified by EPA.

(2) A firm seeking certification shall submit to EPA a letter attesting that the firm shall only employ appropriately certified employees to conduct lead-based paint activities, and that the firm and its employees shall follow the work practice standards in § 745.227 for conducting lead-based paint activities.

(3) From the date of receiving the firm's letter requesting certification, EPA shall have 90 days to approve or disapprove the firm's request for certification. Within that time, EPA shall respond with either a certificate of approval or a letter describing the reasons for a disapproval.

(4) The firm shall maintain all records pursuant to the requirements in § 745.227.

(5) Firms may first apply to EPA for certification to engage in lead-based paint activities pursuant to this section on or after March 1, 1999.

(g) *Suspension, revocation, and modification of certifications of individuals engaged in lead-based paint activities.* (1) EPA may, after notice and opportunity for hearing, suspend, revoke, or modify an individual's certification if an individual has:

(i) Obtained training documentation through fraudulent means.

(ii) Gained admission to and completed an accredited training

program through misrepresentation of admission requirements.

(iii) Obtained certification through misrepresentation of certification requirements or related documents dealing with education, training, professional registration, or experience.

(iv) Performed work requiring certification at a job site without having proof of certification.

(v) Permitted the duplication or use of the individual's own certificate by another.

(vi) Performed work for which certification is required, but for which appropriate certification has not been received.

(vii) Failed to comply with the appropriate work practice standards for lead-based paint activities at § 745.227.

(viii) Failed to comply with Federal, State, or local lead-based paint statutes or regulations.

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

(h) *Suspension, revocation, and modification of certifications of firms engaged in lead-based paint activities.*

(1) EPA may, after notice and opportunity for hearing, suspend, revoke, or modify a firm's certification if a firm has:

(i) Performed work requiring certification at a job site with individuals who are not certified.

(ii) Failed to comply with the work practice standards established in § 745.227.

(iii) Misrepresented facts in its letter of application for certification to EPA.

(iv) Failed to maintain required records.

(v) Failed to comply with Federal, State, or local lead-based paint statutes or regulations.

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

(i) *Procedures for suspension, revocation, or modification of the certification of individuals or firms.*

(1) If EPA decides to suspend, revoke, or modify the certification of any individual or firm, it shall notify the affected entity in writing of the following:

(i) The legal and factual basis for the suspension, revocation, or modification.

(ii) The 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 EPA action to suspend, revoke, or modify certification.

(v) Any additional information, as appropriate, which EPA may provide.

(2) If a hearing is requested by the certified individual or firm, EPA shall:

(i) Provide the affected entity an opportunity to offer written statements in response to EPA's assertion of the legal and factual basis 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 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; and

(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 EPA action subject to judicial review.

(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 shall:

(i) Notify the affected entity of its intent to immediately suspend certification for the reasons listed in paragraph (h)(1) of this section. If a suspension, revocation, or modification notice has not previously been issued, it shall be issued at the same time the immediate suspension notice is issued.

(ii) Notify the affected entity in writing of the grounds upon which the immediate suspension is based and why it is necessary to suspend the entity's accreditation before an opportunity for a hearing to suspend, revoke, or modify the individual's or firm's certification.

(iii) Notify the affected entity of the 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, transcript or other verbatim record of oral testimony, and any documents filed by a certified individual or firm 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.

**§ 745.227 Work practice standards for conducting lead-based paint activities: target housing and child-occupied facilities.**

(a) *Effective date, applicability, and terms.* (1) Beginning on March 1, 1999, all lead-based paint activities shall be performed pursuant to the work practice standards contained in this section.

(2) When performing any lead-based paint activity described by the certified individual as an inspection, lead-hazard screen, risk assessment or abatement, a certified individual must perform that activity in compliance with the appropriate requirements below.

(3) Documented methodologies that are appropriate for this section are found in the following: The U.S. Department of Housing and Urban Development (HUD) Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing; the EPA Guidance on Residential Lead-Based Paint, Lead-Contaminated Dust, and Lead-Contaminated Soil; the EPA Residential Sampling for Lead: Protocols for Dust and Soil Sampling (EPA report number 7474-R-95-001); Regulations, guidance, methods or protocols issued by States and Indian Tribes that have been authorized by EPA; and other equivalent methods and guidelines.

(4) Clearance levels are appropriate for the purposes of this section may be found in the EPA Guidance on Residential Lead-Based Paint, Lead-Contaminated Dust, and Lead-Contaminated Soil or other equivalent guidelines.

(b) *Inspection.* (1) An inspection shall be conducted only by a person certified by EPA as an inspector or risk assessor and, if conducted, must be conducted according to the procedures in this paragraph.

(2) When conducting an inspection, the following locations shall be selected according to documented methodologies

and tested for the presence of lead-based paint:

(i) In a residential dwelling and child-occupied facility, each component with a distinct painting history and each exterior component with a distinct painting history shall be tested for lead-based paint, except those components that the inspector or risk assessor determines to have been replaced after 1978, or to not contain lead-based paint; and

(ii) In a multi-family dwelling or child-occupied facility, each component with a distinct painting history in every common area, except those components that the inspector or risk assessor determines to have been replaced after 1978, or to not contain lead-based paint.

(3) Paint shall be sampled in the following manner: (i) The analysis of paint to determine the presence of lead shall be conducted using documented methodologies which incorporate adequate quality control procedures; and/or

(ii) All collected paint chip samples shall be analyzed according to paragraph (f) of this section to determine if they contain detectable levels of lead that can be quantified numerically.

(4) The certified inspector or risk assessor shall prepare an inspection report which shall include the following information:

(i) Date of each inspection.

(ii) Address of building.

(iii) Date of construction.

(iv) Apartment numbers (if applicable).

(v) Name, address, and telephone number of the owner or owners of each residential dwelling or child-occupied facility.

(vi) Name, signature, and certification number of each certified inspector and/or risk assessor conducting testing.

(vii) Name, address, and telephone number of the certified firm employing each inspector and/or risk assessor, if applicable.

(viii) Each testing method and device and/or sampling procedure employed for paint analysis, including quality control data and, if used, the serial number of any x-ray fluorescence (XRF) device.

(ix) Specific locations of each painted component tested for the presence of lead-based paint.

(x) The results of the inspection expressed in terms appropriate to the sampling method used.

(c) *Lead hazard screen.* (1) A lead hazard screen shall be conducted only by a person certified by EPA as a risk assessor.

(2) If conducted, a lead hazard screen shall be conducted as follows:

(i) Background information regarding the physical characteristics of the residential dwelling or child-occupied facility and occupant use patterns that may cause lead-based paint exposure to one or more children age 6 years and under shall be collected.

(ii) A visual inspection of the residential dwelling or child-occupied facility shall be conducted to:

(A) Determine if any deteriorated paint is present, and

(B) Locate at least two dust sampling locations.

(iii) If deteriorated paint is present, each surface with deteriorated paint, which is determined, using documented methodologies, to be in poor condition and to have a distinct painting history, shall be tested for the presence of lead.

(iv) In residential dwellings, two composite dust samples shall be collected, one from the floors and the other from the windows, in rooms, hallways or stairwells where one or more children, age 6 and under, are most likely to come in contact with dust.

(v) In multi-family dwellings and child-occupied facilities, in addition to the floor and window samples required in paragraph (c)(1)(iii) of this section, the risk assessor shall also collect composite dust samples from common areas where one or more children, age 6 and under, are most likely to come into contact with dust.

(3) Dust samples shall be collected and analyzed in the following manner:

(i) All dust samples shall be taken using documented methodologies that incorporate adequate quality control procedures.

(ii) All collected dust samples shall be analyzed according to paragraph (f) of this section to determine if they contain detectable levels of lead that can be quantified numerically.

(4) Paint shall be sampled in the following manner: (i) The analysis of paint to determine the presence of lead shall be conducted using documented methodologies which incorporate adequate quality control procedures; and/or

(ii) All collected paint chip samples shall be analyzed according to paragraph (f) of this section to determine if they contain detectable levels of lead that can be quantified numerically.

(5) The risk assessor shall prepare a lead hazard screen report, which shall include the following information:

(i) The information required in a risk assessment report as specified in paragraph (d) of this section, including

paragraphs (d)(11)(i) through (d)(11)(xiv), and excluding paragraphs (d)(11)(xv) through (d)(11)(xviii) of this section. Additionally, any background information collected pursuant to paragraph (c)(2)(i) of this section shall be included in the risk assessment report; and

(ii) Recommendations, if warranted, for a follow-up risk assessment, and as appropriate, any further actions.

(d) *Risk assessment.* (1) A risk assessment shall be conducted only by a person certified by EPA as a risk assessor and, if conducted, must be conducted according to the procedures in this paragraph.

(2) A visual inspection for risk assessment of the residential dwelling or child-occupied facility shall be undertaken to locate the existence of deteriorated paint, assess the extent and causes of the deterioration, and other potential lead-based paint hazards.

(3) Background information regarding the physical characteristics of the residential dwelling or child-occupied facility and occupant use patterns that may cause lead-based paint exposure to one or more children age 6 years and under shall be collected.

(4) Each surface with deteriorated paint, which is determined, using documented methodologies, to be in poor condition and to have a distinct painting history, shall be tested for the presence of lead. Each other surface determined, using documented methodologies, to be a potential lead-based paint hazard and having a distinct painting history, shall also be tested for the presence of lead.

(5) In residential dwellings, dust samples (either composite or single-surface samples) from the window and floor shall be collected in all living areas where one or more children, age 6 and under, are most likely to come into contact with dust.

(6) For multi-family dwellings and child-occupied facilities, the samples required in paragraph (d)(4) of this section shall be taken. In addition, window and floor dust samples (either composite or single-surface samples) shall be collected in the following locations:

(i) Common areas adjacent to the sampled residential dwelling or child-occupied facility; and

(ii) Other common areas in the building where the risk assessor determines that one or more children, age 6 and under, are likely to come into contact with dust.

(7) For child-occupied facilities, window and floor dust samples (either composite or single-surface samples) shall be collected in each room, hallway

or stairwell utilized by one or more children, age 6 and under, and in other common areas in the child-occupied facility where the risk assessor determines one or more children, age 6 and under, are likely to come into contact with dust.

(8) Soil samples shall be collected and analyzed for lead concentrations in the following locations:

(i) Exterior play areas where bare soil is present; and

(ii) Dripline/foundation areas where bare soil is present.

(9) Any paint, dust, or soil sampling or testing shall be conducted using documented methodologies that incorporate adequate quality control procedures.

(10) Any collected paint chip, dust, or soil samples shall be analyzed according to paragraph (f) of this section to determine if they contain detectable levels of lead that can be quantified numerically.

(11) The certified risk assessor shall prepare a risk assessment report which shall include the following information:

(i) Date of assessment.

(ii) Address of each building.

(iii) Date of construction of buildings.

(iv) Apartment number (if applicable).

(v) Name, address, and telephone number of each owner of each building.

(vi) Name, signature, and certification of the certified risk assessor conducting the assessment.

(vii) Name, address, and telephone number of the certified firm employing each certified risk assessor if applicable.

(viii) Name, address, and telephone number of each recognized laboratory conducting analysis of collected samples.

(ix) Results of the visual inspection.

(x) Testing method and sampling procedure for paint analysis employed.

(xi) Specific locations of each painted component tested for the presence of lead.

(xii) All data collected from on-site testing, including quality control data and, if used, the serial number of any XRF device.

(xiii) All results of laboratory analysis on collected paint, soil, and dust samples.

(xiv) Any other sampling results.

(xv) Any background information collected pursuant to paragraph (d)(3) of this section.

(xvi) To the extent that they are used as part of the lead-based paint hazard determination, the results of any previous inspections or analyses for the presence of lead-based paint, or other assessments of lead-based paint-related hazards.

(xvii) A description of the location, type, and severity of identified lead-

based paint hazards and any other potential lead hazards.

(xviii) A description of interim controls and/or abatement options for each identified lead-based paint hazard and a suggested prioritization for addressing each hazard. If the use of an encapsulant or enclosure is recommended, the report shall recommend a maintenance and monitoring schedule for the encapsulant or enclosure.

(e) *Abatement.* (1) An abatement shall be conducted only by an individual certified by EPA, and if conducted, shall be conducted according to the procedures in this paragraph.

(2) A certified supervisor is required for each abatement project and shall be onsite during all work site preparation and during the post-abatement cleanup of work areas. At all other times when abatement activities are being conducted, the certified supervisor shall be onsite or available by telephone, pager or answering service, and able to be present at the work site in no more than 2 hours.

(3) The certified supervisor and the certified firm employing that supervisor shall ensure that all abatement activities are conducted according to the requirements of this section and all other Federal, State and local requirements.

(4) Notification of the commencement of lead-based paint abatement activities in a residential dwelling or child-occupied facility or as a result of a Federal, State, or local order shall be given to EPA prior to the commencement of abatement activities. The procedure for this notification will be developed by EPA prior to August 31, 1998.

(5) A written occupant protection plan shall be developed for all abatement projects and shall be prepared according to the following procedures:

(i) The occupant protection plan shall be unique to each residential dwelling or child-occupied facility and be developed prior to the abatement. The occupant protection plan shall describe the measures and management procedures that will be taken during the abatement to protect the building occupants from exposure to any lead-based paint hazards.

(ii) A certified supervisor or project designer shall prepare the occupant protection plan.

(6) The work practices listed below shall be restricted during an abatement as follows:

(i) Open-flame burning or torching of lead-based paint is prohibited;



(ii) Machine sanding or grinding or abrasive blasting or sandblasting of lead-based paint is prohibited unless used with High Efficiency Particulate Air (HEPA) exhaust control which removes particles of 0.3 microns or larger from the air at 99.97 percent or greater efficiency;

(iii) Dry scraping of lead-based paint is permitted only in conjunction with heat guns or around electrical outlets or when treating defective paint spots totaling no more than 2 square feet in any one room, hallway or stairwell or totaling no more than 20 square feet on exterior surfaces; and

(iv) Operating a heat gun on lead-based paint is permitted only at temperatures below 1100 degrees Fahrenheit.

(7) If conducted, soil abatement shall be conducted in one of the following ways:

(i) If soil is removed, the lead-contaminated soil shall be replaced with soil that is not lead-contaminated; or

(ii) If soil is not removed, the lead-contaminated soil shall be permanently covered, as defined in § 745.223.

(8) The following post-abatement clearance procedures shall be performed only by a certified inspector or risk assessor:

(i) Following an abatement, a visual inspection shall be performed to determine if deteriorated painted surfaces and/or visible amounts of dust, debris or residue are still present. If deteriorated painted surfaces or visible amounts of dust, debris or residue are present, these conditions must be eliminated prior to the continuation of the clearance procedures.

(ii) Following the visual inspection and any post-abatement cleanup required by paragraph (e)(8)(i) of this section, clearance sampling for lead-contaminated dust shall be conducted. Clearance sampling may be conducted by employing single-surface sampling or composite sampling techniques.

(iii) Dust samples for clearance purposes shall be taken using documented methodologies that incorporate adequate quality control procedures.

(iv) Dust samples for clearance purposes shall be taken a minimum of 1 hour after completion of final post-abatement cleanup activities.

(v) The following post-abatement clearance activities shall be conducted as appropriate based upon the extent or manner of abatement activities conducted in or to the residential dwelling or child-occupied facility:

(A) After conducting an abatement with containment between abated and unabated areas, one dust sample shall

be taken from one window (if available) and one dust sample shall be taken from the floor of no less than four rooms, hallways or stairwells within the containment area. In addition, one dust sample shall be taken from the floor outside the containment area. If there are less than four rooms, hallways or stairwells within the containment area, then all rooms, hallways or stairwells shall be sampled.

(B) After conducting an abatement with no containment, two dust samples shall be taken from no less than four rooms, hallways or stairwells in the residential dwelling or child-occupied facility. One dust sample shall be taken from one window (if available) and one dust sample shall be taken from the floor of each room, hallway or stairwell selected. If there are less than four rooms, hallways or stairwells within the residential dwelling or child-occupied facility then all rooms, hallways or stairwells shall be sampled.

(C) Following an exterior paint abatement, a visible inspection shall be conducted. All horizontal surfaces in the outdoor living area closest to the abated surface shall be found to be cleaned of visible dust and debris. In addition, a visual inspection shall be conducted to determine the presence of paint chips on the dripline or next to the foundation below any exterior surface abated. If paint chips are present, they must be removed from the site and properly disposed of, according to all applicable Federal, State and local requirements.

(vi) The rooms, hallways or stairwells selected for sampling shall be selected according to documented methodologies.

(vii) The certified inspector or risk assessor shall compare the residual lead level (as determined by the laboratory analysis) from each dust sample with applicable clearance levels for lead in dust on floors and windows. If the residual lead levels in a dust sample exceed the clearance levels, all the components represented by the failed sample shall be recleaned and retested until clearance levels are met.

(9) In a multi-family dwelling with similarly constructed and maintained residential dwellings, random sampling for the purposes of clearance may be conducted provided:

(i) The certified individuals who abate or clean the residential dwellings do not know which residential dwelling will be selected for the random sample.

(ii) A sufficient number of residential dwellings are selected for dust sampling to provide a 95 percent level of confidence that no more than 5 percent or 50 of the residential dwellings

(whichever is smaller) in the randomly sampled population exceed the appropriate clearance levels.

(iii) The randomly selected residential dwellings shall be sampled and evaluated for clearance according to the procedures found in paragraph (e)(8) of this section.

(10) An abatement report shall be prepared by a certified supervisor or project designer. The abatement report shall include the following information:

(i) Start and completion dates of abatement.

(ii) The name and address of each certified firm conducting the abatement and the name of each supervisor assigned to the abatement project.

(iii) The occupant protection plan prepared pursuant to paragraph (e)(5) of this section.

(iv) The name, address, and signature of each certified risk assessor or inspector conducting clearance sampling and the date of clearance testing.

(v) The results of clearance testing and all soil analyses (if applicable) and the name of each recognized laboratory that conducted the analyses.

(vi) A detailed written description of the abatement, including abatement methods used, locations of rooms and/or components where abatement occurred, reason for selecting particular abatement methods for each component, and any suggested monitoring of encapsulants or enclosures.

(f) *Collection and laboratory analysis of samples.* Any paint chip, dust, or soil samples collected pursuant to the work practice standards contained in this section shall be:

(1) Collected by persons certified by EPA as an inspector or risk assessor; and

(2) Analyzed by a laboratory recognized by EPA pursuant to section 405(b) of TSCA as being capable of performing analyses for lead compounds in paint chip, dust, and soil samples.

(g) *Composite dust sampling.* Composite dust sampling may only be conducted in the situations specified in paragraphs (c) through (e) of this section. If such sampling is conducted, the following conditions shall apply:

(1) Composite dust samples shall consist of at least two subsamples;

(2) Every component that is being tested shall be included in the sampling; and

(3) Composite dust samples shall not consist of subsamples from more than one type of component.

(h) *Recordkeeping.* All reports or plans required in this section shall be maintained by the certified firm or individual who prepared the report for

no fewer than 3 years. The certified firm or individual also shall provide copies of these reports to the building owner who contracted for its services.

**§ 745.228 Accreditation of training programs: public and commercial buildings, bridges and superstructures [Reserved].**

**§ 745.229 Certification of individuals and firms engaged in lead-based paint activities: public and commercial buildings, bridges and superstructures [Reserved].**

**§ 745.230 Work practice standards for conducting lead-based paint activities: public and commercial buildings, bridges and superstructures [Reserved].**

**§ 745.233 Lead-based paint activities requirements.**

Lead-based paint activities, as defined in this part, shall only be conducted according to the procedures and work practice standards contained in § 745.227 of this subpart. No individual or firm may offer to perform or perform any lead-based paint activity as defined in this part, unless certified to perform that activity according to the procedures in § 745.226.

**§ 745.235 Enforcement.**

(a) Failure or refusal to comply with any requirement of §§ 745.225, 745.226, 745.227, or 745.233 is a prohibited act under sections 15 and 409 of TSCA (15 U.S.C. 2614, 2689).

(b) Failure or refusal to establish, maintain, provide, copy, or permit access to records or reports as required by §§ 745.225, 745.226, or 745.227 is a prohibited act under sections 15 and 409 of TSCA (15 U.S.C. 2614, 2689).

(c) Failure or refusal to permit entry or inspection as required by § 745.237 and section 11 of TSCA (15 U.S.C. 2610) is a prohibited act under sections 15 and 409 of TSCA (15 U.S.C. 2614, 2689).

(d) In addition to the above, any individual or firm that performs any of the following acts shall be deemed to have committed a prohibited act under sections 15 and 409 of TSCA (15 U.S.C. 2614, 2689). These include the following:

- (i) Obtaining certification through fraudulent representation;
- (ii) Failing to obtain certification from EPA and performing work requiring certification at a job site; or
- (iii) Fraudulently obtaining certification and engaging in any lead-based paint activities requiring certification.

(e) Violators are subject to civil and criminal sanctions pursuant to section 16 of TSCA (15 U.S.C. 2615) for each violation.

**§ 745.237 Inspections.**

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

**§ 745.239 Effective dates.**

This subpart L shall apply in any State or Indian Country that does not have an authorized program under subpart Q, effective August 31, 1998. In such States or Indian Country:

(a) Training programs shall not provide, offer or claim to provide training or refresher training for certification without accreditation from EPA pursuant to § 745.225 on or after March 1, 1999.

(b) No individual or firm shall perform, offer, or claim to perform lead-based paint activities, as defined in this subpart, without certification from EPA to conduct such activities pursuant to § 745.226 on or after August 30, 1999.

(c) All lead-based paint activities shall be performed pursuant to the work practice standards contained in § 745.227 on or after August 30, 1999.

**Subparts M-P [Reserved]**

**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) For State or Tribal pre-renovation notification programs, a State or Indian Tribe may seek authorization to administer and enforce regulations developed pursuant to TSCA section 406.

(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.

**§ 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 any provisions of subpart L of this part under section 402(a) of TSCA or the provisions of regulations developed under section 406 of TSCA shall submit an application to the Administrator in accordance with the procedures of this paragraph (a).

(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 L of this part, regulations developed pursuant to TSCA section 406, or both. This analysis shall 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 L of this part, regulations developed pursuant to TSCA section 406, or both. EPA will use this analysis to evaluate the 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.

(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)(A) In the case of an application to authorize the State or Indian Tribe to administer and enforce the provisions of subpart L of this part, the State or Tribal program is at least as protective of human health and the environment as the corresponding Federal program under subpart L of this part; and/or

(B) In the case of an application to authorize the State or Indian Tribe to administer and enforce the regulations developed pursuant to TSCA section 406, the State or Tribal program is at least as protective of human health and the environment as the Federal regulations developed pursuant to TSCA section 406.

(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 L and regulations developed pursuant to TSCA section 406, 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 regulations developed pursuant to TSCA section 406 in effect by August 31, 1998, the Administrator shall, by such date, establish and enforce the provisions of regulations developed pursuant to TSCA section 406 as the Federal program for that State or Indian Country.

(3) Upon authorization of a State or Tribal program, pursuant to paragraph (d) or (e) of this section, it shall be an unlawful act under sections 15 and 409 of TSCA for any person to fail or refuse to comply with any requirements of such program.

(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:

(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 shall establish and enforce the provisions of subpart L of this part or regulations developed pursuant to TSCA section 406, 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:

(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; and

(B) Environmental sampling for lead in paint, dust, and soil.

(iv) 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.

(v) 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.

(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.

**§ 745.326 Pre-renovation notification: State and Tribal program requirements.**

(a) *Program elements.* To receive authorization from EPA, a State or Tribal program must contain the following program elements for renovation disclosure:

(1) Procedures and requirements for the distribution of lead hazard

information to owners and occupants of target housing before renovations for compensation; and

(2) An approved lead hazard information pamphlet meeting the requirements of section 406 of TSCA, as determined by EPA. EPA will provide States or Tribes with guidance on what is necessary for a State or Tribal pamphlet approval application.

(b) *Program to distribute lead information.* To be considered at least as protective as the Federal requirements for pre-renovation distribution of information, the State or Indian Tribe must have procedures and requirements that establish:

(1) Clear standards for identifying home improvement activities that trigger the pamphlet distribution requirements; and

(2) Procedures for distributing the lead hazard information to owners and occupants of the housing prior to renovation activities.

(c) *Distribution of acceptable lead hazard information.* To be considered at least as protective as the Federal requirements for the distribution of a lead hazard information pamphlet, the State or Indian Tribe must either:

(1) Distribute the lead hazard information pamphlet developed by EPA under section 406(a) of TSCA, titled *Protect Your Family from Lead in Your Home*; or

(2) Distribute 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 use in that State or Tribe. Such information must meet the content requirements prescribed by section 406(a) of TSCA, and be in a format that is readable to the diverse audience of housing owners and occupants in that State or Tribe.

**§ 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.

(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.

(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 pre-renovation notification 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 pre-renovation notification program, State or Tribal officials must be able to enter a renovator's place of business.

(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 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 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.

#### § 745.330 Grants.

The Administrator, or a designated equivalent, may make grants to States and Indian Tribes, that meet the requirements of § 745.324(e)(2)(i) and (e)(2)(ii), under section 404(g) of TSCA to develop and carry out programs authorized pursuant to this subpart. Grants made under this section are subject to the requirements of 40 CFR part 31.

#### § 745.339 Effective dates.

States and Indian Tribes may seek authorization to administer and enforce subpart L pursuant to this subpart effective October 28, 1996.

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